Testimony of

Mr. Frank B. Strickland

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Mr. Chairman, Senator Leahy and members of the committee, thank you for this opportunity to provide testimony regarding the important issue of renewal of certain sections of the Voting Rights Act ("VRA" or "the Act"). While I recognize that the question of renewal extends to Sections 5, 6 and 8, my focus today is on Section 5 and whether it should be renewed, and, if so, to what extent.

I am a partner in the law firm of Strickland Brockington Lewis LLP in Atlanta, Georgia, a firm which together with its predecessors, dates back to 1971. My experience with Section 5 comes primarily from two sources: serving as a member of the election board for the largest county in Georgia and litigating redistricting cases, which, in Georgia, always involve Section 5 issues.

Although I am not here in an official capacity, I am one of five members of the Fulton County Board of Registration and Elections (the "Election Board"), a bipartisan board appointed by the Board of Commissioners of Fulton County, which has general supervision of all voter registration and election processes in Georgia's largest county. I previously served on the Election Board from 1971 to 1977. Substantially all of the City of Atlanta is located in Fulton County. The Election Board is independent in that it does not report to the Board of Commissioners, and its decisions on registration and election matters in Fulton County, including the appointment of the department director, are final.

In addition to my experience on the Election Board, I have litigated a number of redistricting cases which, as I mentioned, have all involved Section 5 issues to differing degrees. During the 1990s redistricting cycle, I was one of the attorneys representing a group of citizens in the case called Jones v. Miller. In that case, the citizens sought court intervention in the redistricting process when the State of Georgia's 1991 redistricting plans were not precleared. Later in that decade, my law partner Anne Lewis and I served as counsel to former speaker Newt Gingrich and Congressman John Lewis as amici curiae in the case of Abrams v. Johnson, which was earlier known as Johnson v. Miller. In that case, my co-counsel and I had the distinct and rare privilege of representing both Congressman Gingrich and Congressman Lewis.

In the 2000 redistricting cycle, I served as one of the lawyers for four minority citizens - two Republicans and two Democrats - as intervenors in the case of Georgia v. Ashcroft, in which the State of Georgia sought Section 5 preclearance from the U.S. District Court for the District of Columbia. The voters we represented opposed Georgia's Congressional and state legislative redistricting plans on the ground that the plans were retrogressive. The District Court precleared the Congressional and state House plans but denied preclearance of the state Senate plan. The case went to the Supreme Court and was reversed and remanded. In essence, the Supreme Court redefined retrogression and added an additional method by which a jurisdiction might prove there was no retrogressive effect with respect to minority voting rights. Although retrogression had always been measured by whether the new redistricting plan so decreased minority voting strength in majority-minority districts that the plan resulted in a backsliding in minority voting rights, in Ashcroft, the Supreme Court determined that retrogression might also be measured by assessing the minority group's opportunity to participate in the political process, rather than simply whether the minority group still had an opportunity to elect a candidate of choice. In reversing and remanding, the Supreme Court directed the District Court to consider whether the State, although not meeting the traditional test of retrogression, had, in fact, met the new test.

While the District Court in Washington was in the process of attempting to apply the Supreme Court's instructions - including whether to hold a new trial, what new discovery was required, what new evidence would be allowed and the like - we were litigating the case of Larios v. Cox in Georgia, in which we represented a group of 29 voters who contended that the state legislative and Congressional plans violated the constitutional guarantee of one person, one vote. We were ultimately successful on the state legislative plans, and they were redrawn in 2004 by a special master selected by the three judge federal court; that decision was summarily affirmed by the Supreme Court. Based on the decision in Larios, the District Court in Ashcroft dismissed the latter case as moot and therefore never applied the new Section 5 test of Ashcroft.

I have submitted testimony which addresses two main areas. First, the State of Georgia has made such significant progress in the 40 years since the adoption of the Voting Rights Act that many - if not all - of the Section 5 preclearance provisions no longer should apply to Georgia. Second, assuming the preclearance provisions of Section

5 would still apply to Georgia, Congress should consider revising the list of changes that are subject to preclearance. The current list is over inclusive and raises unnecessary practical problems; in my testimony, I will cite a few of those problems dealt with by the Election Board in Georgia's largest county.

First, should Georgia continue to be a covered jurisdiction? The election results in Georgia over the years, not only in Fulton County but statewide, suggest that the answer is no. In a recent paper entitled "An Assessment of Voting Rights Progress in Georgia Prepared for the Project on Fair Representation," written by Charles S. Bullock III, Professor of Political Science at the University of Georgia, and Ronald Keith Gaddie, Professor of Political Science at the University of Oklahoma ("Bullock and Gaddie Report"), not only is there a much higher registration and voter turnout rate for African Americans, the number of black elected officials has steadily increased. In 1969, there were 30 African American officeholders, 14 of whom served in the legislature. By 1973 this number had increased to 100 and in 1977 the number exceeded 200. In 1991 more than 500 African Americans served in elected offices in Georgia. There were further increases during the 1990s so that by 2001, 611 African Americans held office in Georgia.

The makeup of Georgia's Congressional delegation is even more revealing. Four of 13 members of Congress are African American. The other states which have as many as four African Americans in the House of Representatives are New York, which has a 29 member delegation and California with a 53 member delegation. In fact, the African American share of Georgia House seats (31%) exceeds the black population (29 %).

At the state level there is a significant number of African American elected officials (nine of 34), including Attorney General, Labor Commissioner, three of seven justices on the Supreme Court of Georgia, three of 12 judges of the Court of Appeals and one Public Service Commissioner. All except one have run successful campaigns for reelection. Justice Harold D. Melton of the Supreme Court, appointed by Governor Sonny Perdue in 2005 to fill a vacancy, is running in 2006 for the unexpired term of his predecessor.

The experience in Fulton County is similar. I would remind you that the Board of Commissioners of Fulton County has a 4-3 African American majority, the mayor of Atlanta has been an African American since 1972 and the Fulton County legislative delegation to the Georgia General Assembly includes a majority of African American representatives.

In addition to looking at whether African Americans are able to get elected, which they clearly are both statewide and in Fulton County, an examination of the people running elections in Fulton County is illuminating. The Election Board appoints a full time director of the election department, who for several years has been an African American woman. Approximately 95 percent of the election department staff is African American. In primary and general elections more than half of the paid poll workers in the 356 precincts in Fulton County are African American.

Some might suggest that rather than trying to escape coverage in renewal legislation, Georgia and particularly Fulton County pursue the bailout mechanism available under Section 4 of the Voting Rights Act. That Section allows a jurisdiction to bail out of the preclearance requirements of the Act if it has had no objections interposed by DOJ for a period of 10 years, i.e., it must have a perfect record. That might appear to be the obvious choice for Fulton County, but there is a catch. Here is how the catch works. Because there are 11 cities within Fulton County, if any one of those cities has had a single objection interposed by DOJ during the 10 year period, Fulton County is automatically prevented from seeking to bail out of the preclearance requirements of the Act, even if its own 10 year record is flawless. A recent actual example that stopped Fulton County from pursuing the bail out provision resulted from the failure of the city of Alpharetta to obtain timely preclearance of one or more annexations from the county into the city in an area of the county where the African American population is probably less than five percent. This means that Fulton County must begin a new 10 year period of perfection in its own preclearance procedures and hope that all cities in the county will also achieve perfection for 10 years. There has to be a better way. I see no reason why Fulton County's perfect record should not stand alone and that the time period for compliance should not be shortened.

While Section 5 may continue to be an important component of election law and perhaps it should be renewed in some form, some states and local jurisdictions could and should be eliminated from its application. Georgia and Fulton County are two good examples for the reasons I have outlined.

Even if these jurisdictions remain covered, Congress must still examine what changes should remain covered. For example, the Fulton County Election Board spends considerable staff and board time reviewing and approving simple changes in the location of a polling place from one public building to another. In many instances the polling place is in a church and is being moved to another church because the current location is no longer available (or will be temporarily unavailable) for use as a polling place.

Similarly, the simple task of setting a date for a special election must be precleared. Most of the requirements for special elections are a matter of Georgia law which can not be varied by the action of the Election Board.

There are 11 municipalities in Fulton County. Another example of unnecessary preclearance occurs when one of these cities annexes additional territory from the county. First, the annexation itself must be precleared. Next, when the Election Board modifies voting precinct lines to comport with the new city boundaries for the convenience of

voters, the new precinct lines also must be precleared. Clearly, these are repetitive and unnecessary steps.

In the past year a new city of Sandy Springs was created in Fulton County by the General Assembly. The legislative act creating the city, the date of proposed city elections and the city council district lines all had to be precleared. The 2006 Session of the Georgia General Assembly resulted in legislative acts to create three more new cities in Fulton County as part of an effort to municipalize the entire County. The same preclearance procedures will apply to all of these new cities.

These preclearance requirements exist because the VRA presumes that decisions on such matters by the Election Board are suspect and must be approved by a Justice Department official before being implemented. Nothing could be further from the truth. Frankly, it is insulting to the integrity of the members of the Election Board and the entire staff of the election department, as well as to the government and citizens of Fulton County, to be told by Congress that another 25 years of supervision by the Justice Department is required based on a presumption that our policies and procedures are suspect. In my service on the Election Board in the 1970s and during my current tenure since 2004, I am not aware of a single instance of improper relocation of a polling place, adjustment of precinct boundary lines or any issue with the date of a special election, yet the VRA, if renewed without modification or elimination of the application of Section 5 to the State of Georgia or Fulton County, will continue the fiction that all such decisions are suspect and require submission to the Department of Justice.

In the two decades since the Voting Rights Act was last amended and renewed in 1982, a revolution has occurred in American election law that has resulted in representation that more accurately reflects the composition of the American electorate than any previous time in our history. This is certainly the case in Georgia and Fulton County. If Section 5 is to be renewed, the Congress should consider what jurisdictions should remain covered and why, as well as what changes should remain covered and why. Anything less is an invitation to a constitutional challenge that will likely be successful.

Thank you for your consideration of my comments. I will attempt to answer your questions, and I would request that I be allowed to revise and extend my remarks where appropriate.