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Highlights Of Hearings Of The National Commission On The Voting Rights Act 2005

A Supplement to:

***Protecting Minority Voters:
The Voting Rights Act At Work, 1982-2005***

A Report by:

**The National Commission
on the Voting Rights Act**

**HIGHLIGHTS OF HEARINGS OF THE
NATIONAL COMMISSION ON THE
VOTING RIGHTS ACT
2005**

A Supplement to

***Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005:
A Report by the National Commission on the Voting Rights Act***

February 2006

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TABLE OF CONTENTS

Introduction	1
Southern Regional Hearing	3
Southwest Regional Hearing	10
Northeast Regional Hearing	18
Midwest Regional Hearing	25
South Georgia Hearing	31
Florida Hearing	37
South Dakota Hearing	43
Western Regional Hearing	51
Mid-Atlantic Regional Hearing	60
Mississippi Hearing	70
Endnotes	76

INTRODUCTION

The National Commission on the Voting Rights Act was established in 2005 by the Lawyers' Committee for Civil Rights Under Law, a nonprofit, nonpartisan civil rights organization, in conjunction with the civil rights community. The Commission was tasked to produce a fact-based report to determine whether discrimination in voting is serious and widespread, particularly in the period since the Voting Rights Act's last major reauthorization in 1982. The National Commission has produced a Report of its findings: *Protecting Minority Voters: The Voting Rights Act At Work, 1982-2005* (the "Report").

One of the primary factual sources the National Commission relied upon in the Report was the ten field hearings the Commission conducted from March to October 2005. Six regional hearings were held: Southern Regional Hearing (March 11 in Montgomery, Alabama); Southwest Regional Hearing (April 7 in Phoenix, Arizona); Northeast Regional Hearing (June 14 in New York City); Midwest Regional Hearing (July 22 in Minneapolis, Minnesota); Western Regional Hearing (September 27 in Los Angeles, California); and Mid-Atlantic Regional Hearing (October 14 in Washington, D.C.). In addition, three state or local hearings were held: South Georgia Hearing (August 2 in Americus); South Dakota Hearing (September 9 in Rapid City); and Mississippi Hearing (October 29 in Jackson). The tenth hearing, which was held in conjunction with the National Bar Association's 80th Annual Convention, included witnesses from Florida and members of the National Bar Association from throughout the country (August 4 in Orlando, Florida).

The National Commission has eight members: Honorary Chair Charles McC. Mathias, Chair Bill Lann Lee, John Buchanan, Chandler Davidson, Dolores Huerta, Elsie Meeks, Charles Ogletree, and Joe Rogers. Biographies of the Commissioners are contained in the preface to the Report. None of the commissioners was able to attend all hearings. However, a number of Guest Commissioners with special knowledge of elections, voting rights and/or civil rights were invited to substitute for them. This added an important dimension to the hearings, as did the Guest Commissioners' familiarity with local and regional issues. Fred Gray, a lawyer for both Rosa Parks and Martin Luther King in the 1950s, for example, was a Guest Commissioner at the Florida hearing. Former U.S. Senator Tom Daschle, South Dakota Democrat, and current South Dakota Secretary of State Chris Nelson, a Republican, both served as Guest Commissioners at the South Dakota hearing.

The purpose of the hearings was to gather facts from people across the country regarding the presence of discrimination in voting, if any, and the impact of the Voting Rights Act in combating such discrimination. The Commission heard from voting activists, election administrators, attorneys with experience in voting rights—whether in private practice or with experience in the Department of Justice—academic experts, representatives of minority groups, and interested citizens who had knowledge of voting discrimination.

All testimony was transcribed by court reporters, and various documents were entered into the hearings record, including not only prepared statements of some speakers, but election statistics, published articles on voting rights, court opinions, results of election protection programs, and summaries of voting rights-related activities prepared *pro bono* for the Commission by law firms.

This supplement to the Commission Report provides a brief summary of selected aspects of the hearings in each city. It cannot, however, do justice to the testimony rendered. The reader is therefore urged to go to the transcripts and hearings documents contained in the appendices of the Report, which can be found at the National Commission's Web site, www.votingrightsact.org, to get a better sense of the breadth and depth of opinions expressed. For a description of the provisions of the Voting Rights Act, the reader should consult Chapter 3 of the Report.

**Southern Regional Hearing
Freewill Missionary Baptist Church
1724 Hill Street
Montgomery, Alabama
March 11, 2005**

National Commissioners in Attendance:

Hon. John Buchanan
Chandler Davidson
Bill Lann Lee
Elsie Meeks

Guest Commissioners:

Hon. Denise Majette, Former U.S. Representative, 4th District, Georgia
Derryn Moten, Associate Professor, Alabama State University

Panelists:

James Blacksher, Law Offices of James Blacksher, Birmingham, AL
Vernon Burton, University of Illinois, Urbana, IL
Helen Butler, Georgia Coalition for the People's Agenda, Atlanta, GA
Raoul Cunningham, NAACP, Louisville, KY
Anita Earls, University of North Carolina Center for Civil Rights, Chapel Hill,
NC
Richard Engstrom, University of New Orleans, LA
Hon. Frank Jackson, Mayor, Prairie View, TX
Victor Landa, Southwest Voter Registration Education Project, Laredo, TX
Leslie Lobos, Mexican American Legal Defense and Educational Fund,
Atlanta, GA
Laughlin McDonald, ACLU Voting Rights Project, Atlanta, GA
Gwendolyn Patton, Montgomery, AL
Hon. Bobby Singleton, Alabama State Senate, Montgomery, AL

Public Testimony:

Fletcher Earl Cooley, Montgomery, AL
Claude Foster, NAACP National Voter Fund, Texas
Apostle James Jemison, Alabama Alliance to Restore the Vote and the
Alabama Coalition on Black Civil Participation
Rev. Earl S. Wagner, Concerned Citizens' Organization
Efia Wangaza, South Carolina Chapter of the Malcolm X Grassroots
Movement for Self-Determination
Willie Mae Whitlow, Montgomery, AL

The states covered included Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. The hearing site was the sanctuary of the Free Will Baptist Church, 1724 Hill Street, Montgomery, Alabama. Panels consisted of those invited to appear and members of the public who volunteered their experiences. Invited panelists included voting rights lawyers, public officials, scholars of voting rights, and representatives of civil rights organizations. Seated in the audience were some of the participants in the Fortieth Anniversary Selma-To-Montgomery March, which at the time of the hearing had reached the outskirts of Montgomery and the next day would continue past the Rosa Parks Museum and the Dexter Avenue Baptist Church to the state capitol.

Vernon Burton, a historian at the University of Illinois who specializes in southern history and voting rights issues, described the Voting Rights Act as “one of the most successful civil rights statutes ever enacted by the United States Congress.”¹ He relied on his expert testimony in the 2003 congressional redistricting case in Texas to remark on “how overt some racial appeals” are in that state.² He mentioned hearings held by the NAACP in Texas regarding the 2000 and 2002 elections, in which various kinds of intimidation and misinformation directed at African Americans were reported, as well as “late change of polling places; dropping individuals from poll lists without cause; not allowing individuals to file challenge ballots,” as well as “a hate crime in Wharton [Texas],” where the home of a campaign staff treasurer for a black candidate for sheriff was burned. “[H]er husband, a former county commissioner,” was inside, “and got [out] only because the dog was barking. And she had just received threatening calls saying what would happen to her if she did not get [that]—and we won’t use the N word—sign out of her yard.”³

Burton also referred to other forms of anti-black discrimination of which a judge took note in a recent Charleston, South Carolina, voting rights case, including “people making it hard for African-Americans to vote.”⁴ He introduced his expert witness reports in that case and another recent one in South Carolina. Examples of discrimination, he said, “can be documented [in the 1990s and 2000s], including “poll watchers, who make it hard for people [to vote],” among other things.⁵ In Charleston, South Carolina, after the county was forced by the court to adopt single-member districts, the school board decided “after African Americans got elected . . . to change the method of elections and take away powers from them.”⁶ He cited this as a reason why the federal preclearance provision contained in Section 5 of the Act still needed.

Dr. Gwen Patton, a long-time Alabama voting rights activist and teacher, testified about recent instances of polling places being

relocated in Black Belt counties without voters knowing where the new sites were, as well as charges filed against people at the polls who “were simply assisting elderly people with the right to vote.”⁷

Victor Landa, representing the Southwest Voter Registration Education Project, stressed the importance to Latino citizens of having election materials, especially registration cards, in Spanish:

I’ve found that citizens who prefer Spanish registration cards do so because they feel more connected to the process. They also feel they trust the process more when they fully understand it. Many older citizens, new citizens, and first-time voters whose primary language is Spanish would not have registered to vote if not for the access to registration cards in Spanish. Without materials in Spanish, those citizens whose eagerness . . . to participate . . . would compel them to register even using a form with registration instructions they did not understand, would run the risk of making errors on the registration card that could prevent them from voting if those errors made them wrongly appear ineligible. Without materials in Spanish, many citizens not fluent in English would find the process too difficult to navigate and would not vote or would not necessarily vote in the way that they had intended.⁸

Landa went on to describe “strategic” efforts in the 2004 Texas election cycle to prevent some citizens from registering to vote. “In one county in South Texas, some of our Spanish-speaking volunteers were denied the eligibility to be deputized as registrars,” he said, adding that in Texas only deputized registrars can register voters in the field. “Some officials who are employed by law to deputize registrars deliberately set obstacles to deputization for people who may have belonged to an opposing political party.”⁹

Speaking of the difference Section 5 of the Act makes, Landa gave the example of an election in San Antonio “where early voting places were [going to be] changed in the west side and south side . . . that’s predominantly Latino. . . . Early voting places were taken from there and put in the other parts of town. The reasoning [given] for this was that more people vote in the other parts of town than they do on the south side and the west side.” But because the changes had not been submitted to the Department of Justice for Section 5 preclearance, “it was very easy to stop it before it even happened, while it was still in the planning stages . . .”¹⁰

Frank Jackson, currently the mayor of Prairie View, Texas, the site of a historically black university, Prairie View A & M, testified about the efforts of the white District Attorney to disqualify black students from voting during the 2004 presidential election year, on the grounds they were not legal residents of the county. This was in spite of lawsuits in the late 1970s growing out of vote-suppression efforts in the surrounding county that settled the question of whether students were county residents. The mayor asserted that the Voting Rights Act “provides us with some necessary safeguards, because if it was not for that looking-over-the-shoulder, somebody watching the process, then we would have been at the mercy of the powers that still advocate states rights.”¹¹

Raoul Cunningham with the Kentucky NAACP compared the problems faced by minorities in his state, which is not covered by Section 5, with problems in states that are covered. Officials in Kentucky do not have to consider the views of the black community when making voting changes, he said. He also asserted that the legislature “has never given African Americans . . . an opportunity to elect candidates of choice across the board across the state.” Referring to methods of racial gerrymandering, he added, “They have packed us; they have cracked us.” With Section 5 coverage, he said, districting proposals in his state would have had to be reviewed and precleared by the Department of Justice before implementation.¹²

The same type of comparison was made by *Anita Earls*, former Deputy Assistant Attorney General for Civil Rights who oversaw the Voting Section. Earls spoke of the situation in certain covered and uncovered counties in North Carolina. In the covered ones, Section 5’s non-retrogression standard prevents efforts to “get rid of the court orders that were established to create opportunities for black voters.” In the uncovered counties, however, it does not.¹³

In measuring the Department of Justice’s impact under Section 5, Earls stressed the importance of tallying jurisdictions’ withdrawals of their submissions to the Department of Justice as a measure of their attempts to discriminate. Objections alone, she noted, do not tell the whole story. “Below the surface, what you don’t see are all the times that the Justice Department writes letters requesting more information on a submission, and as a result of that, the jurisdiction changes its plans and brings them into compliance. . . . It doesn’t even have to rise to the level of a written letter for more information. [The Justice Department] gets a submission; they make phone calls; make inquiries; the jurisdiction says, ‘Oh, you’re right.’ . . . They change what they’re planning to do.”¹⁴ Earls also stressed the important role federal observers play, as provided for under the Voting Rights Act, in preventing discrimination because of their ability to get

inside polling places—something election protection volunteers are unable to do.¹⁵

Professor Richard Engstrom of the University of New Orleans, a noted expert on voting who has testified in numerous voting rights cases, spoke at length about his findings regarding the widespread phenomenon of racially polarized voting, which he called “a central concept which we deal with in Section 5 of the Voting Rights Act.” He noted, “If voting isn’t racially polarized, we no longer need these protections [against vote dilution offered by the Voting Rights Act].” His data, he said, revealed that much polarization still exists.¹⁶

Today I want to tell you race remains the central demographic division in American politics. Don’t trust me; read the literature. Read the recent books on southern politics. Race is still the major demographic division in southern politics and, indeed, politics across the country. And racially polarized voting persists. I know this because I study it.¹⁷

Since the 2000 census, Engstrom has worked in seven states conducting studies of racially polarized voting, “or at least what it takes to elect minority-choice representatives.” As an example of his findings, he presented several data sets measuring polarization in different ways in various types of Louisiana elections. Specifically, he focused on ninety elections using three measures of polarization for each. “Almost every election analysis in those tables,” he testified, shows “racially-polarized voting in that election. . . . There are a few exceptions, usually when African Americans themselves may not be supportive of the African-American candidate. But . . . rarely is that the case.” Engstrom analyzed elections for at least ten types of office in his study—from governor to the recorder of mortgages. “It doesn’t matter what office is at issue; it doesn’t matter whether it’s high profile or low profile; it doesn’t matter whether it’s top of the ballot or down on the ballot. Time, place, and office do not matter. What we find consistently in almost every instance” is racially polarized voting.¹⁸

Engstrom claimed there was nothing unique to Louisiana in this respect. He pointed to other states in which he had recently conducted polarization analyses—South Carolina, Georgia, Florida, Alabama, and North Carolina (regarding African Americans and whites), and Texas (regarding Hispanics and Anglos [non-Hispanic whites]). He also noted that, in voting cases, he has worked as an expert for defendants and plaintiffs, for states, for civil rights organizations, and for the Department of Justice. He believes, as a

consequence of his research, that Section 5 is still needed to protect against vote dilution.¹⁹

Engstrom's views on polarized voting were echoed by *Laughlin McDonald*, Director of the Southern Regional Office of the ACLU, who discussed the phenomenon and pointed to court findings of polarized voting as recently as 2002.²⁰

The impact of the Voting Rights Act on Hale County, Alabama, and its county seat of Greensboro, deep in the state's Black Belt, was discussed by *State Senator Bobby Singleton*. Singleton ran for city council in 1984 in an at-large system. In spite of the fact that the city was 63 percent black, it had no black elected officials. Singleton lost by fifty votes. A suit he subsequently filed against the city's election system became part of a larger suit which eventually mandated single-member districts. The plan, in turn, had to be precleared under Section 5. The district system led in 1992 to the election of the city's first black council members in a century. In 1997, the city also elected its first African-American mayor, an event which Singleton attributed to the political mobilization of the city's black population as a result of the creation of single-member districts.²¹ Racial tensions in the city's politics have been noteworthy. Singleton mentioned one especially tense situation in 1992, during the elections of the first blacks in the city:

We had at that time, still, white minorities . . . in that community who were still in control of the electoral process, holding the doors, closing the doors on African-American voters before the . . . voting hours were over. I . . . had to go to jail because I was able to snatch the door open and allow people who was coming from the local fish plant . . . whom they did not want to come in, that would have made a difference in the . . . votes on that particular day. We've experienced that in the city of Greensboro . . . over and over again, and even in the county of Hale . . .²²

The Department of Justice, Singleton added, was contacted many times to prevent efforts to change voting hours and to prevent "intimidation of black voters going to the poll." As a result of Department intervention and the presence of federal observers, blacks in the county are now a majority on many if not most of the elected governments in Hale County—school boards, the county government, "most of the cities in the area," and, Singleton added, "we were able to elect a black circuit judge, black circuit clerk, myself as a state representative . . ."²³

James Blacksher, a noted voting rights lawyer who, with colleagues Larry Menifee and Edward Still, litigated most of the Section 2 cases that have changed the face of Alabama politics over the last thirty years, spoke about the continuing struggle for black voting rights in his native state and the importance of Section 5 coverage. He pointed out that, thanks to Section 5, the Alabama legislature in 2001 redistricted its congressional, legislative, and state board of education districts in a racially fair manner, and, he added, “We were able to defend those districts in a series of collateral attacks that were brought in federal and state courts against those districts. And they stand to this time.”²⁴ He continued:

And the point I want to make . . . is that what made that legislative process successful was . . . the requirement of Section 5 that there be no retrogression in the electoral strength of blacks. That was at the top of the list of the legislative guidelines for redistricting . . . [which] gave African-American legislators the leverage they needed to negotiate district plans in both houses . . .²⁵

When asked by Commissioner Meeks what they would like to see changed regarding Section 5, panelists Blacksher and Earls advocated restoring the meaning of the section to its 1982 definition, prior to the Supreme Court’s decisions in *Reno v. Bossier Parish School Board*²⁶ and *Georgia v. Ashcroft*.²⁷ Blacksher mentioned as a possibility extending coverage to more jurisdictions, such as Kentucky.²⁸

**Southwest Regional Hearing
Carson Ballroom, 3rd Floor, Old Main Building
Arizona State University
Tempe, Arizona
April 7, 2005**

National Commissioners in Attendance:

Hon. John Buchanan

Chandler Davidson

Bill Lann Lee

Guest Commissioners:

Hon. Rebecca Vigil-Giron, Secretary of State of New Mexico and President of the National Association of Secretaries of State (NASS)

Hon. Penny Willrich, Judge, Superior Court of Maricopa County, AZ

Hon. Ned Norris, Jr., Vice Chair of the Tohono O'odham Nation, and Representing the Intertribal Council of Arizona.

Panelists:

Adam Andrews, Tohono O'odham Tribe, Sells, AZ

Rogene Calvert, Houston Chapter of the Organization of Chinese-Americans, Houston, TX

Paul Eckstein, Perkins, Coie, Brown & Bain, Phoenix, AZ

Richard Ellis, Fort Lewis College, Durango, CO

Rodolfo Espino, Arizona State University, Tempe, AZ

Claude Foster, NAACP National Voter Fund, Sugarland, TX

Lydia Guzman, Clean Elections Institute, Inc., Phoenix, AZ

John R. Lewis, Intertribal Council of Arizona, Phoenix, AZ

Alberto Olivas, Maricopa Community Colleges, Mesa, AZ

Daniel Ortega, Roush, McCracken, Guerrero, Miller & Ortega, Phoenix, AZ

Nina Perales, Mexican American Legal Defense & Educational Fund, San Antonio, TX

Penny Pew, Elections Director, Apache County, AZ

Andres Ramirez, Clark County, NV

Shirlee Smith, Native American Election Information Program, Office of the Secretary of State, Albuquerque, NM

Rev. Oscar Tillman, Maricopa County Branch of the NAACP, Phoenix, AZ

James Tucker, Arizona State University, Phoenix, AZ

Hon. Robert Valencia, Tribal Council, Pascua Yaqui Tribe, Tucson, AZ

The Southwest Regional hearing was held on the campus of Arizona State University, Tempe. It was held on the 2nd day of a conference sponsored by the Barrett Honors College of Arizona State University entitled, "One Nation with Many Voices: The Language Assistance Provisions of the Voting Rights Act." On the first day, panelists presented preliminary findings of a major survey of the effectiveness of Sections 4(f)(4) and 203 of the Act in securing language assistance for covered language minorities. The survey was coordinated by Professors James Tucker and Rodolfo Espino of Arizona State University and conducted by a team of students in the University's Barrett Honors College. States covered by the Commission's hearing included Arizona, Colorado, Nevada, New Mexico, and Texas.

Guest Commissioner Penny Willrich noted that until 1972 a literacy test was required by an Arizona statute, even though the Voting Rights Act had prohibited such tests in 1965; and that the state's Native American population was prohibited by law from voting until 1948, when Native American veterans of World War II challenged the provision in court and won.²⁹ Various panelists also commented on the recent passage in Arizona of Proposition 200, which requires anyone registering to vote to present proof of citizenship, and anyone voting to present a photo ID or two non-photo IDs bearing the voter's name and address.³⁰ The speakers expressed concern that passage of the new law reflected a hostile sentiment toward minority voters.³¹ They also commented on how difficult it is for some minority citizens to comply with the new law.³²

Guest Commissioner Ned Norris, a representative of the Intertribal Council of Arizona, described the difficulty posed by the new law for elderly Native Americans:

[F]or many tribal communities, and I know for a fact in my tribal community, that there are a number of members of the Tohono O'odham Nation and other tribes that . . . would not be able to document proof of citizenship because they were born in their tribal community, a remote village within the community, under a mesquite tree somewhere, and there's no record of that. . . . [T]hey were born in the United States of America, but born at home, and don't have proof of citizenship . . . ³³

John Lewis of the Intertribal Council of Arizona sketched the history of the fight for Native American voting rights in the Twentieth Century, linking the problems Indians in Arizona face today both with

the heritage of anti-Native American attitudes and the vast distances that often separate Native Americans from urban centers and from polling places. He also mentioned problems concerning redistricting and access to information about polling sites. Of particular importance, he said, was the language barrier, and he mentioned the need for Section 203.³⁴

Penny Pew, Elections Director of Apache County, Arizona since 2001, gave a detailed account of the difficulties of providing language assistance to the 35,000 Native American registered voters in a county of 11,000 square miles. In spite of these challenges, Pew described the wide variety of means her office has employed to ensure Native Americans in Apache County are able both to understand their rights and to vote easily, using ballots in Navajo. These efforts include training poll workers in bilingual assistance, translating English materials into Navajo—a “time-consuming” task—constructing pamphlets, making power-point presentations to poll workers, ensuring that transportation is available to those who need it, sending out early-voting trailers to remote areas, clearly identifying the large precinct boundaries through the use of special mylar maps, and explaining issues on the ballot, when necessary. Pew was enthusiastic about the language assistance her office provided to Navajos and assured the Commission that “reauthorization [of Section 203] will help us continue with our program.” She included in her packet of materials submitted at the hearing a graph indicating increased turnout in presidential elections among Apache County residents between 2000 and 2004, which she believes resulted in part from her staff’s efforts.³⁵

Barriers to voting confronted by African Americans were described by *Claude Foster*, national field director for the NAACP National Voter Fund. He summarized complaints voiced at a Voter Irregularity Hearing held by the Houston Coalition for Black Civic Participation in Harris County (Houston) Texas on December 12, 2001, shortly after a nonpartisan mayoral run-off election. Among those attending were the county tax assessor-collector, a U.S. Department of Justice official, and an official from the county clerk’s office, as well as representatives of black and Latino organizations.

In his written testimony Foster listed some of the complaints voiced by voters at the Texas hearing in 2001:

- “[Officials] said they could not vote because they were not [registered] in that county. They [officials] claimed they ran out of ballots.”

- “Tried to vote and the precinct judge told him he was not on rolls. Told he could not vote in elections.”
- “Was told by precinct judge that she could not vote because she was not in city limits. She voted at that same place for 12 years.”
- “[She was] showed a list of signed names of the only people who could vote. White people of same zip code were allowed to vote.”
- “The woman would not let her vote, did not try to help her find out what precinct to vote in, and ultimately was discouraging.”
- “Drove 30 miles to vote from original precinct and was again told she couldn’t vote. Never allowed to vote.”
- “They asked her name without asking for ID, and told her she was not eligible to vote. She received a challenged ballot and when she tried to submit the ballot, they rejected it saying she could not vote.”
- “Told she could not vote because she wasn’t [registered] in the county. White people were allowed to vote though.”
- “Saw a list of handwritten names and was told that those people’s votes wouldn’t count. Also her husband was on the list, and she was told she was not allowed to vote. The precinct or school called the police. Black people were not being allowed to vote.”³⁶

Foster introduced additional documents which in his words “clearly show the continued disenfranchisement of African-Americans in Texas.” He then addressed the chair as follows:

Mr. Chairman, without the Voting Rights Act, what other tool would minority communities have for redress if a state, county, city, or town adopted a discriminatory new procedure or changed voting locations without adequately notifying the community? This was done in the Houston mayoral election in 2001 when over 166 precincts were changed without the African American Community being notified . . . until the civil rights community challenged election officials under Section 5 . . .³⁷

Foster also alluded to the events in 2004 at predominantly black Prairie View A&M University, mentioned above, whereby efforts by white officials to suppress black students’ votes were thwarted by a

Section 5 enforcement action—a suit brought by the student NAACP chapter to prevent Waller County from implementing unprecleared voting changes.³⁸

Harris County, Texas, was also the subject of testimony given by *Rogene Calvert*, past president of the Houston Chapter of the Organization of Chinese Americans. Calvert spoke about the difference to Vietnamese voters that Section 203 coverage beginning in July 2002 has made. As a result of an agreement between the county and the Department of Justice, the county's ballot is translated in Vietnamese; the county has hired a Vietnamese staff member in the county clerk's office; and it has staffed precincts with a significant number of Vietnamese poll workers who speak the language.³⁹ These measures had a direct impact on the participation of Vietnamese voters and are probably responsible, in part, for the election of Hubert Vo, the first member of the Texas legislature of Vietnamese descent, who won election by 16 votes.⁴⁰

Nina Perales, regional counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), then testified regarding Latino populations in various Southwestern states. She pointed both to recent examples of attempted Latino vote dilution during redistricting as well as to ballot access problems this sizable minority group faces. For example, a Section 2 lawsuit in Colorado was necessary in the 1990s redistricting process to ensure the drawing of a house district containing a sufficient number of Latinos to enable them to elect a candidate of their choice to the legislature in the San Luis Valley, where Latinos constituted a community of interest. She also mentioned past ballot access problems in the state:

Voting registration branches being placed in Anglo homes, limited hours for farm workers to register to vote, and a system where Anglo county commissioners tapped their friends for election judge, resulting in an all-Anglo election judge pool. We also have significant issues of access to the ballot in Colorado related to language.⁴¹

With regard to Section 203, Perales pointed out that only eight Colorado counties are covered, and, in New Mexico, where Latinos compose more than 42 percent of the population, coverage in the northern counties is inadequate. "As the Latino community grows and becomes more a presence in non-covered counties," she argued, "it is vitally important that we have Section 203 in place to provide language access to the ballot in this northern region . . ."⁴² Perales mentioned voter harassment in November 2004, where Anglos standing outside polling places in Dona Ana County (Las Cruces),

New Mexico, videotaped the license plates of Mexican Americans as they went to vote. According to the voters who complained, “it is very intimidating . . . to be videotaped and to have their license plates videotaped by Anglos standing outside the polling place.”⁴³ Such videotaping sometimes occurs in minority precincts in other places in the nation, and Department of Justice officials discourage videotaping when it is called to their attention, pointing out that videotaping could violate Section 11(b) of the Voting Rights Act, which forbids intimidation of voters.⁴⁴ In addition to this practice Perales mentioned relocation of polling places in New Mexico, “one of the time honored and classic mechanisms for defeating the minority vote.”⁴⁵ She expressed the belief that in Texas there “is widespread noncompliance with both Section 203 and Section 5.” As an example of the former, she pointed to Tarrant County (Fort Worth) where the Spanish translation of the ballot was “utterly incoherent, because it had been done by a non-Spanish-speaking staff in the county elections administrator’s office,” and as an example of the latter, she mentioned Bexar County (San Antonio), where in the spring of 2003 a “very large number” of early polling places were closed in heavily populated Latino areas, without a timely submission of the changes for preclearance. Only after MALDEF filed an enforcement action under Section 5 were these changes enjoined. In 2001 her organization helped obtain a statewide Section 5 objection to a Texas legislative redistricting plan, and spearheaded efforts to successfully prevent a Latino-majority congressional district in Phoenix from being removed in 2003. “Even today, Section 5 prevents retrogressive changes from being put into place,” Perales asserted.⁴⁶

Andres Ramirez, a voter empowerment activist in Clark County, Nevada, discussed the positive impact on limited-English-proficient Latino voters that Section 203 coverage has had since its implementation there in 2002. Among the resulting innovations are the creation of a Latino advisory board, the designation of an employee in the elections division as a liaison to the Latino community, the creation of a ballot printed in Spanish, and the development of an election hotline in Spanish. Ramirez stated that if Section 203 were not reauthorized, many of these enhancements would be taken away. He based his view on the voter backlash the elections division was faced with when it implemented measures to comply with Section 203.⁴⁷ He added: “Without the [Section 5] preclearance provision and [Section] 203, minority and small [town] and rural citizens would have great disadvantages placed upon them to have access to their voting rights and to election information. [Without these provisions] I can’t foresee that our legislative powers would continue to fund and allow these activities.”⁴⁸

The importance of Section 203 was also underscored by *Shirlee Smith*, a Navajo who serves as the Voting Rights Act coordinator for Bernalillo County, New Mexico. Smith discussed her work, which involves providing assistance and outreach to four Indian tribes located in the county. She described how because of Section 203, and the creation of her position, elderly Indian voters were able to participate in the elections process for the first time. “It’s really touched my heart to see our people,” Smith said, “not knowing what the process is and how much their voice can be [heard], it’s important to them, and it’s important to us, . . . that they can make a difference.”⁴⁹

Lydia Guzman, Policy Director of the Clean Elections Institute, sounded a similar theme. Guzman has been involved in several voter registration efforts in the Latino community. She emphasized the importance of Spanish-language election materials and described how Spanish-language registration materials and ballots empowered limited-English-proficient citizens. She also described the difficulty her mother had in casting her first vote ever in the 2004 election because there was nobody able to assist her in Spanish. At the polling place, “there were no bilingual assistants outside,” and so Guzman explained the voting procedure to her mother. “I thought I did a wonderful job explaining to her for the first time. [However], I forgot one important thing. So when she went in, she was lost. The poll workers, they didn’t deny her the right to vote, but they did deny her the opportunity of being properly instructed in how to vote. It was a terrible experience for her. She was heart-broken because she thought maybe her vote didn’t count.”⁵⁰

Professor Richard Ellis is chair of Southwest Studies at Fort Lewis College in Durango, Colorado. He served as an expert in *Cuthair v. Montezuma-Cortez School District*,⁵¹ a successful Section 2 case brought on behalf of Ute Indians in Colorado in 1998. Dr. Ellis discussed the hostility and discrimination encountered by the Utes both generally and in voting. As recently as 1968, he said, a county clerk had sought but failed to obtain an opinion from the Attorney General that Indians living on reservations should not be allowed to vote.⁵²

Daniel Ortega and *Paul Eckstein*, two lawyers who have often worked together on redistricting cases in Arizona since the 1980s, presented opposing views on Section 5 based on their experiences. Ortega stated that Section 5 has been, and continues to be, an important protection for minority voters, and that without Section 5 the position of minority voters would be worse. Prior to Section 5 coverage, he maintained, the political parties disregarded the views of minority voters in the redistricting process. On the other hand,

Eckstein stated that Section 5 is too “blunt a tool” because it applies to every voting change, no matter how inconsequential, and that Section 5 has been improperly manipulated by the political parties, by the Department of Justice, and by candidates to serve their own political interests. In Eckstein’s view, Section 2 and the Fourteenth Amendment provide sufficient protection for minority voters.⁵³

Adam Andrews, executive assistant to the Chair of the Tohono O’odham Nation, stated that the elderly members of his tribe needed language assistance and that Pima County, because of the Section 203 requirements, has made affirmative efforts to work with the tribe, including hiring tribal members to serve as poll workers. He said that these efforts have resulted in unprecedented turnout of tribal members in the 2002 and 2004 elections.⁵⁴

**Northeast Regional Hearing:
Association of the Bar of the City of New York
42 West 44th Street
New York, New York
June 14, 2005**

National Commissioners in Attendance:

Chandler Davidson

Bill Lann Lee

Hon. Joe Rogers

Guest Commissioners:

Juan Cartagena, Community Service Society of New York, New York, NY

Kimberle Crenshaw, Columbia University and UCLA Schools of Law

Miles Rapoport, Demos, A Network of Ideas and Action, New York, NY

Panelists:

Nadine Cohen, Boston Lawyers' Committee for Civil Rights Under Law,
Boston, MA

Hon. Marcos Devers, City Council, Lawrence, Massachusetts

Hazel Dukes, New York State Conference of NAACP Branches, New York, NY

Walter Fields, Community Service Society of New York, New York, NY

Margaret Fung, Asian American Legal Defense and Education Fund, New
York, NY

Jose Garcia, Institute for Puerto Rican Policy & the Latino Voting Rights
Network, New York, NY

Joan Gibbs, Center for Law and Social Justice, Medgar Evers College, The
City University of New York, Brooklyn, NY

Veronica Jung, Korean American League for Civic Action, New York, NY

Randolph McLaughlin, Hale House Center, Inc.; Professor, Pace University
Law School, New York, NY

Ozzie Maldonado, Passaic, NJ

Hon. David Paterson, New York State Senate, Albany, NY

Martin Perez, Latino Leadership Alliance of New Jersey, New Brunswick, NJ

Joseph Rich, Lawyers' Committee for Civil Rights Under Law and former
Chief of Voting Section, Department of Justice, Washington, DC

Theodore Shaw, NAACP Legal Defense and Educational Fund, New York, NY

Hon. Charles Walton, Community College of Rhode Island; former Rhode
Island State Senator, Providence, RI

Carlos Zayas, voting rights activist and lawyer, Reading, PA

Public Testimony:

Kevin Peterson, New Democracy Coalition, Boston, MA

Colombina Santiago, ACORN, Passaic, NJ

Mr. Thuy, New York, NY

Dolores Watson, Long Island, NY

Joanne Wright, ACORN, Long Island, NY

The Northeast Regional Hearing was held in New York City on June 14, 2005. While the Voting Rights Act's temporary provisions are often associated in the public mind with the South and, to a lesser extent, the Southwest, the six states covered in this regional hearing have been the focus of extensive voting rights enforcement efforts for a number of years. Bronx, Kings, and New York County have all been covered by Section 5 since the 1970s. In addition, the diverse immigrant populations in New York, Connecticut, Massachusetts, New Jersey, Pennsylvania, and Rhode Island have brought Section 203 into play in this region as well. The year Section 5 was last reauthorized, for example—1982—organizers of a Latino festival were denied their request to the Board of Registrars in Lawrence, Massachusetts, to hold a voter registration drive. After the organizers sued the board, a preliminary injunction required it to hold the drive.⁵⁵ Virtually all the states in the region targeted by the Northeast Regional Hearing have areas covered by Section 203, have experienced the presence of election observers sent by the Department of Justice (Rhode Island is the exception), and have been the site of at least one Section 2 action.⁵⁶ In some areas, such as Newark and Passaic, New Jersey; Boston; and New York City, sharp ethnic conflicts remain a constant reality and have led to voting rights problems over a considerable period of time.

Theodore Shaw, Director-Counsel and President of the NAACP Legal Defense and Educational Fund, Inc. (LDF), presented testimony focusing on New York. He began by noting that New York's English literacy test, in effect from 1923 to 1966, prevented large numbers of the state's citizens of Puerto Rican origin from voting. Section 4(e) of the Act banned such tests in 1965, but the state tried to preserve its literacy test, losing its case in the U.S. Supreme Court in 1966.⁵⁷ The triggering formula for Section 5 coverage—having had a literacy requirement and having fewer than 50 percent of voting-age citizens registered at the times specified in the Act—led to Kings (Brooklyn), Bronx, and New York (Manhattan) Counties becoming covered.⁵⁸ Shaw stated that in New York City since 1982,

Section 5 objections have helped prevent minority vote dilution in three broad areas: redistricting, non-geographical election procedures (voting rules, election control, suspension of elected bodies, etc.), and barriers to political access for linguistic minorities. The scope of these categories is significant: their breadth touches virtually every aspect of the vote.⁵⁹

Since 1983, the Department of Justice has objected six times to submissions from New York jurisdictions, involving “dozens” of changes that would have diluted the minority vote in widespread areas of the city, said Shaw. Among the neighborhoods in which minorities would have been harmed were “Williamsburg, East Heights, Inwood, Washington Heights, Williamsbridge, Wakefield, University Heights, and Union Port.” Thanks to Section 5 coverage, however, “many of these neighborhoods have become important bases for minority voting power.”⁶⁰

Shaw pointed to the fact that since three New York City counties are covered and one, Queens, is not, this situation provides the opportunity for a natural experiment in which the impact of Section 5 can be measured. “In Queens, where redistricting plans are not subject to the scrutiny of preclearance review, pressure to protect white incumbents from dramatic demographic changes has wrought a districting pattern that, according to former Assistant Attorney General John R. Dunne, ‘consistently disfavored the Hispanic voters.’ Additionally, though all State Senate districts in New York City are overpopulated (i.e., individual votes are diluted), Queens County districts are twice as overpopulated as Kings, Bronx, and New York Counties. If Section 5 is allowed to expire, we could expect that pattern to become the norm across all of New York City.” Shaw claimed that even with Section 5 coverage, “minorities still hold a disproportionately low number of political seats in New York.”⁶¹

Asian Americans, too, have faced barriers to voting in recent years. The Asian American Legal Defense and Education Fund (AALDEF) conducted exit polls during the 2004 presidential election in various locales. Their report, submitted to the Commission, noted that while in most jurisdictions identification was not a voting requirement (aside from the HAVA requirement that first-time voters who registered by mail must provide identification), “two-thirds (66%) of New York and New Jersey [Asian-American] voters who had registered prior to January 1, 2003 were required to show identification, even though it was not legally required by HAVA.”⁶² There were a number of other problems reported by Asian Americans in the exit polls. (The total sample consisted of 10,789 voters in twenty-three cities in eight states.)

- The names of 371 voters were not on the lists of registered voters.
- 126 voters complained that poll workers were discourteous or hostile.
- 239 voters said that poll workers were poorly trained.

- 185 voters were directed to the wrong poll site or election district.
- 385 voters encountered other voting problems.⁶³

Apart from the results of the poll, “more than 600 voters called AALDEF’s election hotline or complained to poll monitors to report voting problems.”⁶⁴ *Margaret Fung*, the organization’s executive director, expanded on the experience of Asians in New York. While deeming Section 203 a “success story” and describing her organization’s role in its 1992 reauthorization, whereby the trigger formula was amended to expand coverage, she pointed to continuing problems with language assistance. The problems included inaccurate translations, an insufficient number of interpreters, poorly trained election workers, and wrong information about polling sites. Fung also described racist remarks by two talk-show hosts on a New Jersey radio station about Jun Choi, a Korean-American candidate for mayor in Edison before the 2005 primary elections. Following widespread protest in the large Asian community, the radio station issued an on-air apology. Choi went on to win the Democratic nomination.⁶⁵

Joseph Rich, former Chief of the Voting Section in the Department of Justice, based his observations in part on his more than thirty-six years in the Department’s Civil Rights Division. According to Rich, the Voting Section annually receives over 4,000 submissions containing about 20,000 proposed voting changes. While the Attorney General objects to less than 1 percent of the submissions, he believes that Section 5 has a significant deterrent effect. “Because the Department has built a tradition of excellence and meticulousness in its Section 5 review process, jurisdictions will think long and hard before passing laws with discriminatory impact or purpose,” according to Rich. As a result of this deterrent effect, Section 5, in his view, has “probably” been the Act’s “most important and effective provision.”⁶⁶ And given this fact, Rich judged the Supreme Court’s 2000 *Bossier II* decision, mentioned above, to have “significantly narrowed the ability to object to and deter discriminatory [behavior] when compared to the pre-*Bossier Parish* standard.” He added, “It is truly anomalous to me that a voting change which intentionally discriminates against minority voters in a manner that violates the constitution is not objectionable unless it has ‘retrogressive purpose.’”⁶⁷

The former Department of Justice official also stressed the importance of the continued use of federal observers and monitors, and of Section 203. Regarding observers and monitors, he noted that

the Civil Rights Division “has developed very careful procedures for determining when to recommend to the Attorney General that federal observers be sent to cover an election”—the most important factor being the potential for vote discrimination in contests pitting minority candidates against white ones, “resulting in increased racial or ethnic tensions.” The presence of these observers on Election Day has “consistently . . . had a calming effect during highly charged elections in which there have been allegations of possible Voting Rights Act violations and has helped deter discriminatory acts.” Rich cited the presence of observers at several elections in Passaic County, New Jersey, as an example of their importance.

The county was under a consent decree which required specific actions to bring the county into compliance with Section 203 . . . On the basis of information gathered [by the observers], the Department took legal action to ensure full implementation of Passaic’s court-mandated language assistance program.⁶⁸

Federal involvement relating to language assistance on behalf of minority voters led to the first election of a Latino mayor in the city.⁶⁹

Rich also pointed to the increased federal oversight of elections in recent years as indicating a need for the Attorney General’s continued authority to send them. In 2004 alone the Department dispatched a total of 898 federal observers and monitors to 85 jurisdictions.⁷⁰

Charles D. Walton, the first African American to serve in the Rhode Island senate, was elected to that body in 1983 after a court found that the legislature’s redistricting plan discriminated against African Americans. He noted that while progress in electing minorities in his state was evident since 1983, there is still significant racial discrimination as well as litigation attacking it—including the legislature’s 2002 senate redistricting plan that was only changed as a result of a legal challenge supported both by Latino and black organizations. Walton’s review of events in his own state led him to conclude that “across New England racial discrimination exists in the electoral systems for local and state government. Voting patterns are racially polarized, and black voters do not have an equal opportunity to elect candidates of their choice.”⁷¹

José A. Garcia, representing the Institute for Puerto Rican Policy and the Latino Voting Rights Network, reiterated some of the points made by Theodore Shaw regarding the impact of Section 5 on New York counties. “In New York City alone,” he stated, “there are 23 Latino elected officials at the local, state and federal levels, most

elected in the three counties of the city covered by Section 5 . . .” He suggested that the absence of coverage in Queens County hindered election of minority candidates in “the newer and fastest-growing Latino communities” there.⁷² Garcia also pointed to numerous problems in the area as seen over time in the Latino community, including racial gerrymandering of districts, “the exclusion of Latinos from the decision making process in the setting of redistricting rules, procedures, and practices; . . . the lack of notices in poll places in Spanish and the lack of Spanish-language poll workers”; lack of adequate training of poll workers; “the use of off-duty police and other law enforcement personnel as poll watchers in Latino areas”; scare tactics in the media intended to frighten Latinos away from the polls; harassment of Latino voters by poll officials; refusal to register legitimate Latino voters; and moving of polling places, without notice, to locations inconvenient to Latinos.⁷³

Pennsylvania has also had its problems with language assistance, according to voting rights activist and lawyer *Carlos A. Zayas*, whose testimony focused on election practices in Berks County. Those practices led to a permanent injunction issued by a federal judge. He summarized the court’s finding in *U.S. v. Berks County*⁷⁴ that use of English-only election processes violated Section 4(e) of the Act by conditioning “the right to vote for the county’s sizeable Puerto Rican community, many of whom attended schools in Puerto Rico, on ability to read, write and understand English . . .” The court also found the English-only process violated both Sections 2 and 208. Among the election practices Zayas enumerated as occurring in Berks County were “hostile and disparate treatment of Hispanic and Spanish-speaking voters . . . lack of bilingual poll workers . . . lack of bilingual materials . . . denial of assistor of choice . . .,” and county officials’ refusals to remedy voting rights violations.⁷⁵

**Midwest Regional Hearing
Dorsey & Whitney
50 South Sixth Street, Ste. 1500
Minneapolis, Minnesota
July 22, 2005**

National Commissioners in Attendance:

Chandler Davidson

Bill Lann Lee

Elsie Meeks

Hon. Joe Rogers

Guest Commissioner:

Matthew Little, Chairman of Minnesota NAACP

Panelists:

Ihsan Ali Alkhatib, Arab American Anti-Discrimination Committee, Detroit Chapter, Dearborn Heights, MI

Gwen Carr, Native Vote, Madison, WI

Kat Choi, Korean-American Resource & Cultural Center, Chicago, IL

Hon. W. Patrick Goggles, State Representative, Wyoming

Hon. Carol Juneau, State Representative, Montana

Ellen D. Katz, University of Michigan Law School, Ann Arbor, MI

Maggie Kazel, Fond du Lac Tribal and Community College, Duluth, MN

Judson Miner, Miner, Barnhill & Galland, Chicago, IL

Gregory Moore, NAACP National Voter Fund, Washington, DC

Hon. Gwen Moore, U.S. House of Representatives, 4th Congressional District, Wisconsin

Hon. Michael Murphy, Michigan House of Representatives, 7th District

Mark Ritchie, Center for Agriculture & Trade Policy, Minneapolis, MN

Janet Robideau, Montana's People's Action and Indian People's Action

Jorge Sanchez, Mexican American Legal Defense and Educational Fund, Chicago Regional Office

Michael Sayers, Red Lake Band of Chippewa Indians and Urban Liaison, Duluth, MN

Elona Street-Stewart, St. Paul Board of Education, St. Paul, MN

Alice Tregay, Rainbow Push Coalition, Chicago, IL

Public Testimony:

Sunday Alabi, ACORN

Kathy Dopp, US Count Votes

Shade Buyobe-Hammond, ACORN

Cheryl Morgan-Spencer, Minneapolis Urban League, MN

Submitted Statements:

Hon. William Lacy Clay, U.S. House of Representatives, 1st Congressional District, Missouri

Hon. Emanuel Cleaver, U.S. House of Representatives, 5th Congressional District, Missouri

Hon. Jesse L. Jackson, Jr., U.S. House of Representatives, 3rd Congressional District, Illinois

Stephen Laudig, private practitioner, Indianapolis, IN

Hon. Barack Obama, U.S. Senator, Illinois

Dr. Janine Pease, Crow Indian Educator and Voting Rights Activist, Billings, MT

This regional hearing focused on the fourteen Midwestern states of Idaho, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Ohio, Wisconsin, and Wyoming. The situation of Native Americans, African Americans, and Latinos figured most prominently in the day's testimony, although important information on Arab-American voter harassment also came to light, as did the need for Asian-American language assistance. The variety and extensiveness of data collected for these states almost defies a brief summary. A useful overview is provided by a report prepared for the hearing by the law firm of Dorsey & Whitney LLP.⁷⁶ This report not only summarizes each state's demography, Voting Rights Act coverage, and "minority issues," but gives examples of voting problems and allegations of misconduct or unfairness in various recent elections that warrant concern.

At least sixty-eight lawsuits were filed in these Midwestern states since 1982 alleging discrimination against minority voters, including several decided in the 1990s or later. Of these, thirty-two had results favorable to Native Americans, Latinos, or African Americans. Most were filed under Section 2.⁷⁷ Also noteworthy were the various attempts and alleged attempts by officials, poll challengers, or others to harass or suppress the votes of minorities in numerous venues throughout the region. According to the report, such allegations were made in at least ten of the fourteen states within the past few years, and in some of these states many allegations were made. These typically involved false information about election timing or voter qualifications purveyed in minority neighborhoods, aggressive challenging of voters at the polls, unduly restrictive and illegal identification requirements announced by election officials, and rudeness to people of color by election workers.⁷⁸

One of the most remarkable incidents involved discrimination against Arab-American voters in a 1999 mayoral election in Hamtramck, Michigan—almost two years before 9/11. Historically a heavily Polish city surrounded by Detroit, Hamtramck's Muslim population has grown sharply in recent years and the Polish population has declined. *Ihsan Ali Alkatib* described events in 1999 as follows. Poll challengers from "Citizens for a Better Hamtramck," a group seeking to "keep the election pure" accosted Arab-American and other dark-skinned voters in the city's general election. Because of the challenges, election officials required many Arab-American voters to take a citizenship oath as a requirement for voting. Some Arab Americans apparently decided not to vote after they heard of the harassment. The Department of Justice filed suit against the city under Section 2 of the Voting Rights Act. The Department and the

City ultimately entered a consent decree, providing for bilingual, Arabic- and Bengali-speaking inspectors at all polling stations and for federal observers to monitor elections.⁷⁹ In 2003, a Bangladeshi-American was elected to the city council for the first time.⁸⁰ Even so, in 2004, “several Bangladeshi voters” at one polling place complained that they were given incorrect information about poll sites. According to written testimony submitted at the Northeast Regional Hearing by *Margaret Fung* of the AALDEF, “Bangla interpreters are still needed in this location.”⁸¹

Other examples of techniques falling under the heading of vote suppression or harassment include but are by no means limited to the following: voters in Saginaw, Michigan being asked in 2000 if they were felons; a white Republican Michigan state legislator telling supporters in July 2004 that their party would have a tough time in November unless they “suppress[ed] the Detroit vote,” referring to the predominantly black city; a 2004 complaint “that a police officer outside a polling location in Cook County [Chicago, Illinois] asked voters for photo identification and told them they could not vote if they had ever been convicted of a felony”; and complaints from several Minnesotans that they had received telephone calls instructing voters to go to the wrong precinct or giving an incorrect election date.⁸² These examples represent a small number of the allegations of vote suppression efforts in recent years in the Midwest. Hundreds of such complaints were reported.⁸³

Testimony at the hearing echoed the concerns described in the report. Montana State Representative *Carol Juneau*, member of the Mandan and Hidatsa Tribes on the Blackfeet Reservation, spoke about her role as a plaintiff in a vote-dilution suit filed after the 1992 redistricting process and encouraged the Commission to familiarize itself with the case. In a written statement, *Dr. Janine Pease*, a Montana Crow Indian educator and voting rights activist, pointed to the practice of county clerks often “tossing” the names of potential Indian registrants who lack addresses in rural tribal areas; purges that unnecessarily remove registered voters from the voter lists, especially affecting first-time and younger voters; and at-large election systems that dilute Indians’ voting strength. She also voiced the need for Indian judges at the polls.⁸⁴

U. S. Rep. William Lacy Clay of St. Louis, an African-American Democrat, accused the city’s election officials of “routinely” violating state and federal election law by misusing “inactive voters” lists to purge the rolls of inactive voters prior to the 2000 election. He also criticized the provisional ballot law, which he called “confusing,” lending itself to misinterpretation by “ill-informed election officials.”

He said that “Missouri voters should not be turned away at the polls because of a misinterpretation of law.”⁸⁵

Alice Tregay, a member of the Rainbow-PUSH Coalition, spoke about the racial gerrymandering to dilute black and Latino votes by the Democratic machine in Chicago since the last reauthorization of the Voting Rights Act. She also spoke of racially unfair administration of voter identification procedure at the polls and unfair removal of voters’ names from the voter rolls.⁸⁶

Kat Choi, with the Korean-American Resource & Cultural Center in Chicago, pointed out that approximately 7,000 registered Korean Americans live in Cook County, fewer than the 10,000 needed to trigger that group’s coverage by Section 203. Cook County does not provide much-needed bilingual materials, including sample ballots, to those voters, many of whom are recent arrivals with limited English proficiency. She also spoke of a dearth of Korean-American election judges, and asked that the Section 203 trigger be changed to accommodate her community’s needs.⁸⁷

Jorge Sanchez, a staff attorney with the Mexican American Legal Defense and Educational Fund’s Chicago office, echoed Choi’s concern about the lack of language assistance. “MALDEF has found that even sympathetic county registrars and clerks have dragged their feet in . . . translating election materials,” he said. He then asserted that in Cook County, which he termed “fairly friendly” to both immigrants and Latinos, “it was only after litigation that the clerk of Cook County ordered all materials to be translated” for Latinos, who are numerous enough there to be covered by Section 203. Other jurisdictions in Illinois, he said, were even more difficult to convince—King County, for example. From 2001 through 2004 the county did little to prepare for their obligation to provide language assistance. “Even after they agreed that they were covered, that they had the obligation to translate everything, we found them fighting about what needed to be translated. ‘Well, does it really have to be everything?’” According to Sanchez, it was only after the threat of litigation that King County finally did what was required.⁸⁸

Another insight into the problems Native Americans face was provided by *Elona Street-Stewart*, the first Native American elected to the St. Paul school board and currently its chairwoman. Street-Stewart spoke of events on the Red Lake Nations reservation in Minnesota in 2004—the “most blatant” of “several attempts to suppress Native American votes in Minnesota.” As a “closed” reservation, non-tribal members are required to obtain permission from the tribe before entering it. On Election Day, however, several “party-sponsored” challengers (from both major parties) arrived on the reservation before the polls opened:

A Republican challenger showed up in Ponemah; first he started questioning and intimidating the election judges [all of whom were Indians], . . . he then started to intimidate the voters by arbitrarily challenging individuals who were standing in line to vote. Some potential voters left the precinct because of this challenger's antics. The Red Lake Tribal Police Department was called to observe the situation. However, this challenger's behavior worsened once the officers arrived. He continued to disrupt the voting process and eventually the Tribal Officers were forced to remove him from the precinct and escort him to the reservation's border.⁸⁹

In summary, from the hearing a portrait emerged of the Midwest as an area in which minority voting rights, including those of Native Americans, African Americans, Asian Americans, Latinos, and Arab Americans, are a matter of continuing controversy and of concern to minority leaders and activists.

**South Georgia Hearing
Sumter County Courthouse
Americus, GA
August 2, 2005**

National Commissioners in Attendance:

Chandler Davidson

Hon. Joe Rogers

Panelists:

Hon. Floyd Griffin, Mayor, Milledgeville, GA

Daniel Levitas, ACLU Voting Rights Project, Atlanta, GA

Charles Sumblin, SCLC City of Wrightsville, GA

Tisha Tallman, MALDEF, Atlanta, GA

Johnny Vaughn, District One Voter's Association, GA

A “mini-hearing” in the Georgia town of Americus was held in the late afternoon of August 2, 2005, in the Sumter County Court House, at the invitation of State Senator Robert Brown, who also chairs the Community Connections Committee of the Georgia Legislative Black Caucus. Americus, located a few miles east of Plains and north of Albany, was the site of intense conflict over civil rights in the 1960s. It was here that John Lewis (now a U.S. Representative from Georgia) was arrested for demonstrating in support of black women arrested earlier for refusing to accept racially separate registration lines at the court house. His arrest occurred two days after the Voting Rights Act was signed. (More than thirty-five years later Lewis would write, “As always, when it came to the Deep South, passing laws was one thing; enforcing them was another.”)⁹⁰

The South Georgia hearing was held in the same Sumter County Court House. *Senator Brown* described events in Georgia as representing “the best of times and the worst of times.” He expanded on that point by saying, “We in this state have probably the largest African American caucus in the state legislature of any in the states, all 50 states. . . . Yet, we are also a state where we recently have seen the law passed that’s one of the [most] restrictive laws in the nation as far as voter identification is concerned. And we really are concerned that without the Voting Rights Act being renewed, that we will see even more injurious and onerous kinds of legislation.” If the legislature would pass such laws with Section 5 in effect, he suggested, “it certainly would stand to reason that they would go even further” without it.⁹¹ (The Georgia voter ID law the senator was referring to was later precleared by the Department of Justice in spite of a recommendation to the contrary by most of the Voting Section staff handling the case. Federal Judge Harold Murphy issued a preliminary injunction on October 18, 2005, enjoining its enforcement.)⁹²

Later in the hearing, Senator Brown again discussed the good and bad trends in his state. There is still a significant amount of racially polarized voting, he said. Even so, four African Americans have so far won statewide office—as Attorney General, Chief Justice of the Supreme Court, a member of the Public Service Commission, and a Labor Commissioner, but only after they were first appointed to these positions.⁹³ Whites will vote for such candidates, according to the senator, “after they have had an opportunity to demonstrate their capacity to govern . . . and you often don’t get that opportunity except for starting in a predominantly African American district.”⁹⁴

Senator Brown’s Dickensian theme of “the best of times and the worst of times” was picked up by *Floyd Griffin*, the mayor of Milledgeville, which was Georgia’s capital before the Civil War. He is

also president of the Georgia Conference of Black Mayors. Griffin, a retired Army colonel, said he was the first African-American mayor to be elected in the city's 199-year history. Moreover, according to him, the city is predominantly white, consisting of "about . . . 43, 44 percent" registered black voters. He said the voting in his contest was almost entirely along racial lines—although he admitted some blacks did not vote for him—but he got enough white support to win by twenty-one votes. However, after nine months in office, "the [city] council voted to change the form of government and it went to the legislature and the legislature approved that . . ." The change was from a strong mayor to a city manager system, in which, as Griffin put it, the manager would be "carrying out the responsibilities, the day-to-day responsibilities of the city." Under the new system, as he described it, the mayor is "more of a figurehead." According to Mayor Griffin, the city from its beginning had had a strong mayor form until the first African American was elected to the post.⁹⁵ The Department of Justice precleared the change, he said, in part because the six-member council was unanimous in supporting it and three were African Americans elected from districts. He believed, however, that the change should have been made only after a referendum "or anything of that nature." He filed suit in both federal and state courts challenging the change, lost in both, and appealed the state court ruling, which had not been decided at the time of the hearing.⁹⁶

Mayor Griffin pointed out, again on a positive note, that there are now forty black mayors in the state, although perhaps only "two or three" represent majority-white cities. He also expressed the view that almost all African Americans in the Georgia legislature were elected from majority-black districts, although Griffin himself, who had also served in the state senate, had been elected from a majority-white seat.⁹⁷ "I went to Tuskegee back during the 60s and marched in Tuskegee, was on the march from Selma to Montgomery and so you know and understand and appreciate where we have come from, but we still have a long way to go, and if we start taking away some of the remedies that are put in place to help try to make the field level, then we're going to be in tough shape," the mayor averred.⁹⁸

Apparent discrimination against Latinos, a growing segment of Georgia's population, was described by *Tisha Tallman*, regional counsel for MALDEF. This discrimination is part of a larger negative response to the rapid influx of Latino immigrants in the South.⁹⁹ She spoke of individuals who, prior to the 2004 primary elections, challenged the citizenship of Latino registered voters at the Registrar's office in Long County, Georgia, on the basis of nothing more than their Spanish surname, so far as MALDEF could determine. The office required that the voters attend a hearing for the purpose of

establishing their citizenship. Tallman believed this had a “chilling effect” on Latino turnout in the primary. “We believe that this process was in violation of Georgia law and potentially in violation of Section 2 of the Voting Rights Act,” Tallman said. She had protested this behavior to the State Election Board a week before her testimony to the Commission, but, she said, “nothing has been done to date in regard to action by the State of Georgia.” The Department of Justice was still investigating.¹⁰⁰

She also mentioned an event in Alamance County, North Carolina, in which a sheriff obtained a list of Latino registered voters and “publicly stated that he was going to go door-to-door to the house of every single registered Latino voter and determine whether or not they were U.S. citizens and to systematically arrest every single person he did not believe to be a U.S. citizen.” Resulting publicity and MALDEF’s notification of the Department of Justice, however, caused the sheriff not to carry out his plan.¹⁰¹

Danny Levitas represented the American Civil Liberties Union Voting Rights Project in Atlanta at the South Georgia hearing. He told of events sixteen years ago in “the modern era here in the State of Georgia.”

I moved to Georgia in 1989 to work for a nonprofit civil rights organization whose mission was to assist . . . victims of racial violence and I received a phone call at the office one day from some folks who lived not too far from here [the town of Blakeley in Early County] . . . who told me . . . they needed help because the Ku Klux Klan was running the fire department in their town and had what they believed was a habit of letting homes in the black community burn for . . . a long period of time before they intervened. We investigated. To make a very long story short, we interviewed members of the Klan who provided . . . the membership records [of the Klansmen]; we subpoenaed, subject to the Federal District Court civil rights lawsuit filed in the Southern District of Georgia, the telephone records of the fire chief and we proved in fact that the city fire chief, . . . Franklin Brown, was indeed a dues paying member of the Ku Klux Klan, that he had hired other Klan members to . . . [work] in the Fire Department . . . [W]hat was notable about this case was that the city put on an extraordinarily vigorous defense and retained none other than the president of the Georgia Trial Lawyers Association to defend the city and during depositions, one in which I was present, during a break .

. . . the president of the Georgia Trial Lawyers turned to our counsel and said, well, the way I see it the black folks have the NAACP and the white folks have the Klan and that's about equal.

The city vigorously defended this gentleman Franklin Brown until the telephone records that we produced by way of subpoena proved they had the unfortunate habit of making frequent phone calls to the state headquarters of the . . . Ku Klux Klan and their defense fell apart. The result was the Klan was purged from the Fire Department and as part of that case, the American Civil Liberties Union, through cooperating attorney Christopher Coates, who now works as the Deputy Chief of the Voting Section in Washington . . . [was able to effect the creation of] single member districts in the City of Blakeley [and black representation on city council].¹⁰²

Levitas also discussed some of the voting rights suits in Georgia brought by the ACLU Voting Rights Project. He said the Project had filed “more than 300 separate legal actions to enforce the 1965 Voting Rights Act”— more, he said, than the Department of Justice had brought. Between 1974 and 1990 alone the ACLU sued 57 of Georgia’s 159 counties for minority vote dilution, as well as 40 cities—including the city of Milledgeville mentioned earlier by its mayor, Mr. Griffin. He then mentioned various Section 2 cases the ACLU had filed in Georgia during the 1990s. “[T]he overwhelming bulk of enforcement and the burden and cost of that [Voting Rights Act] enforcement has fallen to private organizations like the ACLU, like MALDEF, like the Lawyers’ Committee for Civil Rights Under Law, like the NAACP Legal Defense Fund and others,” he asserted.¹⁰³

Dr. Johnny Vaughn from Dublin, Georgia, is president of District One Voters Association and one of the plaintiffs in a successful Section 2 case challenging at-large elections in Laurens County, a suit which led to the creation of two majority-black county commissioner districts.¹⁰⁴ One of his complaints concerned the recently passed Georgia voter ID law and the burden it placed on the elderly. “Can you imagine an 85-year-old lady standing in line in Fulton County waiting to get an ID card where you’re standing in line waiting to get a driving license?” he asked.¹⁰⁵

The new ID law was also criticized by *Charles Sumblin*, past president of the Southern Christian Leadership Conference (SCLC) of Wrightsville. Sumblin said he was arrested and beaten in 1982 by “Sheriff Attaway . . . because we were standing for civil rights in

Johnson County.” Later he declared his candidacy for public office and made the runoff, but claimed there was “illegal use of absentee votes” that was “rampant and widespread.” He claimed that a letter of complaint from him and the local chapter of the SCLC “did not result in any corrective action on the part of [the] Election Division of the State of Georgia.”¹⁰⁶ He went on to say he was “saddened by the fact that even now we live with the question of whether or not the Department of Justice is going to embrace or endorse the newly passed” voter ID law. “It’s unbelievable that they would try to undo all the hard work that . . . has gone into voter rights and just make a mockery of the lives of all those people that died for voter rights here in the State of Georgia and across this country” by passing such a law.¹⁰⁷

**Florida Hearing
80th Annual Convention of the National Bar Association
J.W. Marriott Orlando
4040 Central Florida Parkway
Orlando, Florida
August 4, 2005**

National Commissioners in Attendance:

Hon. John Buchanan

Chandler Davidson

Hon. Joe Rogers

Guest Commissioners:

Kim Keenan, National Bar Association, Washington, DC

Fred Gray, Gray, Langford, Sapp, McGowan, Gray & Nathanson, Tuskegee,
AL

Panelists:

Debo Adegbile, NAACP Legal Defense and Educational Fund, New York, NY

Brad Brown, NAACP, Miami-Dade, Miami, FL

Hon. G.K. Butterfield, US House of Representatives, 1st Congressional
District, North Carolina

Monica Dula, National Bar Association Election 2004 Task Force, New York,
NY

Iris Green, National Bar Association, Washington, DC

Reggie Mitchell, People for the American Way Foundation, Inc., Tallahassee,
FL

Regine Monestime, Florida Haitian Bar Association, Miami, FL

J. Goodwille Pierre, National Bar Association, Region 5, Houston, TX

Meredith Bell Platts, ACLU Voting Rights Project, Atlanta, GA

Marlon Primes, National Bar Association, Cleveland Heights, OH

Marytza Sanz, Latino Leadership, Orlando, FL

Constance Slaughter-Harvey, Elections, Inc. and adjunct professor,
Tougaloo College, Tougaloo, MS

Courtenay Strickland, ACLU of Florida, Miami, FL

Reginald Turner, National Bar Association, Detroit, MI

The Commission's Florida hearing was in Orlando, in conjunction with the annual meeting of the National Bar Association, whose president, Kim Keenan, was a guest commissioner, along with Fred Gray, an Alabama attorney who had represented Rosa Parks during the Montgomery bus boycott and who was the first civil rights attorney of the Rev. Martin Luther King, Jr. (Gray's fifty-year career was also marked by service in the Alabama legislature and as president of the National Bar Association.) The Florida hearing involved witnesses from Florida and members of the National Bar Association from throughout the country.

Congressman G. K. Butterfield, representing North Carolina's 1st District, struck a note that was often heard in the hearings, namely, that while much progress in minority voting rights had been made in his state, thanks to the Voting Rights Act, the resistance of many whites—including those in the “power structure”—to minority gains warranted continuation of Section 5.

He recounted a bit of personal history that informed his fear of what might happen if Section 5 were not extended. His father was the fourth black elected official in North Carolina in the twentieth century, he said, and the first in the eastern part of the state. The senior Butterfield ran from a district in which African Americans were registered in large numbers, and after a tie vote, he was declared the victor after his name was drawn from a hat. “Prior to the next election, my family was on vacation in New York, and while we were away, the city council called an emergency meeting and changed . . . from district elections to at-large elections. And so at the next election he was defeated. Had we had a Section 5, that would not have happened.” He continued:

And so I say all of that to say that if we eliminate Section 5, you will begin to see a mass movement to revert to at-large elections in the South. And at-large elections would, I suppose, be fine if we did not have racially polarized voting. But racially polarized voting continues to be a very, very serious problem in the rural South.¹⁰⁸

Several issues were addressed by the speakers who followed. *Marytza Sanz*, president and CEO of Latino Leadership, spoke of the special needs of Puerto Ricans in Florida; and *Regine Monestime* of the Haitian Bar Association, talked about the language-assistance needs, in particular, of Haitian-born Florida citizens who are not covered by Section 203.¹⁰⁹ *Brad Brown*, Political Action Chair of the Miami-Dade NAACP, spoke of political conflicts and polarization between Cuban Americans and African Americans in that area of the

state—conflicts in which, he said, the rights of African Americans were often ignored regarding ballot access. Department of Justice intervention has sometimes been necessary, he said, to protect the rights of African Americans.¹¹⁰ He also spoke of efforts by whites to undercut the impact of a lawsuit in the 1990s that successfully challenged the dilutive impact of at-large elections to the Miami-Dade County Commission. Now that there are four blacks among the thirteen commissioners, a referendum is scheduled to amend the charter, he said, “to remove the executive power of that commission and give them to the county mayor.” The mayor, Brown said, would have sole authority to select persons to fill the more than 100 advisory boards and committees in the county. This shift of authority, he claimed, would remove “the ability of the current four black out of thirteen total commissioners to ensure that their constituents have a voice.”¹¹¹

Iris Green, chair of the National Bar Association’s Civil Rights Section and former Department of Justice attorney, spoke of her experience in the 2004 national Election Protection program, and echoed concerns expressed by others both at this hearing and those at the Southern Regional and Southwest Regional hearings about the rights of black college students. Working on Election Day, she said,

I got quite a few calls from the state of Florida. One in particular came from a . . . student [at historically black Florida A&M], in fact, a number of students who, even though there was a polling place on the campus . . . they were told that they were to vote some place that was off campus. They went to the polling place that was off campus only to be told that, no, your polling place is . . . the precinct on the Florida A&M campus. They came back to the Florida A&M campus and were once again told, no, your polling place is off campus. By that time they were really, really frustrated and desperately wanted to vote. For most of them, it would be their first time ever voting in a national election. . . .

But since we had people located on the ground, I referred them to our local persons . . . and hoped that they were able to help them. But those students were being denied the right to exercise their franchise, and they were right there on the campus where they had a polling place. And these were not students who lived in the city. These were the students who actually lived on the FAMU campus. There still exist many impediments

to voting, and the Voting Rights Act should be strengthened along with being extended.¹¹²

The situation of blacks in South Carolina was addressed by *Meredith Bell Platts*, attorney with the Voting Rights Project of the ACLU Southern Regional Office. “We’ve heard of the great changes, the quiet revolution that has taken place in minority representation due to the Voting Rights Act,” Bell Platts stated. “I have also observed, however, how much work remains and how discriminatory tactics may be less overt, but no less palpable today.”¹¹³

In particular, she spoke of the extreme disparity in socio-economic status between blacks and whites in South Carolina, and “the high levels of racial polarization,” with the result that “black voters are rarely able to elect their candidates of choice in majority-white districts.” One result of this situation is the need for heavily black districts, which in some cases appear to depress the number of Democratic seats in the legislature. To address this problem, a Democratic governor, Jim Hodges, argued that black percentages in such districts should be reduced, “to ward off further electoral failures for the Democratic party in senatorial elections.” This was rejected by a three-judge court. As an illustration of the intensity of racial feelings, Bell Platts noted that during the trial, “it was reported that a group of citizens in Lexington County . . . which is slightly outside the City of Columbia, informed one of their Republican representatives that they didn’t want any, and they used a racial epithet, the ‘n’ word, on the Lexington County delegation, referring specifically to a plan that had drawn a black representative into portions of Lexington County.”¹¹⁴

Bell Platts also summarized the recent history of racial animosity in Sumter County, South Carolina, by mentioning the various Section 5 objections interposed to electoral arrangements in the county. The fact that Sumter County in 2000 was almost 50 percent black undoubtedly added to the racial tensions surrounding redistricting in recent years. Bell Platts described angry editorials in the local papers and tense public meetings in county council chambers during the most recent round of redistricting, which ultimately led to a four-three black majority on the council.¹¹⁵

The situation of African Americans in Louisiana since 1982 was described in detail by *Debo Adegbile*, Associate Director of the NAACP Legal Defense Fund, who concluded on the basis of his legal experience in the state that “voting discrimination in Louisiana persists and . . . if Section 5 is not renewed, the state will experience a sudden and avoidable reduction of African-American access to the political process at every level of government.”¹¹⁶ This testimony was

given before Hurricane Katrina caused numerous problems of voter access in the state's next election cycle.¹¹⁷

Adebile gave a brief overview of Department of Justice Section 5 enforcement efforts in the state since 1982. He said that 66 percent of the objections interposed since passage of the Voting Rights Act have occurred since that date. "These blocked changes have impacted every aspect of African-American voting," he noted, "including redistricting, polling place relocation, changes in voting procedures, voter registration, annexations, and other alterations of elected bodies, and even an attempted suspension of a presidential primary election."¹¹⁸

He also noted that the proposed changes objected to under Section 5 occurred "at every level of government, including the state legislature, the state court system, the state board of education, parish councils, school boards, police juries, city councils, and boards of aldermen." Moreover, he added, these objections were not concentrated in a small part of the state. "Thirty-three, more than half of Louisiana's 64 parishes and 13 of its cities and towns have proposed discriminatory voting changes since 1982—many, more than one time."¹¹⁹ Adebile continued:

The DOJ was also compelled to object 17 times to attempts by the state itself to make changes that would set back minority voting rights in congressional, state legislative, state board of education, and state court elections. And in a stark, statewide illustration of the persistence and hostility toward equal African-American participation in Louisiana's political process since the VRA was passed in 1965, every proposed Louisiana State House of Representatives' redistricting plan has been objected to by the DOJ, including three since 1982.¹²⁰

Adebile stressed to the Commission that "these consistent efforts to diminish black voting power are not inconsequential remnants of the past . . ." He pointed out that Assistant Attorneys General for Civil Rights over the past three decades—individuals who have been appointed under both Democratic and Republican Administrations—"have consistently noted evidence of Louisiana officials' continuing intent to discriminate, including rejection of readily available non-discriminatory alternatives, inconsistent application of standards, drastic voting changes immediately following attempts by black candidates to win public office, and even candid admissions of racism by state and local officials as recently as 2001."¹²¹

Constance Slaughter-Harvey, president of Elections, Incorporated, past president of the Magnolia Bar Association (the predominantly African-American lawyers association of Mississippi) and former Assistant Secretary of State for Elections in Mississippi, also testified. Among her many accomplishments, Slaughter-Harvey was the first African-American woman to receive a law degree from the University of Mississippi, in 1970, five years after passage of the Voting Rights Act.

Like some others who participated at the Florida hearing, Slaughter-Harvey presented a poignant reminiscence.

I was introduced to problems in voting when I was in the eighth grade. I was cleaning out my father's wallet, without his permission, of course, and came across a poll tax receipt, and it bothered me. I have the poll tax receipt in my office now and it's been with me since I graduated from law school in 1970. Every time I look at that receipt it reminds me that I have work that still needs to be done.¹²²

During her testimony, Slaughter-Harvey expressed pessimism about the prospects for the "work that still needs to be done," causing Commissioner Joe Rogers to probe her on that issue, inquiring whether she considered her pessimistic statement "to be an overstatement on your part." He said, "You've had extraordinary gains that have taken place in Mississippi as a result of the Voting Rights Act, but . . . you say, 'I'm concerned now more than ever.'"¹²³

She replied as follows:

And I mean it. . . . I feel more pain now than when a judge called me a nigger from the bench in 1970. I feel pain because I sense that young African Americans . . . think that we have overcome. . . . See, when I was in Florida, I understood that the Klan does not have to wear a sheet. I know that. Now, I'm not certain young folks understand that you don't have to wear a sheet. . . . So yes, at my age, I'm 58 years old and I have never been more concerned about the survival of this country and the mean-spiritedness that's hit.¹²⁴

**South Dakota Hearing
Journey Museum
222 New York Street
Rapid City, SD
September 9, 2005**

National Commissioners in Attendance:

Elsie Meeks

Hon. Joe Rogers

Guest Commissioners:

Hon. Thomas Daschle, former U.S. Senator, Special Policy Advisor, Alston & Bird, Washington, DC

Jacqueline Johnson, National Congress of American Indians

Hon. Chris Nelson, Secretary of State, South Dakota

Jennifer Ring, ACLU of the Dakotas

Panelists:

Brenda Blue Arm, Cheyenne River Sioux Tribe, SD

Jesse Clausen, Oglala Lakota, Pine Ridge, SD

Hon. Craig Dillon, Councilman, Oglala Sioux Tribal Council, LaCreek District, Pine Ridge, SD

Adele Enright, County Auditor, Dewey County, Timber Lake, SD

Richard Guest, Native American Rights Foundation, Washington, DC

Dan McCool, Director, American West Center, University of Utah, Salt Lake City, UT

Laurette Poirier, Society for Advancement of Native Interests—Today, Rapid City, SD

Bryan Sells, ACLU Voting Rights Project, Atlanta, GA

O.J. Semans, Rosebud Sioux Tribe, Mission, SD

Hon. Theresa Two Bulls, State Senator, SD

Hon. Raymond Uses the Knife, Cheyenne River Sioux Tribe, Eagle Butte, SD

Public Testimony:

Patrick Duffy, Rapid City, SD

Tom Katus, Standing Rock Sioux Reservation, SD

The Commission met in Rapid City on September 9 for the seventh hearing, focusing solely on problems of Native Americans in South Dakota, who in 2000 made up 8.3 percent of the state's 755,000 people. Whites made up 88.0 percent. In 2005 there were 4 Native Americans in the 105-member state legislature.¹²⁵ Eighteen counties are covered by Section 203. Two counties—Todd and Shannon, 86 and 94 percent of whose population, respectively, is Native American—are covered by Section 5 as well.¹²⁶ There is a long history of conflict between whites and Native Americans in South Dakota, the state in which thousands of Oglala Sioux died in 1890 in the Wounded Knee massacre. The most recent *Almanac of American Politics* describes the current situation of the Sioux in the state as follows:

They are isolated far from the mainstream economic marketplace, beset by high rates of crime, alcoholism and suicide, with life expectancy and disease rates like those of sub-Saharan Africa; on the Pine Ridge Reservation in Shannon County unemployment is 70% and incomes average \$3,500 a year. But infant mortality has been reduced and the American Indian population has been growing—by 23% in the 1990s.¹²⁷

From the testimony at the hearing, it appears that many Native American voting problems stem from longstanding white prejudice combined with Native Americans' poverty, growing population, and increasing voter turnout in recent years. In addition, narrowly decided races for the U.S. Senate in 2002 and 2004 in a traditionally Republican state where Indians typically vote Democratic has led to intense partisan conflict as well. In 2002, Democratic incumbent U.S. Senator Tim Johnson narrowly defeated Republican John Thune. The victory was assured only after the votes came in from Shannon County, home of the Pine Ridge Reservation, early in the morning following Election Day. This led to unproven charges by Republicans of vote fraud. Other charges of "massive" Native American vote fraud earlier in the campaign—spread by the national conservative media but strongly denied by the state's Republican Attorney General, Mark Barnett—also symbolized the tension between Native Americans and at least some South Dakota whites.¹²⁸

Professor Dan McCool, a political scientist and director of the American West Center at the University of Utah, provided an overview of Native American voting rights nationally and in South Dakota. McCool, who has testified as an expert in South Dakota voting rights suits, pointed out that of the sixty-six such suits involving Native

Americans filed since 1966, South Dakota and New Mexico were tied, at seventeen cases each, for the largest number filed within a state's borders.¹²⁹ McCool is co-author of a forthcoming book on the subject of Native American voting rights, the final chapter of which focuses on the 2002 and 2004 elections. He told the Commission that:

[T]here are continuing problems . . . in South Dakota. So we see some problems have been resolved and other problems continue to arise, and there are still challenges to American Indians in their efforts to try to vote. There were also a number of widespread accusations about, quote, Indian voter fraud which proved to be inaccurate, and I think the level of accusations is indicative of the level of animosity and the hostility that has been created when American Indians register and try to vote. . . . And in South Dakota, there is still a high level of racial polarization in a number of areas. . . . [While not true everywhere in the state] this is especially true when Indians run against Anglos . . .¹³⁰

Among the problems Indians face, McCool said, were the false but "widespread perception" that Indians are not taxpayers, and thus shouldn't be allowed to vote, "especially in state and local elections"; the long distance from residence to polling stations, "especially over bad roads; polls that are not located conveniently or not on Indian reservations; hostility among election workers and public officials; the purging of voter lists; a poor understanding of election laws and procedures; difficulties and resistance when attempting to register to vote; and efforts to dilute the impact of Indian voting."¹³¹

McCool's concluding opinion was that while Indians are achieving "remarkable gains" in some places, the "Voting Rights Act . . ., including Sections 5 and 203, has played a pivotal role in providing American Indians with an opportunity to vote and elect candidates of their choice. The impact is enormous."¹³²

Bryan Sells, staff attorney with the Voting Rights Project of the American Civil Liberties Union, elaborated on the Act's impact by describing two of the seven cases over the past six years in which the ACLU has represented tribal plaintiffs in voting matters. "Our clients' litigation," he said, "has challenged virtually every level of government in this state from the state legislature and the Secretary of State on down to county commissions, city councils, and school boards." He added that his clients have so far prevailed in five of the seven cases, with two still pending.¹³³ Sells continued:

Any discussion of Section 5 compliance in South Dakota has to begin with William Janklow. On August 23, 1977, then State Attorney General Janklow issued an official opinion in which he assailed Section 5 as a, quote, absurdity, end quote, that imposed an unworkable solution to a nonexistent problem. Janklow advised the South Dakota Secretary of State, Lorna Herseth, that he intended to pursue both litigation and legislation that would exempt South Dakota from the Voting Rights Act and that Herseth should therefore disregard the preclearance mandate in the meantime. Janklow never did file a bailout lawsuit. Legislation was never passed exempting South Dakota from the Voting Rights Act, but Secretary Herseth and her successors in office followed Janklow's advice for more than a quarter century.¹³⁴

When the ACLU Voting Rights Project first learned of the state's noncompliance with Section 5, the staff over a period of months was able to identify "more than 600 unprecleared voting changes at the state level." The ACLU then brought suit in 2002 against the secretary of state on behalf of tribal members. "The parties negotiated a consent order and a remedial plan in which the secretary eventually admitted to more than 800 separate violations of Section 5," and his office is currently bringing the state into compliance.¹³⁵ However, in response to Sells's statement, current Secretary of State *Chris Nelson*, who has been a defendant in the case and was invited to serve as a guest Commissioner at the hearings, pointed out that in spite of these violations, none of South Dakota's non-precleared changes in voting law so far examined by the Department of Justice had resulted in an objection.¹³⁶

Sells also described two recent cases brought by Native American plaintiffs alleging dilution of votes, one of which is pending. The other, which plaintiffs won, targeted county commissioner districts in Buffalo County. Buffalo County is said to be the poorest county in the United States in 2000, 85 percent of whose population is Indian. The three districts had existed for almost a decade, Sells said, and they contained populations of approximately 1,700, 300, and 100. "Virtually all of the 1,700 people in Commissioner District 1 were Native American while not a single Indian lived in the underpopulated District 3. The result was that the county's minuscule non-Indian minority had effective control of the county commission." The districts were not only malapportioned in violation of the one-person-one-vote principle, but as drawn, they diluted Indian votes. The case was settled in 2004, when two of the three districts were re-

drawn and special elections were held for two of the three seats. In addition, the county “agreed to relief under Section 3(c) of the Voting Rights Act, which effectively means that Buffalo County is now subject to the preclearance requirements of Section 5 along with Shannon and Todd Counties . . .”¹³⁷ The fact that all seven of the voting rights suits Sells mentioned were filed in the last six years, including the Section 5 enforcement action requiring South Dakota to submit more than a quarter-century’s worth of un-precleared changes, suggests continuing discrimination against Indians by the state as a whole and some of its subdivisions.¹³⁸

Much of the subsequent testimony was presented by Native Americans and provided a corroborating overview of problems they and their fellow citizens and kinsmen encounter in trying to vote. *State Senator Theresa Two Bulls* said she “really [felt] bad that . . . after all these years there’s still prejudice and discrimination; . . . it isn’t right to be taking it out on Native Americans just because we’re a minority.”¹³⁹ She mentioned the need for redistricting to give her people a chance to elect candidates of their choice, and she mentioned various “roadblocks” whites used to deny Indians ballot access, including unfair burdens in the registration process and turning potential voters away at the polls without giving reasons. “[I]t’s still ongoing today in the twenty-first century, and I think we need to change that,” Two Bulls asserted.¹⁴⁰

Raymond Uses the Knife, a member of the Cheyenne River Sioux and, in his words, a representative of “probably nineteen communities on my reservation,” spoke of the voting problems his people, many of whom speak Lakota, have as a result of limited English proficiency:

I’ve . . . witnessed one of our tribal members didn’t know how to read or write and he needed help from his wife. His wife was proficient in the English language, and that’s what his request was, but it was denied. So he was so upset with this situation that he picked up his ballot and just tore it in half and threw it in the trash can. He said this is the second time that this is the way he was treated at the polls. . . . [Limited English proficiency] also causes a lot of our people to have mistrust in the non-Native elections. A lot of the comments that I hear is that our Lakota people feel they have no chance in the system that is there already, whether it’s the state system or the federal system.¹⁴¹

Uses The Knife, however, took the opportunity to commend Guest Commissioner Nelson, because “Mr. Nelson’s been at Cheyenne River working with us, and he’s offered his hand to help us to work some of these things out, so I’m glad to see that,” he said. On a positive note, he mentioned the creation of the Cheyenne River Sioux Tribal Voters’ Rights Commission “that was established just within the last three years.” The main focus is to educate Indians because “our people feel disenfranchised, and they feel they have no say-so in the governments. They . . . feel they may have a little say-so in the tribal governments because they get to vote for their tribal officials every two years, but they feel that the state elections and the county elections, sometimes they call it—these are white elections and they don’t belong to us,” he said.¹⁴²

Uses The Knife also mentioned “limited tribal resources. . . . When election time comes, people can’t find rides. . . . It costs \$50 just to get a ride to the hub of the reservation in some places. Eighty miles from Bridger to the middle of the reservation.” To help overcome this problem, he said, “we have changed our Tribal Constitution to allow for the national elections to coincide with our tribal elections. . . . We’ve had examiners come out, thankfully, to the reservations helping us, letting us know what our rights are—what our rights are under the Voters Rights Act.”¹⁴³

One of the most subtle accounts of voting experiences in any of the ten hearings was given by *Laurette Pourier*, a Native American who heads the Society for the Advancement of Native Interests—Today (SANI-T). Pourier gave voice to a feeling, apparently widespread among Native American voters, that in polling places staffed by whites, Native Americans are often made to feel unwelcome and uncomfortable—a feeling that might very well discourage timid or older people from voting:

[A]s a voter myself, what I had experienced when going to vote was being confronted by little old white ladies—excuse the term, not to offend anyone, but that’s what I saw—and being questioned and being treated poorly. [When I participated in the 2004 Native Vote election protection program] . . . we just spread the word amongst the people, the women that were doing it, is we’re going to be the little old brown ladies sitting there and at least make a statement that way. But our purpose was to help the Native American voters feel more comfortable, to have a recognizable friend or at least a greeter that they’d feel okay about, that they wouldn’t have to be afraid or nervous. [I had another earlier experience as an observer.] I did it for one full day, and, of course, the little old white ladies that were

there gave me attitude, and I—that’s the only way to say it, and it was attitude. There wasn’t specific words of put-downs or attitudes, but it was in a look or gesture or a tone of voice. And being somewhat frustrated by that and talking about it later, I told one of the other workers, I said, “You know, but it’s nothing—yes, it was racism, but it—you know, it’s nothing tangible that I can actually document. . . . [But as my late friend Carol Maiki always told us] “If you feel it, it’s real,” and . . . we were talking about racism. So it was definitely there.¹⁴⁴

Pourier went on to describe less subtle problems Native Americans faced, including what seemed to her to be misinformation about provisional ballots and the lack of translators in cities to accommodate the large urban Native American population, and the new photo identification requirement, which several witnesses mentioned.¹⁴⁵ This requirement was passed in the regular 2003 legislative session—the first one after the narrow defeat of senatorial candidate John Thune in 2002 under the circumstances described above.¹⁴⁶

Efforts at intimidation at the polling place were described by *Jesse Clausen*, an Oglala Lakota tribal member. Compared to the elderly Native American poll watchers, whites stationed large, intimidating men as poll watchers:

[O]n the non-Indian side of the deal, Danny O’Neill, which makes me look real scrawny, Bob Bucholtz, which makes me look scrawny again, five or six of these guys standing at the door of the polling place, and when our people came in, they had to say, “Excuse me,” and then they [the whites] wouldn’t move; they’d have to walk around them. When the white people come in, it’s, “Hi, how you doing?” shake their hand and step aside and let them come in. That was just blatant intimidation.¹⁴⁷

Richard Guest, staff attorney for the Native American Rights Fund, summarized the main problem areas uncovered by Native Vote 2004, the Native American Election Protection project, as being of three main kinds: “allegations of voter intimidation and fraud,” absentee ballots that were applied for but not received by Indians, and discriminatory election laws.¹⁴⁸

Guest pointed to New Mexico as a model for a state’s conforming to Section 203. “They have an entire program set up under the state law,” he said, “where . . . a language interpreter is in every polling place. That’s required under state law where they have

an agency that's staffed that's specific to target Native American communities for education . . . as a result of lawsuits that were filed in the mid-1980s around language assistance." He asked the rhetorical question whether those programs would continue without Section 203, and answered that "they would be at the whim of whoever's in the governor's office or of the makeup of a particular legislature, and that's where the danger lies . . ."149

While Native Americans tend to vote Democratic, various witnesses testifying at the South Dakota hearing noted that discrimination against Native Americans was bipartisan. *O. J. Semans*, of the Rosebud Sioux Tribe, averred that "racial discrimination in South Dakota is alive and well. It's not divided by political parties, whether it's a Democrat or whether it's a Republican. Since becoming involved in this, I have butted heads in Charles Mix County, a Democratic stronghold, and we've butted heads in, you know, Republican strongholds. . . . There's no party lines."150 In later testimony, *Craig Dillon*, a councilman in the Oglala Tribal Council, LaCreek District, provided an illustration of Semans' point by describing events in a Democratic primary in Bennett County, where Native American challengers unseated incumbent white county commissioners. The county Democratic chair then recruited Independent whites to oppose the Native American Democratic nominees in the general election.¹⁵¹

Several witnesses strongly advocated reauthorization of the nonpermanent features of the Voting Rights Act, perhaps none more so than *Patrick Duffy*, a Rapid City attorney who has been extensively involved in recent South Dakota voting rights litigation. "The racial tension in South Dakota that still exists is unlike anything anybody from the outside looking in can imagine. . . . Thank God for the people at the Department of Justice who helped us set up those satellite voting offices, and thank God for Chris Nelson who helped us do it, too. But without the Voting Rights Act, without my friends at the ACLU, and to be really honest with you, without a heck of a banker because I've gone eight years now with this [voting rights litigation], we couldn't get anything done."¹⁵²

**Western Regional Hearing
California African American Museum
600 State Drive
Los Angeles, CA
September 27, 2005**

National Commissioners in Attendance:

Hon. John Buchanan

Chandler Davidson

Bill Lann Lee

Hon. Joe Rogers

Panelists:

Joaquin Avila, Seattle University School of Law, Seattle, WA

Kathay Feng, Common Cause, Los Angeles, California

Rosalind Gold, Policy Research & Advocacy, NALEO Educational Fund, Los Angeles, CA

J. Morgan Kousser, California Institute of Technology, Pasadena, CA

Eugene Lee, Voting Rights Project, Asian Pacific American Legal Center, Los Angeles, CA

Eun Sook Lee, National Korean American Service & Education Consortium, Los Angeles, CA

Conny McCormack, Registrar-Recorder/County Clerk, Los Angeles County, Norwalk, CA

Robert Rubin, Lawyers' Committee for Civil Rights of San Francisco, San Francisco, CA

Debbie Hsu Siah, Chinese Information and Service Center, Seattle, WA

Public Testimony:

Carolyn Fowler, Los Angeles, CA

Submitted Statements:

Wing Tek Lum, Voter Registration Committee, Chinese Community Action Coalition, Honolulu, HI

Patricia McManaman, Na Loio, Immigrant Rights and Public Interest Legal Center, Honolulu, HI

The Commission met in Los Angeles on September 27 for the Western Regional hearing, focusing on voting problems on the West Coast. This hearing, like the Midwest Regional and Northeast Regional hearings in particular, brought home to the Commission the ethnic diversity that exists in many regions of the nation, the different as well as the common problems faced by ethnic groups and, indeed, the different problems that voters within an “umbrella” ethnic group such as Asian Americans may confront. The diversity was discussed in a report entered in the record by the Asian Pacific American Legal Center, *The Diverse Face of Asians and Pacific Islanders in California*. In the introduction, *Steward Kwoh*, president and executive director of the Center, writes that “while Asians and Pacific Islanders are often thought of as a homogenous group, the reality is that our communities represent dozens of ethnic groups, cultures, and languages. While groups like Cambodians, Filipinos, Bangladeshi, Koreans, and Tongans share many common issues and values, they are different from one another in many ways.”¹⁵³ The demographic analyses in the report include twenty-two separate Asian/Pacific Islander nationality groups, ranging alphabetically from Asian Indian to Vietnamese.

The different problems of sub-populations among Asian Pacific Islander Americans (APIAs) were discussed by *Eugene Lee*, staff attorney in the Voting Rights Project at the Asian Pacific American Legal Center of Southern California. Among various groups in the state, 62 percent of Vietnamese are limited in English proficiency, as are 61 percent of Hmong, 56 percent of Cambodians, 55 percent of Laotians, 52 percent of Koreans, and 48 percent of Chinese. The overall percentage of APIAs of limited-English proficiency is 39 percent—as compared, for example, to Latinos’ 43 percent and to all Californians’ 20 percent.¹⁵⁴

In Lee’s view, Section 203’s language-assistance provisions have been very useful to Californians who have problems with English. He pointed out that the number of APIAs elected to the state assembly had increased from zero in 1990 to nine, with the recent election of Ted Lieu due in part to Section 203. “Eight of these nine legislators represent legislative districts located in counties that are covered under Section 203 for at least one Asian language.” Their home districts range from San Diego in the south to San Francisco in the north.¹⁵⁵ Lee also attributes the extraordinary growth in both APIA registration and turnout rates to Section 203. The total turnout rate among APIA registered voters increased 98 percent between 1998 and 2004, according to his statistics.¹⁵⁶ The efficacy of Section 203, he believes, can partly be attributed to outreach efforts in some areas by election officials:

According to data gathered by the Los Angeles County Registrar of Voters, the total number of voters in Los Angeles County who have requested language assistance has increased by 38% from December 1999 to August 2005. This increase reflects increased outreach by Los Angeles County and illustrates language minority voters' reliance on language assistance.¹⁵⁷

An illustration of the variety of creative “outreach instruments” is contained in a packet of documents submitted to the Commission by *Los Angeles County Registrar-Recorder/County Clerk Conny McCormack*. These include such things as an instructional DVD created by her office, entitled “An All American Polling Place”; a printed election guide explaining the various kinds of voting machines; an analysis of the general election ballot, with arguments for and against propositions on the ballot; special instructions concerning language assistance in six languages; a colored brochure entitled “Voters’ Survival Guide,” including specific instructions on language assistance and information on the voter Web site; information on multilingual targeting; information on the “voter outreach committee”; an instructional pamphlet entitled “Cultural Interactions: Precinct Coordinator Continuing Enhancement Program”; and, among other things, examples of multilingual signs used in polling places and ads in various non-English-language newspapers in the county, giving advice to voters on when and where to vote.¹⁵⁸

In light of the numerous comments made during the Commission’s hearings regarding the lack of enthusiasm among voting officials in some venues, McCormack’s advocacy for effective use of bilingual materials and language assistance in general is noteworthy. Indeed, she made clear in her testimony that her office went beyond the requirements of Section 203, in that poll workers were recruited who spoke the language of some groups that were not covered by the Voting Rights Act, including Russian and Armenian.¹⁵⁹ McCormack gave the Commission an overview of her office’s three-pronged multilingual program—“provision of translated written material; oral assistance; and collaboration with key community-based organizations.” She also spoke about various measures of effectiveness of the program, which include tallying multilingual voter requests received by her office per year (requests have increased more than twentyfold from 6,227 in 1993 to 135,129 through August 2005). Most of the requests have come from Latinos, followed in number by Chinese and Koreans.¹⁶⁰

Another measure of effectiveness, McCormack said, was the relationship between her office and the Department of Justice:

[I]n both pre- and post-election meetings with attorneys from the U.S. Department of Justice (USDOJ), L.A. County's ML [multilingual] services program has been described as very good and comprehensive. Indeed, from feedback from other counties covered by Section 203 of the VRA, we have learned that the USDOJ has held L.A. County's multifaceted program as a model for other jurisdictions to follow. Also, our commitment to the permanence of our extensive, successful ML program is demonstrated by assigning specified staff to this program including a designated ML Coordinator, an Executive Liaison Officer and several additional full- and part-time staff."¹⁶¹

Attorney Lee also spoke enthusiastically about the Act's observer provision, pointing out that earlier in 2005 the Department of Justice had brought successful enforcement actions against cities in Los Angeles County, leading to consent decrees whereby federal observers will in the future monitor these cities' conformity with Section 203 requirements.¹⁶² He also discussed various ballot access problems APIA voters sometimes confront: "Despite electoral gains and improvement in poll worker training, racial discrimination against APIA voters still occurs in the polling place." As examples, he noted rudeness and racism among some poll officials in 2000 and 2004 elections.¹⁶³

Another witness who spoke of polling place discrimination was *Rosalind Gold*, Senior Director of Policy Research and Advocacy with the National Association of Latino Elected and Appointed Officials (NALEO). Her organization's survey and monitoring of 89 polling sites in the 2005 Los Angeles municipal elections found that "about 15 percent of the polling sites did not have Spanish language sample ballots available, and a larger percentage also lacked other important informational forms [and] materials." In addition, about one-third of the sites did not have a Voter's Bill of Rights posted—a document that the California secretary of state is supposed to make available at every polling place. Moreover, "about one-half of the sites" lacked "Spanish language information on provisional voting and 80 percent of the sites had no information on how to contact election officials if you had complaints or concerns."¹⁶⁴ She strongly recommended renewal of the nonpermanent features of the Voting Rights Act.¹⁶⁵

Statements on voting problems in Hawaii were offered by *Wing Tek Lum*, a representative of the Chinese community in Honolulu, and *Patricia McManaman*, lawyer and chief executive officer of Na Loio, the Immigrant Rights and Public Interest Legal Center in the same city. Lum spoke of problems Chinese voters encountered with mail-in voting. McManaman addressed both the lack of bilingual ballots at some polling places in Hawaii and, as did Lum, problems of mail-in voting. “Hawaii law needs to be amended,” she said, “to allow earlier mail-out of absentee ballots to ensure that those who live abroad or in remote areas of the United States have the ability to cast a timely ballot.”¹⁶⁶

Eun Sook Lee is executive director of the National Korean American Service and Educational Consortium, which represents the more than 1.2 million Korean Americans in the United States today. Over 70 percent of them are immigrants, many of whom do not speak or read English well. Lee attributed the noticeable increase in voting within the Korean community to Section 203 and strongly urged its renewal. Moreover, she advocated a change in the coverage trigger. “Currently,” Lee said, “Section 203 covers counties that have 5 percent or 10,000 voting age citizens who speak the same language, are limited-English proficient and, as a group, have a higher illiteracy rate than the national illiteracy rate. In our opinion, measures that would allow counties to capture as many language-minority voters as possible are both meaningful and necessary.” She mentioned suggestions that had been made to drop the threshold for coverage “from 10,000 voters to 7,500 or 5,000 voters.”¹⁶⁷

Kathay Feng, executive director of California Common Cause and, prior to her current job, head of the Voting Rights Project of the Asian Pacific American Legal Center, testified about the progress that has been made by minority voters as a result of the efforts of groups she has been affiliated with. In particular, she pointed to the problems minority voters faced with pre-scored punch card machines, a type of machine, she said, that accounted for 74.8 percent of all ballots that did not register a vote for President in the 2000 elections. “Common Cause investigated [high rates of overvotes and undervotes in California] and found that their rate of error from punch card voting had a disproportionate effect on African American, Latino and Asian American communities.” She continued:

Using the Voting Rights Act and the Fourteenth Amendment of the U.S. Constitution, California Common Cause challenged the certification and use of punch card voting machines in California and won. As a result, California became one of the first states to require all of

its counties to switch to new, more accurate voting machines by the 2004 elections.¹⁶⁸

Feng also pointed to her group's efforts to work proactively with the California secretary of state to avoid violations of the Voting Rights Act in implementing the mandates of the Help America Vote Act of 2002. Among the goals they achieved were a "state plan that would soften the potential disenfranchisement of the new voter identification requirements"; establishing "standards for the implementation of a statewide database and uniform purging standards that protected against discriminatory purging of voters"; allocation of adequate federal funding for "voting technology improvements to ensure language and disability accessibility"; creation of "uniform poll worker trainings and outreach standards"; and creation, through cooperation with the Secretary of State, of "multi-lingual education about the new voting changes."¹⁶⁹

In contrast to these achievements, however, Feng pointed to flagrant anti-Asian racism that still exists. "There . . . were a couple of examples of Vietnamese Americans who ran for elected office and who faced incredible discrimination. Some of the campaign signs that they had up would have swastikas drawn on them. And this was in the late nineties, so it's not like it was . . . fifty years ago or a hundred years ago. . . . [P]eople would show up at the poll sites and they would be told, you know, if you're an American, you should be voting in English. If you can't speak English, you shouldn't be voting." However, her organization's increased poll monitoring led to "a big change . . . around the late nineties and the 2000s."¹⁷⁰

While acknowledging that "much remains to be done to improve voter participation by minority and language-minority groups," Feng concluded that

The Voting Rights Act has had [an] immeasurable positive impact on all facets of civic engagement in California. It has protected against the worst kind of discriminatory behavior, whether intentional or in effect. It has been instrumental in pushing our election officials and lawmakers to create electoral processes and standards that are responsive to our tremendous racial and language diversity.¹⁷¹

Four counties in California are covered by Section 5 of the Act. *Robert Rubin*, an attorney with the Lawyers' Committee for Civil Rights Under Law of the San Francisco Bay Area, discussed recent noteworthy cases filed under that section involving Latino voters.

One, *Lopez v. Monterey County*,¹⁷² went to the U.S. Supreme Court twice on different issues. Latino plaintiffs had challenged the implementation of an at-large system for the election of municipal judges that had not been precleared by the Department of Justice. “Pending final resolution of the case, and with an election upcoming,” the district court said it could not reconcile a recent Supreme Court decision and Section 5 law, and thus ordered the pending elections to be held although the at-large system had not been approved by the Department of Justice. The Supreme Court reversed and remanded the case, holding that even as an interim measure, the at-large election must be precleared. The district judge then dismissed the case because the change to an at-large system did not originate in Monterey County but was instead the product of California law. “The Supreme Court once more reversed the district court, holding that the Act’s preclearance requirements apply to measures mandated by a non-covered state to the extent that these measures will effect a voting change in a covered county.”¹⁷³

Rubin also explained the facts behind a Department of Justice objection in Monterey County as due to an effort to change the Chualar Union Elementary School District Board elections from district to at-large ones. The Department found that the measure “was motivated, at least in part, by a discriminatory animus,” and that it would have a retrogressive impact on Latino voting strength. Another Monterey County incident leading to Department of Justice intervention involved changing Latino polling places in order to accommodate an abbreviated election schedule for the 2003 gubernatorial recall. Plaintiffs sought an injunction, noting “at least 17 instances in which the proposed change in polling places would have a retrogressive effect on the Latino community. One . . . would move a polling place almost 5 miles away from a predominantly Latino community to a new site without easy access to public transportation.” A proposed consolidation “would close two school-site polling places in predominantly Latino communities and force voters to cast their ballots at the Sheriff’s Posse Club House, a hunting club in a predominantly Anglo area and clearly a site that would discourage Latino voters.” In response to a temporary restraining order issued by the district court, the county reinstated most of the polling places and then obtained Department of Justice preclearance for the remaining changes.¹⁷⁴

Rubin also discussed cases involving the California Voting Rights Act of 2001, which is in some respects similar to the federal Act, and is designed to confront the widespread degree of racially polarized voting in the state and the inability of many Latino voters to elect candidates of their choice, given that “upwards of 80 percent of

all local jurisdictions [in the state] conduct their elections pursuant to an at-large system.”¹⁷⁵

Voting Rights attorney *Joaquin Avila* testified on various problems litigators have faced trying Section 2 cases. After some notable successes in the period following the 1982 amendment to Section 2, adverse decisions in two major cases brought a halt to challenges to at-large election systems in the state. Regarding the California Voting Rights Act mentioned by Rubin, Avila described its purpose as overcoming “often insurmountable evidentiary burdens” in federal court. But he noted that it has been declared unconstitutional by a state court. The decision is now on appeal. To add to the difficulties of minority voters, Avila added that currently “Section 2 has been ineffective in eliminating discriminatory at-large methods of elections in California [with one recent notable exception]. . . . Section 2 cases consume a significant amount of financial resources [in addition to the evidentiary burdens]. . . . [U]nless there are significant amendments to Section 2, this particular provision will not provide the means for eliminating discriminatory at-large election methods in California.”¹⁷⁶

In light of these developments, Avila strongly supported extension of Section 5. “The most significant feature of Section 5 is the reversal of the burden of proof,” he stated, and pointed to the differences that objections by the Department of Justice since 1982 had made in his state. “Two of the letters [of objection] involved redistrictings of county supervisorial districts in Merced County and in Monterey County. In both of these instances the ultimate result was the election of a Latina/o candidate for the board of supervisors. In Monterey County, the last time a Latina/o had been elected was over a hundred years ago.”¹⁷⁷

There were, however, only a total of four objections since 1982, and one might conclude that such a small number in the four covered counties indicates that Section 5 is no longer needed in California. Avila argued against this conclusion on two grounds. First, the objections discourage officials from adopting discriminatory practices. Second, it is a mistake to conclude that the objections are indicators of all the discriminatory behavior engaged in by jurisdictions. “In reality, many Section 5 covered jurisdictions are delinquent in the timely submission of their voting changes [for preclearance],” Avila claimed. “Some jurisdictions, but for litigation, would not have submitted any voting changes,” he said, and added that “this sordid record of non-compliance” had been noted “several times by the United States Commission on Civil Rights, by congressmen and witnesses in testimony when the Act was reauthorized [from 1970 onward] . . . by the Government Accounting Office, and by Supreme

Court precedent. Also as a result of independent reviews of voting changes in selected jurisdictions, the record demonstrates that non-compliance is a significant problem. For example, in Merced County, California, there are special election districts that have not submitted their annexations for Section 5 approval.”¹⁷⁸

The last speaker to testify was *Carolyn Fowler* of Los Angeles, representing the California Election Protection Network, an umbrella organization with more than 300 units statewide. As did many who testified at the ten hearings around the country, she spoke of the difficulties faced by people who were limited in their English proficiency. “People—if they have a language problem,” she said, “are kind of pushed to the side” or treated like, “‘You don’t know what you’re doing.’ And I think I’m going to . . . translate that into intimidation: intimidation as a senior, intimidation as a person of another language. . .” Thus people come to the polling place “not feeling comfortable about knowing what to do . . . with that voting system.” She predicted that as language diversity increases, more training of poll workers will be required, and she advocated additional funding for such training.¹⁷⁹

Fowler also criticized the state’s fair political practices commission. She urged the audience to look at the complaints the commission receives. She believed many of them concerned discrimination. “I think we have maybe four or five people to handle the volume of complaints for the State of California,” she said, “and that is ludicrous. They cannot get back to you. . . . [I]f you’re lucky in two weeks, you get a letter saying, ‘We did receive your complaint.’ And in many instances, people that have complained—and they’ve testified to this at the secretary of state—they never get a response. Well, that’s because they’ve got a few people trying to manage volumes of information and complaints.”¹⁸⁰

Among the legitimate complaints voters have, Fowler asserted, are those concerning polling site accessibility. She spoke particularly of a lack of parking space near some sites, requiring voters to walk “at least five or six blocks.” Another complaint, particularly in the African-American community, is lack of proper notification of polling site changes, especially in elections where polling sites are consolidated. While it may not be intentional, she says, it gives “the appearance of disenfranchising.”¹⁸¹

**Mid-Atlantic Regional Hearing
Arnold & Porter, LLP
555 12th Street, NW
Washington, DC
October 14, 2005**

National Commissioners in Attendance:

Chandler Davidson
Hon. Charles McC. Mathias, Jr.
Charles Ogletree
Hon. Joe Rogers

Guest Commissioners:

Karen Narasaki, Asian American Justice Center, Washington, DC
Robert Raben, The Raben Group on behalf of the National Council of La
Raza, Washington, DC

Panelists:

Juan Aguilar, Sunnyside Voter Registration Project, Sunnyside, WA
J. Gerald Hebert, The Campaign Legal Center, Washington, DC
Sam Hirsch, Jenner & Block, Washington, DC
Margaret Jurgensen, Elections Director, Montgomery County, MD
Robert Kengle, former Deputy Chief, Voting Section, Department of Justice,
Washington, DC
Mark Posner, American University, Washington College of Law, Washington,
DC & University of Maryland Law School, College Park, MD, and
former Voting Section attorney
Richard Valelly, Swarthmore College, Swarthmore, PA
Hon. Melvin Watt, U.S. Representative, 12th Congressional District of North
Carolina
Jeffrey M. Wice, Touro Law School, Huntington, NY
Kent Willis, ACLU of Virginia, Richmond, VA

The Mid-Atlantic Regional Hearing was held in Washington, D.C. on October 14. The Honorable Charles Matthias, former U.S. Senator from Maryland and honorary chairman of the Commission, was present part of the day. Among those giving testimony were three former Department of Justice lawyers with considerable experience in the Voting Section: Gerald Hebert, Robert Kengle, and Mark Posner.

The first witness was *U.S. Representative Melvin Watt* who, when elected in 1992, became one of the first two African Americans elected to Congress from North Carolina in the Twentieth Century. Many of the state's 100 counties have been covered by Section 5 since 1965, and today 40 of them are. Representative Watt is chair of the Congressional Black Caucus and a member of the House Judiciary Committee, among several other House committees. Watt asserted that "the majority of our members . . . would not be members of the Congressional Black Caucus, would not be serving in the Congress of the United States but for the provisions of the Voting Rights Act. And most of them are there because of the aggressive enforcement that has occurred since 1990 when the Voting Rights Act started to be . . . enforced more vigorously."¹⁸²

Watt included himself among those black congressmen who would not have been elected without the Act. "If you look at the history of the districts in North Carolina, if . . . the Voting Rights Act were not in place, there simply would never have been created the opportunity for African Americans to be elected."¹⁸³ He went on to explain that if North Carolina's black population—20 percent of the total—were dispersed across many districts so that they became an "ineffective minority," it would not be possible for "the African-American community [to] elect the representatives of their choice," because of the "very high degree of racially polarized voting." The congressman gave an example of a North Carolina contest for an appellate judgeship, a post that at the time of the election did not have to be filled by a lawyer. "We had an African-American lawyer who had practiced law, distinguished record. And a [white] fireman ran against him. No legal background, no experience, nothing to commend him for the court except that he was white . . . [T]he fireman won the election. And, I mean, there is just no more dramatic example of the impact of racially polarized voting."¹⁸⁴

The Voting Rights Act, Watt said, ensures that "you can take race into account . . . to balance the equation And as long as there are still people out there who are saying, I won't vote for a minority candidate under any circumstances, the Voting Rights Act will always be needed."

When questioned, Watt expressed the belief that racially polarized voting occurred in both partisan and nonpartisan elections.

He opined that in his state's nonpartisan elections, blacks "don't fare well in those except in minority voting rights districts."¹⁸⁵ Regarding partisan elections, he pointed to the case of Allyson Duncan, a black Republican who was appointed to the North Carolina Court of Appeals, a body elected statewide. As an incumbent, she then ran for election against a white and lost. She was later appointed to the U.S. Fourth Circuit Court of Appeals—an indication of her judicial qualifications. "But because she was black, [Watt said] she wasn't qualified enough for the voters, Republican or Democrat." He added that while partisan politics may play a role in North Carolina in determining whether blacks get elected statewide, "normally the decisive factor is race." He could only think of one black official elected statewide in North Carolina who is currently an officeholder.¹⁸⁶

Sam Hirsch, a partner in the firm of Jenner & Block, spoke at length about the extent of racially polarized voting in the United States based on his experience and the evidence of experts in voting rights cases with which he is familiar. Hirsch's litigation practice focuses primarily on election law, redistricting, and voting rights. He said that in the last ten years he has worked in redistricting litigation in about twenty states, and many of his cases have involved Sections 2 or 5 of the Act. In his experience, "there are politically significant statistical levels of racial polarization between Anglos and Latinos, as between whites and blacks, in almost every locale which I have experienced." His focus was on two states—Texas and Maryland—and regarding the latter he introduced into the record an expert report on polarization by Richard Engstrom, who had testified at the first hearing in Montgomery the previous March. The Maryland example was particularly germane in light of Congressman Melvin Watt's observation that racially polarized voting was not simply a function of partisan differences between blacks and whites in his state. In Maryland the voting patterns of those two racial groups had been analyzed for purposes of litigation in Democratic primary elections only, in the heavily Democratic Prince George's County. The data indicated that racially polarized voting was very much in play. In four of the five primary elections for state legislators, all since 1994, "the preferences of white voters and the preferences of black voters diverge in 80 percent of the instances," he said.¹⁸⁷

Regarding Texas, Hirsch introduced reports on congressional elections by Jonathan Katz, a political scientist at Caltech. "Dr. Katz studied 113 different general elections in the U.S. House alone in the 1990s," he said. These were in districts with large black or Latino populations. Katz found "a virtually universal pattern of racially polarized voting with the Latino and black voters overwhelmingly

preferring Democratic [candidates] . . . and Anglo [i.e., non-Hispanic white] . . . voters heavily preferring Republican candidates for Congress in Texas.”¹⁸⁸

But this polarization was not limited to partisan contests. A study by Allan J. Lichtman, a historian at American University, also found it to be common in numerous Democratic primary contests in which at least one black or Latino faced at least one Anglo. While acknowledging that in Texas the race of candidates alone was not always determinative of voting behavior, and that the states of Maryland and Texas “obviously . . . don’t speak directly to the forty-eight [other] states,” Hirsch nonetheless stressed the quality of the experts’ reports, which were “comprehensive, . . . withstood the test of cross-examination . . . and are a rich source of very up-to-date and very carefully executed social scientific analysis and data gathering.”¹⁸⁹

J. Gerald Hebert has the distinction of being the only lawyer to have assisted jurisdictions covered by Section 5 in escaping coverage under the amended 1982 bail-out standards. He gave a brief history of the standards since 1965 and explained how nine jurisdictions, all in Virginia, had successfully bailed out since 1982. (Another one is pending.) The current standards, he believes, are neither as costly nor as onerous for many jurisdictions as is generally believed, and they reward good behavior in complying with Section 5. Hence, according to Hebert, they should probably be renewed as they now exist, with perhaps small modifications.¹⁹⁰

On another topic, Hebert told of being retained in the 1990s by the Alabama Democratic Conference—a statewide black organization—to find out if local jurisdictions were preclearing their election changes with the Department of Justice. Hebert discovered that several had not, and so the Conference filed “ten or twelve” Section 5 enforcement actions against the jurisdictions. None of these local entities had made objectionable election-related changes, Hebert said—“although there were a couple that raised some serious issues.” Nonetheless, “it illustrated to us . . . that there was a lack of compliance even with the fairly routine voting changes that everyone knew should have been submitted but hadn’t been.”¹⁹¹

Information on the impact of Section 203 in Maryland was provided by *Margaret Jurgensen*, elections director for the Montgomery County, Maryland, Board of Elections. The county saw 518,000 registered voters participate in the 2004 election. “The multicultural voter empowerment community engaged over 100 community representatives and volunteers as election information guides and we designed the election judge training module to incorporate the legal and technical voting system requirements, and

this program was unique as well as successful,” she said. “Our election judge training was redesigned and delivered by experienced election-judge trainers. This program included hands-on experience, take-home videos, a quick reference guide and open-the-door refresher.”¹⁹²

Like her counterpart in Los Angeles, Conny McCormack, who spoke to the Commission at the West Coast hearing, and Penny Pew in Arizona Indian Country, Jurgensen was strongly supportive of language-assistance measures and expressed enthusiasm for implementing them. “In the process of recruiting approximately . . . 3,200 election judges necessary to conduct the election on November of 2004,” she said, “our goal was to make certain that we had at least one individual that spoke Spanish in every precinct.” The results were noteworthy: “We achieved that goal in all instances and it was the decision of our multicultural voter empowerment committee to also reach out to other members of our community that spoke other languages. And we ultimately represented seventeen different languages in our county that were placed at the polling place.”¹⁹³ Like her counterpart in Los Angeles, Jurgensen’s program extended beyond what was required by Section 203, for only the Latino population in Montgomery County was large enough to meet the Section 203 threshold.¹⁹⁴

She expressed her philosophy of accommodating the needs of voters in this way: “I’m kind of on the street level. I have to make sure that the men and women that are serving in the polling place” give “every individual walking through that schoolhouse door or going through that recreation center the same equal opportunity that every other voter should have across the country. And that means making sure that there is equal access, that the signage is very clear, that they feel comfortable asking the questions and we have those languages available. Montgomery County was identified by the National Association of County Officials for their multicultural voter empowerment committee in 2005 and every dime we spent was well worth it,” Jurgensen said. “[A]nd I think it’s an effort that we need to continue reaching out toward.”¹⁹⁵

When asked what would happen if Section 203 did not exist, Jurgensen said that because she had invested the money in the translation program she would keep it going. But she recalled her days as election commissioner in Nebraska “in the ‘80s, early ‘90s,” where “one of the very first things that I tried to do and [it] was very simple was to create a sample ballot in both English and Spanish. I was really met with a lot of resistance. That was considered not a good investment of the public money and all of the things that come with that. And so I think it would be harder on the local level to

convince the public policy makers, your county commissioners, your town councils, that that is an important investment in public dollars.”¹⁹⁶

Richard Valelly, a political scientist at Swarthmore College and author of a prizewinning monograph, *The Two Reconstructions: The Struggle for Black Enfranchisement*,¹⁹⁷ spoke about recent research he has conducted with Peyton McCrary, a historian with the Department of Justice, and attorney Christopher Seaman. The purpose of the research was to analyze over 1,000 Section 5 objections interposed “from the 1970s to 2004.” In particular, they were interested in observing the trend in the number of objections by time periods. The authors were struck by the sharp drop in objections from 2000-2004 as compared to 1990-1993. Valelly pointed out that the Supreme Court’s *Bossier II* decision, reinterpreting the intent prong of Section 5 to mean retrogressive intent, was announced in 2000. In a four-year period of the 1990s “there were 250 objection letters on the basis of intent under the prior [intent] standard,” Valelly observed. “And after *Bossier II*, the number of objections which are issued under the new doctrine . . . dropped to some 25 objections. . . . So this was a huge shift. It’s sort of like dropping off a cliff.” He admitted that there might be other reasons for the precipitous drop, although he gave none. And he clearly believed that the drop “has very important implications for the reauthorization of the Voting Rights Act.” Not only should Section 5 be reauthorized, but “*Bossier II* . . . actually weakens Section 5, and so the language of Section 5 has to also be amended in order to cope with and correct” the decision, he asserted.¹⁹⁸

Mark Posner, who worked in the Voting Section from the mid-eighties until he left in 1995, and for three years served as the supervisor handling Section 5 submissions, expanded on the significance of the research Valelly and his colleagues had conducted:

According to [their] analysis, about three quarters of all Section 5 objections in the 1990s were based by the Department in whole or in part on the finding of discriminatory purpose where the voting change was not retrogressive. Furthermore, among those purpose objections, about three quarters were to districting claims. So these redistricting purpose objections played a central and substantial role in the Justice Department’s enforcement of the preclearance requirement in the 1990s.¹⁹⁹

Posner averred that the *Bossier II* decision “essentially read the purpose test entirely out of the statute by keeping the purpose inquiry within the narrow confines of the retrogression analysis. . . . The authority of the Department and the District Court under Section 5 to bar the implementation of discriminatory changes is now highly circumscribed.” he said.²⁰⁰ Posner believes that *Bossier II* was an expression of the Supreme Court’s majority that the Department of Justice had misused its authority in objecting to various redistricting plans in the 1990s. He also believes the Court was mistaken on that point, and in his testimony he noted the continuity in the rate of objections to redistricting plans from the time when William Bradford Reynolds in the Reagan administration oversaw Section 5 through the 1990s redistricting cycle. Posner argued that in light of this mistake by the Court majority, Congress, in reauthorizing Section 5, should reverse the holding in *Bossier II* and restore the authority to the Department of Justice and the D.C. Court to apply a non-retrogressive intent standard, in conformity with the intent standards of the Fourteen and Fifteenth Amendments. “And finally,” Posner argued, “in order to provide further assurance that the Department and the district court will employ the purpose standard in an appropriate manner in the future, Congress should consider including statutory language and/or legislative history that will guide the Department and the district court much like Congress did when it enacted the Section 2 results test in 1982.”²⁰¹

Guest Commissioner Karen Narasaki asked Posner whether, given the frequent need for observers to investigate compliance with the minority language provisions, it might be a good idea to extend the Attorney General’s authority to certify examiner/observer coverage to jurisdictions covered by Section 203. Posner replied that it would:

[C]ertainly 203 is pretty much tied to the question of how elections are run and very much that has, of course, to do with a lot of things that go on before you actually vote, but has a lot to do with what goes on in the polling place. So it would seem like it would make a lot of sense to add and say that observers also can be assigned to 203 jurisdictions perhaps again pursuant to that certification process that the attorney general uses so it wouldn't be automatically all 203 jurisdictions but that would be a further qualification.”²⁰²

Robert Kengle was Deputy Chief of the Voting Section at the time of his retirement in April 2005. He testified about *Georgia v.*

Ashcroft,²⁰³ a case responding to the Department of Justice's objection to a Georgia Senate redistricting plan as having three retrogressive districts—districts in which black voters would have had a less opportunity than in the 1990s to elect their preferred candidates. The state of Georgia sought preclearance through a Section 5 declaratory judgment action in federal district court. The district court ruled in favor of the Department of Justice. Georgia then appealed directly to the Supreme Court, which in 2003 vacated the district court's decision and remanded the case.

In its decision, [said Kengle] the Supreme Court touched upon numerous points. The main point, however, was its conclusion that in deciding whether effective black voting strength was being reduced in Georgia, the D.C. court should have looked at factors beyond the number of districts in which black voters had the ability to elect candidates of their choice. These factors included the creation of additional districts in which black voters could influence the outcome by, for example, helping to elect a white Democrat candidate, even if they could not elect the candidates of their choice, the candidates they would most prefer.

The Supreme Court also held that the district court should consider whether helping Democrats retain control of the senate would help advance black voters' interests by maintaining the seniority of current black representatives, some of whom were committee chairs.²⁰⁴

Kengle noted that the Supreme Court did not overrule the district court. (The plan was later vacated as a result of another legal challenge in Georgia.) However, he added, “[M]y personal view is that the Supreme Court prematurely and unnecessarily, if not incorrectly, introduced factors into the retrogression analysis that make the Section 5 process more complicated and burdensome for everybody, not just for the Department of Justice but for the jurisdictions that have to comply with it as well.” And he predicted that “decisions will become less predictable and more open to subjective judgments, individual preconceptions and even political biases as a result of the *Ashcroft* decision.”²⁰⁵

An overview of voting rights in Virginia was provided by *Kent Willis*, executive director of the ACLU in that state. “I’ve witnessed, during my time in Virginia, a dramatic shift in the political landscape,” he stated. “In the mid-1980s in Virginia,” he noted that there were 75 minority elected officials in the state. No minorities

were in the congressional delegation. “By 1991, after a series of voting rights cases filed under Section 2 and after dramatic changes with redistricting” thanks to Section 5, “Virginia moved from 75 to 150 African-American elected officials by the mid-‘90s. By the late ‘90s, that had moved to about 300,” he stated. There would have been even more, he suggested, had school boards in Virginia been elected. Instead, until 1992 they were appointed, a practice traced to the state’s disfranchising constitution of 1902 and having the purpose of ensuring that blacks were not elected. A Section 2 lawsuit attempted, and failed, to have this law abolished.²⁰⁶ A few years later, however, the legislature allowed jurisdictions to have elective school boards if the voters approved it through a referendum.²⁰⁷

Willis submitted to the Commission a list of “all of the Section 2 cases in Virginia where racially polarized voting was found.” He discussed a few of these cases, as well as the results of a redistricting suit filed in Henrico County by the ACLU that led to the abolition of a dilutive city council district and the election in 1996 of a black to office—one who, eight years afterwards, was elected by his fellow council members to be chairman of the board of supervisors. “A nice success story of the Voting Rights Act,” Willis remarked.²⁰⁸

He also described another “success story” that illustrated the deterrent effect of Section 5.

In Fredericksburg where I live, in 2002, the city had to redistrict because of changes in the population that came about as a result of the census. Fredericksburg has long had one African-American-majority district in its system and from that district, an African-American has been elected. But the discussion—and I attended these meetings—the discussion was entirely about how do we eliminate this district. And the instruction to the city attorney was, look at the recent Supreme Court case, you know, look at the cases that are taking place in the mid-‘90s and early 2000, and tell us if there is a way we can eliminate the African-American majority district. And that was the thrust. All of the original plans produced by the planning department and by the planning commission were plans that eliminated the African-American majority district. Only when the city attorney said, listen, you can’t do it, under Section 5, under any interpretation of it, even the most recent ones by the . . . Supreme Court, you have to draw this district or it’s retrogressive. Then the city council drew the [African-American-majority district]. But what I’m indicating to

you is, despite the successes of the Voting Rights Act, there are still strong forces looking to take us backwards. And Section 5 is one of the great powers of the Act that prevents us from moving backwards.²⁰⁹

Professor Valelly, in adding his support for Section 5, reprised one of the themes of his book on the two Reconstructions: “[W]e’ve only been a fully functioning democracy for 20 or 30 years and, ironically, we’re the first country in the world to have created a mass electoral politics in the 1820s and 1830s with the Jacksonian party system, which was extraordinarily exclusionary. . . . And yet we’re among the last of the major democracies, if not the last, to be at the business of fully including every single American citizen that is entitled to vote. So either we take the Constitution seriously or we don’t.”²¹⁰

Posner took issue with a view expressed by some that because major impediments to minority voting have been overcome, the temporary features of the Act are no longer needed. “I have heard it described as . . . the Bull Connor problem,” he said, referring to the infamous Birmingham police chief, Eugene “Bull” Connor, whose men attacked civil rights protesters with police dogs and fire hoses in the 1960s. The claim, he said, is “that Bull Connor is dead so there is no problem . . . There certainly has been quite a bit of change and I think we should celebrate that. . . . But the issue is never simply Bull Connor preventing people from registering to vote. The question has always been, from the beginning, the ability to have an effective voice in the political system.”²¹¹

**Mississippi Hearing
Jackson Marriott Downtown
200 East Amite Street
Jackson, MS
October 29, 2005**

National Commissioners in Attendance:

Hon. John Buchanan

Chandler Davidson

Hon. Joe Rogers

Guest Commissioners:

Hon. Fred Banks, Jr., former Mississippi Supreme Court Justice, Phelps
Dunbar, Jackson, MS

Armand Derfner, Derfner, Altman & Wilborn, LLC, Charleston, SC

Panelists:

Deborah McDonald, Natchez, MS

Robert B. McDuff, Law Offices of Robert McDuff, Jackson, MS

Carroll Rhodes, Law Offices of Carroll Rhodes, Hazlehurst, MS

Ellis Turnage, Turnage Law Office, Cleveland, MS

Brenda Wright, National Voting Rights Institute, Boston, MA

Public Testimony:

Lawrence Guyot, Washington, DC

Carlton Reeves, Magnolia Bar Association, Private Practitioner, Jackson, MS

The last hearing of the Commission focused solely on the state of Mississippi. It consisted of two panels, one of invited participants, the other of members of the public who wished to speak. The state with the highest proportion of blacks of voting age in the nation (33 percent), Mississippi has a reputation even among the former slaveholding states of the Deep South of having been most resistant to giving full citizenship rights to African Americans. The late Frank Parker's book on the struggle for voting rights in Mississippi from 1965 to 1989 told the story of fierce white resistance after the Voting Rights Act was originally passed.²¹² The Commission was eager to gauge the progress in minority voting rights that had been made there over the past forty years, and particularly since 1982.

The statistics on black elected officials certainly pointed to progress. In 2005, one of the state's four U.S. Representatives, Bennie Thompson, was black, as were 11 (21 percent) of its 52 state senators and 34 (28 percent) of its 120 state representatives.²¹³ However, testimony indicated that racially polarized voting in the state was intense, and had majority-black districts not been drawn, there would be few black lawmakers in office there.²¹⁴ Testimony also pointed to the important role both Sections 2 and 5 have played, and continue to play, in ensuring that districts are drawn in a fashion that enables a significant number of the state's black voters to elect their preferred candidates. As Jackson civil rights lawyer *Robert McDuff* stated, speaking of twentieth century history:

The first member of the Mississippi Legislature who was black was elected in 1967, and no additional black members . . . were elected until . . . 1975, . . . as a result of enforcement of Section 5 by the Justice Department and litigation in the federal courts under the Fourteenth Amendment. There was no black member of Congress in Mississippi for the first 85 years of the 20th century. The only reason [for] that change was because of the enforcement of Section 5 of the Voting Rights Act by the Justice Department and litigation under . . . Section 2, as it was amended in 1982 . . ., leading finally to the creation of the majority-black congressional district and the election of the first black Congressman . . . in 1986. That same year, . . . of the 100 Chancery, Circuit, and County Court judges in Mississippi—those are the trial courts of record . . . only one, Fred Banks, was African-American. As a result of the litigation filed under Section 2 and Section 5 and enforcement of Section 5 by the Justice Department, . . . judicial districts were redrawn,

and a significant number of African-American judges . . . [were elected]. . . . The same story is true for city councils, county [boards of] supervisors, county election commissions. The integration of those bodies in any significant numbers resulted only after enforcement of Section 5 and litigation under Section 2 and the Fourteenth Amendment.²¹⁵

McDuff, then, like several speakers who testified at this and other hearings, stressed that the undeniable progress in the number of minority elected officials was due in large part to the Voting Rights Act, both its permanent and nonpermanent features. Also like several witnesses who testified at the Mississippi hearing, McDuff argued that voter discrimination is on-going. He recalled, as a law student in the 1970s, attending U.S. Supreme Court oral arguments in a Mississippi legislative redistricting case in which the aforementioned Frank Parker was arguing on behalf of the state's black voters. McDuff continued, ". . . the attorney for the State of Mississippi kept saying, you know, 'That's all ancient history. That's all ancient history.' And that was before we had an African-American member of Congress. That was before we had any black judges in the state . . . And so, it wasn't all ancient history in 1977, and it's not all history now. There are no statewide black elected officials in Mississippi."²¹⁶ He went on to elaborate on this last point:

In 2003, there was an election for state treasurer. One of the candidates, African-American, had been the director of the State Department of Economic Development. He had a number of qualifications for the job that made him clearly the best choice, and he was defeated by a 29-year-old white man who had no relevant experience in the area in an election that was characterized by severe racially polarized voting. Until elections in Mississippi are not characterized by the extreme levels of polarization that exist here, Section 5 must remain in place.²¹⁷

Another witness, Jackson attorney *Carlton Reeves*, secretary of the predominantly black Magnolia Bar Association, added his observation to McDuff's illustration of racially polarized voting in the 2003 race for state treasurer. It was true, he said, that the African American was a Democrat and the white who beat him was a Republican, which might lead the uninformed observer to infer that the outcome was determined by partisanship, not race. However, Reeves pointed to another race, for attorney general, in the same

election cycle between two white candidates of roughly the same age and experience for the job, in which the Republican “lost resoundingly,” suggesting that race rather than party was the operative factor in the contest the black lost for statewide office. Moreover, Reeves claimed, even those races involving a Supreme Court judgeship that blacks have won have occurred after they were first appointed to the post. “All the black justices of the Supreme Court were first appointed. No justice has been elected first.”²¹⁸ Reeves also pointed to the use of the phrase, “He’s one of us,” by white candidates opposing blacks. He added, “We know what those signals mean, ‘being one of us’.”²¹⁹

The need for Sections 5 and 2 was reiterated by *Carroll Rhodes*, a lawyer from Hazlehurst, Mississippi, who enumerated several dilutive mechanisms, including at-large elections, changing elective posts to appointive ones, and the numbered-post system. Some of these mechanisms have been struck down in various contexts as a result of litigation under the Act.²²⁰

McDuff’s and Rhodes’s focus was on minority vote dilution and its prevention by the Act. *Brenda Wright*, managing attorney for the National Voting Rights Institute and a lawyer with extensive experience in Mississippi, focused on the issue of ballot access and white officials’ continuing efforts to discriminate against black voters within the past decade. She spoke of the lengthy struggle blacks have mounted to abolish the state’s dual registration systems. One system had its roots in the 1890 constitutional convention, whose overall purpose, according to a federal court finding, was, in Wright’s words, “to disfranchise black citizens of Mississippi to the greatest extent possible.”²²¹ In 1984, when a group of African Americans and two voter registration organizations filed suit challenging the system, Mississippi was the only state in which dual registration existed. In this system, the voter was required to register once for county, state, and federal elections and again for municipal elections. In 1987 the court found that, in violation of Section 2, the system was adopted for a discriminatory purpose and had a discriminatory effect, accounting, in part, for the 25 percentage-point difference in the registration rates of blacks and whites. The court cited an example of a then-recent Democratic primary election in which black candidates may well have lost because of the effects of the dual registration system.²²²

By the early 1990s, a fully unitary registration system had been implemented as a result of the Section 2 lawsuit. Within five years, however, events within the state subsequent to congressional passage of the National Voter Registration Act (NVRA), or “motor voter,” as it is popularly called, led to the creation once more of a discriminatory dual registration system, as Mississippi became the only state in the

union to require people who registered to vote in federal elections at drivers' license offices and other NVRA-sanctioned offices to register yet again to vote in state and local elections. In contrast, people who registered with the circuit clerk were allowed to vote in all elections. Moreover, the state refused to submit the changed procedure to the Department of Justice for preclearance, even after the Department informed Mississippi that its new system had to be precleared.

Private citizens then filed a Section 5 enforcement action that was ultimately decided in their favor by a unanimous U.S. Supreme Court. "The fact that [this enforcement action had to be filed] 30 years after the Voting Rights Act was adopted speaks volumes about Mississippi's determined resistance to the clear requirements of the Act," Wright testified. When the change was finally submitted, the Department objected, finding that the state's new dual system was racially discriminatory both in purpose and effect.²²³

But that was not the end of the story. The state legislature subsequently passed a bill to create a unitary registration system in order to gain preclearance. Then-Governor Kirk Fordice vetoed the bill, and yet another legal action filed by private citizens was required to guarantee the voting rights of African Americans. Only in late 1998—thirty-three years after passage of the Act, eighteen years after Section 5 was last reauthorized, and more than a decade after the federal court struck down the first dual registration system—was the state's new dual registration system abolished.²²⁴ Wright summarized her testimony by pointing to

Mississippi's entrenched resistance to full voting rights, the persistence of state officials in finding new excuses to create barriers to the right to vote, and the continued need for reauthorization of Section 5 to protect the hard-won gains that have been made.²²⁵

The need for Section 5 was underscored by Cleveland, Mississippi, attorney *Ellis Turnage*, whose law practice has to a considerable degree concerned issues in the Mississippi Delta—the area of the state with the largest proportion of blacks. Turnage said he had been involved in many Section 2 cases as well as six Section 5 cases. His complaint regarding Section 5 was that, in his view, the Department of Justice sometimes does not review a submission in a timely fashion. He also believed that the current Department of Justice makes political decisions when responding to submissions—a belief also held by attorney Rhodes.²²⁶

Still other problems with the enforcement of Section 5 were seen by Natchez attorney *Deborah McDonald*, who also serves as a

part-time municipal court judge in Fayette and has a law practice in Natchez. In McDonald's view, there are interpretations of Mississippi law regarding felon disfranchisement (and what class of offenses are actually disfranchising) that seem to shift from time to time, as they are made by various administrative officials, and these shifts, which can have a disparate impact on blacks, are not precleared. Both Turnage and McDuff see these administrative changes as problematic as well.²²⁷

In summary, the overall tenor of the testimony at the Mississippi hearing was that while progress had been made, much discrimination in voting still occurs. *John Walker*, a Jackson attorney, put the latter point most dramatically. He called himself a "blue-collar, shirt-sleeve lawyer" involved in Mississippi elections since 1971, and a former city attorney of Bolton. Walker said:

We've seen . . . the news about Hurricane Katrina. Well, I would say that the Voting Rights Act . . . [is] the levees that keep repression out of Mississippi. If not for the Voting Rights Act—if that levee—is broken, New Orleans would look like a Sunday school picnic compared to what will happen in Mississippi, because the oppression will rain down.²²⁸

ENDNOTES

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- ¹ Vernon Burton, Southern Regional transcript, 71, Appendix 1A.
 - ² *Ibid.*, 73.
 - ³ *Ibid.*, 94-95.
 - ⁴ *Ibid.*, 95.
 - ⁵ *Ibid.*, 73-74.
 - ⁶ *Ibid.*, 81.
 - ⁷ Gwen Patton, Southern Regional transcript, 49, 55, Appendix 1A.
 - ⁸ Victor Landa, Southern Regional transcript, 143-45, Appendix 1A.
 - ⁹ *Ibid.*, 147-48.
 - ¹⁰ *Ibid.*, 180.
 - ¹¹ Frank Jackson, Southern Regional transcript, 106-20, Appendix 1A.
 - ¹² Raoul Cunningham, Southern Regional transcript, 182-84, Appendix 1A.
 - ¹³ Anita Earls, Southern Regional transcript, 226-28, Appendix 1A.
 - ¹⁴ *Ibid.*, 228.
 - ¹⁵ *Ibid.*, 229-30.
 - ¹⁶ Richard Engstrom, Southern Regional transcript, 124, Appendix 1A.
 - ¹⁷ *Ibid.*, 125.
 - ¹⁸ *Ibid.*, 132.
 - ¹⁹ *Ibid.*, 128-37.
 - ²⁰ Laughlin McDonald, Southern Regional transcript, 244-45, Appendix 1A.
 - ²¹ Hon. Bobby Singleton, Southern Regional transcript, 186-88, Appendix 1A.
 - ²² *Ibid.*, 189.
 - ²³ *Ibid.*, 190-91.
 - ²⁴ James Blacksher, Southern Regional transcript, 204-05, Appendix 1A.
 - ²⁵ *Ibid.*, 204-05.
 - ²⁶ 528 U.S. 320 (2000).
 - ²⁷ 539 U.S. 461 (2003).
 - ²⁸ Anita Earls and James Blacksher, Southern Regional transcript, 250-53, Appendix 1A.
 - ²⁹ Hon. Penny Willrich, Southwest Regional transcript, 18, 21, Appendix 2A.
 - ³⁰ Steven Reyes, Southwest Regional transcript, 94-97, Appendix 2A; Alberto Olivas, Southwest Regional transcript, 97-98, Appendix 2A; Penny Pew, Southwest Regional transcript, 98-99, Appendix 2A; Ned Norris, Southwest Regional transcript, 100-01, Appendix 2A; Rev. Oscar Tillman, Southwest Regional transcript, 105-06, Appendix 2A; Daniel Ortega, Southwest Regional transcript, 166-67, Appendix 2A; Paul Eckstein, Southwest Regional transcript, 179-81, Appendix 2A; John Lewis, Southwest Regional transcript, 207-08, Appendix 2A.
 - ³¹ See, for example, Rev. Oscar Tillman, Southwest Regional transcript, 105-06, Appendix 2A.
 - ³² See, for example, Steven Reyes, Southwest Regional transcript, 94-97, Appendix 2A; Penny Pew, Southwest Regional transcript, 98-99, Appendix 2A.
 - ³³ Ned Norris, Southwest Regional transcript, 100, Appendix 2A.
 - ³⁴ John Lewis, Southwest Regional transcript, 205-07, Appendix 2A.
 - ³⁵ Penny Pew, Southwest Regional transcript, 27-36, Appendix 2A. See also materials Pew submitted at the hearing, Appendix 2D, Exs. 1-7.
 - ³⁶ Written Statement of Claude Foster, Southwest Regional Hearing, 3-4, Appendix 2C.
 - ³⁷ *Ibid.*, 5.

³⁸ *Ibid.*

³⁹ Rogene Calvert, Southwest Regional transcript, 196-202, Appendix 2A.

⁴⁰ Lisa Falkenberg, "Heflin likes his odds in the House," *Houston Chronicle*, 16 Dec. 2005, B1.

⁴¹ Nina Perales, Southwest Regional transcript, 46-47, Appendix 2A. See transcript for details of these problems.

⁴² *Ibid.*, 47-48.

⁴³ *Ibid.*, 48.

⁴⁴ See, for example, letter from Deval L. Patrick, Assistant Attorney General for Civil Rights, to Edward S. Allen, Esq., Birmingham, Alabama, 2 Nov. 1994, which states that "an attempt to videotape areas where black voters are present at their polling places could constitute a violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. 19731(b)."

⁴⁵ Nina Perales, Southwest Regional transcript, 48, Appendix 2A.

⁴⁶ *Ibid.*, 49-52.

⁴⁷ Andres Ramirez, Southwest Regional transcript, 56-59, Appendix 2A.

⁴⁸ *Ibid.*, 85.

⁴⁹ Shirlee Smith, Southwest Regional transcript, 155, Appendix 2A.

⁵⁰ Lydia Guzman, Southwest Regional transcript, 157-64, Appendix 2A.

⁵¹ 7 F. Supp. 2d 1152 (D. Colo. 1998).

⁵² Richard Ellis, Southwest Regional transcript, 150.

⁵³ Paul Ecksein and Daniel Ortega, Southwest Regional transcript, 165-90, Appendix 2A.

⁵⁴ Adam Andrews, Southwest Regional transcript, 192-96, Appendix 2A.

⁵⁵ "Massachusetts Executive Summary," in Elissa Doyle, *et al.*, *Report to the Commissioners: Northeast Regional Hearing of the National Commission on the Voting Rights Act, June 14, 2005*, 1, Appendix 3O.

⁵⁶ *Ibid.* See Executive Summaries for each state.

⁵⁷ Section 4(e) states: "Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." For a scholarly account of the provenance and impact of this section of the Act, see Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," *National Black Law Journal* 18 (2005), 201-23.

⁵⁸ Written Statement of Theodore Shaw, Northeast Regional Hearing, 3, Appendix 3K.

⁵⁹ *Ibid.*, 5.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 7-8, 13.

⁶² *The Asian American Vote: A Report on the AALDEF Multilingual Exit Poll in the 2004 Presidential Election* (New York: Asian American Legal Defense and Education Fund, 2005), 15.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Written Statement of Margaret Fung, Northeast Regional Hearing, 2-4, Appendix 3E.

⁶⁶ Written Statement of Joseph D. Rich, Northeast Regional Hearing, 1-2, Appendix 3I.

⁶⁷ *Ibid.*, 2.

⁶⁸ *Ibid.*, 3.

⁶⁹ *Ibid.*, 5

⁷⁰ *Ibid.*, 3.

⁷¹ Written Statement of Hon. Charles D. Walton, Northeast Regional Hearing, 1-5, Appendix 3L.

⁷² Written Statement of José Garcia, Northeastern Regional Hearing, 3, Appendix 3F.

⁷³ *Ibid.*, 4.

⁷⁴ 250 F. Supp. 2d 525 (E.D. Pa. 2003).

⁷⁵ Written Statement of Carlos A. Zayas, J.D., Northeast Region Hearing, 1-2, Appendix 3N.

⁷⁶ Dorsey & Whitney LLP, *Report to the National Commission on the Voting Rights Act: Midwest Regional Hearing*, 22 July 2005, Appendix 4R.

⁷⁷ *Ibid.*, 27-29, 33-39, 44-46, 51, 55-57, 63-64, 68-73, 77-80, 84-85, 90-91, 93, 109-11, 115-18, 123. Not all of the thirty-two cases were won on their merits by minority plaintiffs, but some, whether settlements or other types of outcomes, ultimately benefited minority voters.

⁷⁸ *Ibid.*, 30, 40-42, 48, 53, 48-60, 65, 75, 82, 86, 91, 101-07, 112, 119, 124.

⁷⁹ Ihsan Ali Alkatib, Midwest Regional transcript, 62-66, Appendix 3A. See also Dorsey & Whitney LLP, *Report to the National Commission on the Voting Rights Act: Midwest Regional Hearing*, 59, Appendix 4R.

⁸⁰ Dorsey & Whitney, LLP, *op. cit.*, 59.

⁸¹ Written Statement of Margaret Fung, Northeast Regional Hearing, 3, Appendix 3E. A disturbing account of recent discrimination against Arab Americans nationwide is found in Hussein Ibish and Anne Stewart, *Report on Hate Crimes and Discrimination Against Arab Americans: The Post-September 11 Backlash, September 11, 2001-October 11, 2002* (Washington, D.C.: American-Arab Anti-Discrimination Committee, 2003), Appendix 4B, Ex. 1.

⁸² Dorsey & Whitney, LLP, *op. cit.*, 40, 58, 59, 65.

⁸³ See, for example, Election Protection Coalition, *Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections* (December 2004), available at www.lawyerscomm.org/preliminaryreport.pdf (last visited 18 Oct. 2005).

⁸⁴ Written Statement of Carol C. Juneau, Midwest Regional Hearing, 1, Appendix 4G. Written Statement of Dr. Janine Pease is included in the written testimony of Rep. Juneau, 2-3, Appendix 4G.

⁸⁵ Letter from the Hon. William Lacy Clay, Member of Congress, to National Commission on the Voting Rights Act, 20 July 2005, 1-2.

⁸⁶ Written Statement of Alice Tregay, Midwest Regional Hearing, 1, Appendix 4P. See also Tregay's spoken testimony, Midwest Regional transcript, 39-44, Appendix 4A.

⁸⁷ Written Statement of Kat Choi, Midwest Regional Hearing, 1, Appendix 4I. See also Choi's spoken testimony, Midwest Regional transcript, 268-71, Appendix 4A.

⁸⁸ Jorge Sanchez, Midwest Regional transcript, 176-79, Appendix 4A.

⁸⁹ Written Statement of Elona Street-Stewart, Midwest Regional Hearing, 2, Appendix 4O; and Midwest Regional transcript, 140-42, Appendix 4A.

⁹⁰ John Lewis (with Michael D'Orso), *Walking with the Wind: A Memoir of the Movement* (New York: Simon & Schuster, 1998).

⁹¹ Senator Robert Brown, South Georgia transcript, 10, Appendix 5A.

⁹² Dan Eggen, "Criticism of Voting Law Was Overruled; Justice Dept. Backed Georgia Measure Despite Fears of Discrimination," *Washington Post*, 17 Nov. 2005, A01.

⁹³ The chief justice is not elected statewide, but from a majority-white district nonetheless.

⁹⁴ Senator Robert Brown, South Georgia transcript, 78-79, Appendix 5A. The senator noted that of the four black statewide officeholders he mentioned, the state labor commissioner is an exception, having been originally elected from a white legislative district. *Ibid.*, 79.

⁹⁵ Floyd Griffin, South Georgia transcript, 27-28, Appendix 5A.

⁹⁶ *Ibid.*, 24-35.

⁹⁷ *Ibid.*, 35-38.

⁹⁸ *Ibid.*, 39-40.

⁹⁹ For a recent account of the increasing presence of Latino immigrants in the South and the response to it, see Clay Risen, "Immigration Migrates: Going South," *The New Republic Online*, post date 3 Oct. 2005

<http://www.tnr.com/doc.mhtml?i=20051107&s=risen110705> (last visited 4 Oct. 2005).

¹⁰⁰ Tisha Tallman, South Georgia transcript, 13-21, Appendix 5A.

¹⁰¹ *Ibid.* 19.

¹⁰² Daniel Levitas, South Georgia transcript, 42-44, Appendix 5A.

¹⁰³ *Ibid.*, 45-47; 53-54.

¹⁰⁴ Johnny Vaughn, South Georgia transcript, 85.

¹⁰⁵ *Ibid.*, 89.

¹⁰⁶ Charles Sumblin, South Georgia transcript, 93-94.

¹⁰⁷ *Ibid.*, 94-95.

¹⁰⁸ Hon. R.K. Butterworth, Florida transcript, 45-47, Appendix 6A.

¹⁰⁹ Marytza Sanz, Regine Monestime, Florida transcript, 49-60, Appendix 6A.

¹¹⁰ See particularly Brad Brown, Florida transcript, 118-24, Appendix 6A.

¹¹¹ *Ibid.*, 115-16.

¹¹² Iris Green, Florida transcript, 188-89, Appendix 6A.

¹¹³ Meredith Bell Platts, Florida transcript, 106, Appendix 6A.

¹¹⁴ *Ibid.*, 107-08.

¹¹⁵ *Ibid.*, 108-13.

¹¹⁶ Debo Adegbile, Florida transcript, 69, Appendix 6A.

¹¹⁷ John Hill, "New Orleans Elections May Be Held in April," *Shreveport Times*, 18 Dec. 2005.

<http://www.shreveporttimes.com/apps/pbcs.dll/article?AID=/20051218/NEWS01/512180322/0/NEW01> (last visited 19 Dec. 2005).

¹¹⁸ Debo Adegbile, Florida transcript, 69, Appendix 6A.

¹¹⁹ *Ibid.*, 70. Louisiana whites' hostile attitudes toward sharing power with blacks are deeply entrenched, going back to slavery and Reconstruction. See Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba After Slavery* (Cambridge, Massachusetts and London, England: The Belknap Press of Harvard University Press, 2005), Chaps. 2-3 for an account of the undermining of the First Reconstruction in Louisiana and the events leading to the disfranchisement of blacks, which continued long into the Twentieth Century.

¹²⁰ Debo Adegbile, Florida transcript, 70, Appendix 6A.

¹²¹ *Ibid.*, 71. For a more detailed account of discrimination in Louisiana, see Written Statement of Debo Adegbile, Florida Hearing, Appendix 6B. See especially appendices containing material on Section 5 as it has been enforced in Louisiana.

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- ¹²² Constance Slaughter-Harvey, Florida transcript, 135, Appendix 6A.
- ¹²³ Commissioner Joe Rogers, Florida transcript, 166-67, Appendix 6A.
- ¹²⁴ Constance Slaughter-Harvey, Florida transcript, 168-70, Appendix 6A.
- ¹²⁵ Tom Katus, South Dakota transcript, 184, Appendix 7A.
- ¹²⁶ For an overview of Indian voting rights in South Dakota, see Laughlin McDonald, "The Voting Rights Act in Indian Country: South Dakota, A Case Study," *American Indian Law Review* 29 (2004), 43-74.
- ¹²⁷ Michael Barone with Richard E. Cohen, *The Almanac of American Politics* (Washington, D.C.: National Journal Group, 2005), 1516.
- ¹²⁸ David Kranz, Corrine Olson and Peter Harriman, "Fraud cases cloud S.D. elections," *Argus Leader* (Sioux Falls, S.D.), 20 Oct. 2002, 1A; Scott Waltman, "Scandal Should Pose No Trouble," *Aberdeen American News* (S.D.), 3 Nov. 2002, 1A.
- ¹²⁹ Dan McCool, South Dakota transcript, 30, Appendix 7A.
- ¹³⁰ *Ibid.*, 31-32.
- ¹³¹ *Ibid.*, 32-33.
- ¹³² *Ibid.*, 33.
- ¹³³ Bryan Sells, South Dakota transcript, 35-36, Appendix 7A.
- ¹³⁴ *Ibid.*, 36-37.
- ¹³⁵ *Ibid.*, 37-38.
- ¹³⁶ Hon. Chris Nelson, South Dakota transcript, 81-82, Appendix 7A.
- ¹³⁷ Bryan Sells, South Dakota transcript, 40-41, Appendix 7A.
- ¹³⁸ *Ibid.*, 35.
- ¹³⁹ Theresa Two Bulls, South Dakota transcript, 49-50, Appendix 7A.
- ¹⁴⁰ *Ibid.*, 45, 50-51.
- ¹⁴¹ Raymond Uses The Knife, South Dakota transcript, 51-54, Appendix 7A.
- ¹⁴² *Ibid.*, 54-55.
- ¹⁴³ *Ibid.*, 55-56.
- ¹⁴⁴ Laurette Pourier, South Dakota transcript, 58-59, Appendix 7A.
- ¹⁴⁵ *Ibid.*, 60-62.
- ¹⁴⁶ See wording of HB 1176 at <http://legis.state.sd.us/sessions/2003/bills/HB1176enr.htm> (last visited 7 Nov. 2005).
- ¹⁴⁷ Jesse Clausen, South Dakota transcript, 123-24, Appendix 7A.
- ¹⁴⁸ Richard Guest, South Dakota transcript, 104-05, Appendix 7A.
- ¹⁴⁹ *Ibid.*, 109-10.
- ¹⁵⁰ O. J. Semans, South Dakota transcript, 133-34, Appendix 7A.
- ¹⁵¹ Craig Dillon, South Dakota transcript, 143, Appendix 7A. See also Jesse Clausen, South Dakota transcript, 144, Appendix 7A.
- ¹⁵² Patrick Duffy, South Dakota transcript, 177, Appendix 7A.
- ¹⁵³ *The Diverse Face of Asians and Pacific Islanders in California* (Los Angeles: Asian Pacific American Legal Center, 2005), 1, Appendix 8D, Exhibit 1.
- ¹⁵⁴ Written Statement of Eugene Lee, Western Regional Hearing, 3, Appendix 8D.
- ¹⁵⁵ *Ibid.*, 2.
- ¹⁵⁶ *Ibid.*, 3.
- ¹⁵⁷ *Ibid.*, 4.
- ¹⁵⁸ Materials submitted by McCormack at the Western Regional Hearing, Appendix 8F, Exs. 1-38.
- ¹⁵⁹ McCormack, *op. cit.*, 4.
- ¹⁶⁰ Conny McCormack, "Multilingual Voter Requests on File," Appendix 8F, Ex. 22.
- ¹⁶¹ Written Statement of Conny McCormack, 4, Appendix 8F.

¹⁶² Lee, *op. cit.*, 5.

¹⁶³ *Ibid.*, 6-8.

¹⁶⁴ Los Angeles municipal elections are not administered by the county.

¹⁶⁵ Rosalind Gold, Western Regional transcript, 120-21, 123, Appendix 8A.

¹⁶⁶ Wing Tek Lum and Patricia McManaman, Western Regional transcript, 124-30, Appendix 8A.

¹⁶⁷ Eun Sook Lee, Western Regional transcript, 159-72, Appendix 8A.

¹⁶⁸ Written Statement of Kathay Feng, Western Regional Hearing, Appendix 8H.

¹⁶⁹ *Ibid.*, 3-4.

¹⁷⁰ Kathy Feng, Western Regional transcript, 234-35, Appendix 8A.

¹⁷¹ Feng, Written Statement, *op. cit.*, 4.

¹⁷² 525 U.S. 266 (1999).

¹⁷³ Written Statement of Robert Rubin, Western Regional Hearing, 2-3, Appendix 8G.

¹⁷⁴ *Ibid.*, 4-5.

¹⁷⁵ *Ibid.*, 6-7; Robert Rubin, Western Regional transcript, 152, Appendix 8A.

¹⁷⁶ Written Statement of Joaquin G. Avila, Western Regional Hearing, 4-7, Appendix 8B.

¹⁷⁷ *Ibid.*, 8.

¹⁷⁸ *Ibid.*, 11-12.

¹⁷⁹ Carolyn Fowler, Western Regional transcript, 194-96, Appendix 8A.

¹⁸⁰ *Ibid.*, 198-99.

¹⁸¹ *Ibid.*, 199, 223-24.

¹⁸² Hon. Melvin Watt, Mid-Atlantic Regional transcript, 22, Appendix 9A.

¹⁸³ *Ibid.*, 25.

¹⁸⁴ *Ibid.*, 26-27.

¹⁸⁵ *Ibid.*, 28, 38.

¹⁸⁶ *Ibid.*, 38-40.

¹⁸⁷ Hirsch, Mid-Atlantic Regional transcript, 51-53, Appendix 9A.

¹⁸⁸ *Ibid.*, 57.

¹⁸⁹ *Ibid.*, 58-61.

¹⁹⁰ Gerald Hebert, Mid-Atlantic Regional transcript, 82-92, Appendix 9A.

¹⁹¹ *Ibid.*, 104-05.

¹⁹² Margaret Jurgensen, Mid-Atlantic Regional transcript, 127, Appendix 9A.

¹⁹³ *Ibid.*, 128.

¹⁹⁴ *Ibid.*, 132-33.

¹⁹⁵ *Ibid.*, 131.

¹⁹⁶ *Ibid.*, 134-35.

¹⁹⁷ Chicago and London: The University of Chicago Press (2004).

¹⁹⁸ Richard Valelly, Mid-Atlantic Regional transcript, 137-40, Appendix 9A.

¹⁹⁹ Mark Posner, Mid-Atlantic Regional transcript, 144-45, Appendix 9A.

²⁰⁰ *Ibid.*, 145-46.

²⁰¹ *Ibid.*, 145-52.

²⁰² *Ibid.*, 212.

²⁰³ 539 U.S. 461 (2003).

²⁰⁴ Robert Kengle, Mid-Atlantic Regional transcript, 160-61, Appendix 9A.

²⁰⁵ *Ibid.*, 163.

²⁰⁶ Kent Willis, Mid-Atlantic Regional transcript, 170-71, Appendix 9A. The case was *Irby v. Virginia State Board of Elections*, 889 F.2d 1352 (4th Cir. 1989).

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- ²⁰⁷ Thomas R. Morris and Neil Bradley, "Virginia," in Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, New Jersey: Princeton University Press, 1994), 286.
- ²⁰⁸ Kent Willis, Mid-Atlantic Regional transcript, 172-73, Appendix 9A.
- ²⁰⁹ *Ibid.*, 173-75.
- ²¹⁰ Valelly, Mid-Atlantic Regional transcript, 191, Appendix 9A.
- ²¹¹ Mark Posner, Mid-Atlantic Regional transcript, 192-93, Appendix 9A.
- ²¹² Frank R. Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965* (Chapel Hill and London: The University of North Carolina Press, 1989).
- ²¹³ *Mississippi Report for the National Commission on the Voting Rights Act*, 29 Oct. 2005, 1, Appendix 10E.
- ²¹⁴ See, for example, the testimony of Robert McDuff, Mississippi transcript, 28, Appendix 10A, on how few blacks are elected from majority-white districts; and that of Carroll Rhodes, Mississippi Hearing transcript, 72-73, Appendix 10A.
- ²¹⁵ Robert McDuff, Mississippi transcript, 26-27, Appendix 10A.
- ²¹⁶ *Ibid.*, 29.
- ²¹⁷ *Ibid.*, 29-30.
- ²¹⁸ Mississippi Supreme Court justices are not elected statewide, but from three three-member districts.
- ²¹⁹ Carlton Reeves, Mississippi transcript, 117-19, Appendix 10A.
- ²²⁰ *Ibid.*, 32-37.
- ²²¹ Written Statement of Brenda Wright, Mississippi Hearing, 2, Appendix 10D.
- ²²² *Ibid.*, 3. See also Parker, *Black Votes Count*, *op. cit.*, 206, on the impact of dual registration on blacks: "Substantial numbers of black voters apparently were not informed of the dual registration requirement when they registered to vote with the circuit clerks or were otherwise unaware of the requirement, and disproportionate numbers of black voters have been denied the ballot in municipal elections in Mississippi because they had failed to register again with their municipal clerks."
- ²²³ Wright, *op. cit.*, 5-7.
- ²²⁴ *Ibid.*, 8-9.
- ²²⁵ *Ibid.*, 9.
- ²²⁶ Ellis Turnage, Mississippi transcript, 55-57, Appendix 10A; Carroll Rhodes, Mississippi transcript, 63-64, Appendix 10A.
- ²²⁷ Deborah McDonald, Ellis Turnage, Robert McDuff, Mississippi transcript, 101-05, Appendix 10A.
- ²²⁸ John Walker, Mississippi transcript, 109, Appendix 10A.



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