Testimony of

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May 16, 2006

The Continuing Need for Section 5 Pre-Clearance
Testimony of Anita S. Earls
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Senate Judiciary Committee

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Mr. Chairman and Members of the Committee:
I am honored to be invited to testify concerning the continuing need for the Section 5 preclearance process1 to protect the voting rights of minority citizens. Throughout the 16 states that are covered in whole or in part by the preclearance requirement, minority voters continue to face intentional and unconstitutional barriers to full and equal participation in the political process. Section 5 review of changes affecting voting is a bulwark against further erosion of minority voting rights and works in tandem with Section 2 of the Voting Rights Act to prevent the use of voting practices or procedures that make it harder for minority voters to have an equal voice in local, state and national governments.
My perspective on the value of Section 5 preclearance review comes from a total of eighteen years' experience with voting rights cases, including representing minority voters primarily in the south, and from two and a half years as a Deputy Assistant Attorney General in the Civil Rights Division of the U.S. Department of Justice, with responsibility for the Voting Section, among others. Most recently, I helped conduct public hearings in North Carolina and Virginia, to gather information about the impact of the Voting Rights Act at the local level in those states. The experiences of minority voters who came and testified at those hearings is the most persuasive evidence of the continuing need for Section 5.
First, in those hearings we heard what racially polarized voting really means. John W. Boyd of Mecklenburg County, Virginia, an African-American, testified that recently he was a candidate for Congress in Virginia's Fifth Congressional District. While campaigning, he attended a political function in the southwest part of the state. He encountered a white woman at the function who told him "It's a pleasure to meet you. You speak very well. You would have done a lot better if you had not made an appearance here because you have a white last name, which is Boyd, and we're all voting for those candidates."2 Her polite advice was that he would get more votes if he didn't campaign in person because once people saw that he was black, they would not vote for him. In her world "those candidates" mean white candidates. Mr. Boyd was
1 42 U.S.C. § 1973 (c) (2002).
2 Testimony of John Boyd, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 20, lines 8-11, p. 24, lines 22-25 (Raleigh, N.C. Jan. 26, 2006).
a serious candidate who won 30.7% of the vote in the general election in 2000.3 But he could not overcome the barrier of his race for many voters.
Ralph Campbell, the only African-American to win a non-judicial statewide election in North Carolina knew well what this Virginia voter was saying. In his election campaigns for state auditor, he used a label from a Campbell's soup can rather than his photograph, in his election materials. These examples are from recent times, not the distant past. Racially polarized voting is a current reality that minority voters and the candidates they support must confront when they try to have a role in the democratic process. The Supreme Court has identified the presence of racially polarized voting as important circumstantial evidence of intentional discrimination in the electoral process.4 The continued prevalence of racially polarized voting in the covered jurisdictions is one of the most significant indicators of the continued need for the preclearance provision.
Second, we heard evidence about the deterrent value of Section 5. For example, Ms. Bobbie Taylor, President of the Caswell County NAACP explained how the views of minority voters on issues ranging from polling place location to the composition of election districts were taken into account because of the requirements of Section 5. She testified

that because she is "considered one of the leaders in Caswell, I've been contacted on several occasions when they have anticipated changes, i.e., the voting precincts. In one instance we were trying to get it moved because it was in a dangerous location. So when they finally decided to look into that, ... they contacted me."5 When asked if local officials would still involve minority community leaders without the Voting Rights Act coverage, Ms. Taylor replied: "No. I think we still need it and I think we've been able to accomplish what we have accomplished because it's there. Just like when the plans for the redistricting were being considered, it was because of the Voting Rights Act that the county commissioners contacted me, that he made sure that I was at those meetings. Now, some people might say it was because he was a nice guy, which he was ... but I think it went deeper, in terms of the Voting Rights Act requiring that this be done ... if we had not known about it, they would have passed it, and we rejected all of them."6 During the preclearance process jurisdictions must indicate whether they have conferred with minority community representatives. That requirement is one important way that changes having a harmful effect on minority voters are stopped before they ever reach the stage of an official objection or judicial determination.

This example is only one of many instances where the fact that a proposed change must be precleared results in a different outcome by decisionmakers. The deterrent impact of Section 5 can be hard to quantify because often such conversations about the potential for an objection occurred in closed sessions when local governing bodies confer with their legal counsel. Nevertheless, advocates and activists are well aware of how presenting information about the likely Section 5 analysis of a proposed redistricting plan or the failure to annex a predominantly

3 See http://www.sbe.state.va.us/web_docs/election/results/2000/nov/nov2000/

4 Rogers v. Lodge, 458 U.S. 613, 623 (1982).

5 Testimony of Bobbie Taylor, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 41, Lines 19-25, p. 42, line 1, (Greensboro, N.C., Nov. 14, 2005).

6 Id., p.52, lines 8-24.

black community, for example, can make a difference. Significantly, none of the witnesses at the three hearings we conducted testified that Section 5 was no longer needed.

At a broader level, the available evidence supports the testimony of local leaders that Section 5 is still needed. There are several types of evidence that are relevant. First, the very record of Section 5 objections since 1982 demonstrates that purposeful discrimination continues to occur in matters affecting voting. When the preclearance provisions were last extended in 1982, Congress optimistically expected that not only would the number of objections decrease over time, but that numerous and perhaps all of the covered jurisdictions would eventually be eligible for bailout, 7 which, among other things, requires that no change submitted by the jurisdiction be the subject of an objection for the previous ten years.8

In fact, the record has been exactly the opposite. In many of the covered jurisdictions, including North Carolina, the number of objections since 1982 is actually greater than the total number from 1965 to 1982.9 In states that are substantially covered (that is, where more than a handful of counties are covered), there were a total of 481 Section 5 objections prior to August, 1982, and 682 objections from August 1982 - 2004. Many of these post-1982 objections included evidence that the change was motivated by a discriminatory intent. In a comprehensive review of all Section 5 objection determination letters, authors Peyton McCrary, Christopher Seaman, and Richard Valelly concluded that evidence of discriminatory purpose were significant in well over half the objections. For example they report that "[i]n the 1990s, fully 151 objections (43 percent) were based on purpose alone. Another 67 objections (19 percent) relied on a combination of purpose and retrogression, and 41 (12 percent) on both purpose and the need to comply with Section 2. Thus, the intent prong was involved in a remarkable 74 percent of all objections in that decade. In contrast, a determination of retrogressive effect was involved in only 40 percent of objections in the 1990s and Section 2 in only 14 percent."10 Since Reno v. Bossier Parish School Board11 substantially changed the purpose prong of Section 5 in 2000, to narrow the intent standard, fewer objections based solely on discriminatory purpose have been issued. However, the numerous objection letters from every covered jurisdiction document an extensive record of local officials seeking to change dates of elections, election district boundaries, city boundaries, and other election procedures out of a desire to suppress, diminish or negate the effect of minority voters. These are compelling evidence of continued purposeful discrimination.

7 S.REP.NO. 97-417, at 75 (1982) as reprinted in 1982 U.S.C.C.A.N. 177, 254.

8 42 U.S.C. § 1973b

9 See Appendix 1, "Voting Discrimination in States Covered Statewide by Section 5 Post-August, 1982". The data is from: National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at Work, 1982 - 2005. (February 2006). This table was compiled by James Tucker.

10 Peyton McCrary, Christopher Seaman, and Richard Valelly, "The End of Preclearance as We Knew It: How the Supreme Court transformed Section 5 of the Voting Rights Act (unpublished manuscript, February 2005). Three of their tables, summarizing their analysis of Section 5 objection determinations are attached as Appendix 2.

11 528 U.S. 320 (2000).
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A second source of evidence of intentional discrimination are the forty-two cases in which jurisdictions have unsuccessfully sought preclearance of a change affecting voting in the three-member U.S. District Court for the District of Columbia.12 Jurisdictions covered by Section 5 always have the option of seeking a declaratory judgment from a three-judge D.C. federal court that a proposed change does not have the purpose or effect of making minority voters worse off. A total of twenty-five of the cases in which the Court considered the change on the merits and refused to issue such a judgment occurred after 1982.13
A third compelling source of evidence of purposeful and unconstitutional discrimination comes from judicial findings of intentional discrimination in litigation brought under Section 2 of the Voting Rights Act. Unfortunately many of these findings are in unreported decisions.14 Indeed, the discrepancy between the number of reported opinions finding Section 2 violations and the total number of successful Section 2 cases is huge. In North Carolina, for example, there have been nine reported cases finding Section 2 violations since June 29, 1982 and 41 unreported cases.15 Over the same time period, in the nine states that are substantially covered by Section 5, there have been 66 reported cases finding a Section 2 violation and 587 unreported cases.16 Thus, any review of reported cases alone seriously understates the findings.
Nevertheless, while limited to only reported cases with published opinions, brought under Section 2 of the Voting Rights Act, a study published by the Voting Rights Initiative of the University of Michigan Law School concluded that since 1982 there have been 137 cases nationwide in which a court found a history of official discrimination in voting and in 107 of those cases, the court further found that the history of official discrimination impacted the present-day ability of members of the minority groups to participate in the political process.17 In Katz' analysis, twenty-four lawsuits since 1982 identified more than one hundred instances of intentionally discriminatory conduct in voting. Eight of these twenty-four lawsuits were in jurisdictions covered by Section 5, fourteen were in non-covered jurisdictions.18
Judicial findings of intentional discrimination are only one type of evidence that such discrimination is occurring. Many cases involving allegations of unconstitutional, intentional discrimination are resolved on the more narrow statutory grounds because courts always avoid constitutional questions if at all possible. Typical is this statement by the court in a Georgia case: "[a]s for plaintiffs' additional constitutional claims, the court finds that the proposition set
12 See National Commission on the Voting Rights Act, supra note 9, at 57-58 & n.197.
13 Id. at 58.
14 See, e.g., Sanchez v. King, No. 82-0067 (D. N.M. 1984) (reciting extensive evidence of recent intentional discrimination against Native American voters).
15 See National Commission on the Voting Rights Act, supra note 9, at Table 5.
16 Id.
17 Ellen Katz, Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982, 20 (Final Report of the Voting Rights Initiative, University of Michigan Law School, November 10, 2005).
18Id. at 20-21. There are fewer Section 2 lawsuits finding intentional discrimination in covered jurisdictions because Section 5 objections have blocked those discriminatory changes from taking effect in the first place.
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forth in Justice Brandeis' opinion articulated in Ashwander v. TVA, which suggests that federal courts should avoid ruling on constitutional issues when non-constitutional grounds for a decision exist, is now applicable. Accordingly, the court declines to rule upon plaintiffs' constitutional claims."19 Thus, the general record of Section 2 violations is some further evidence that unconstitutional discrimination is also occurring, short of a judicial finding of a Fourteenth Amendment violation.
In a similar vein, there are frequently allegations of unconstitutional conduct in litigation under Section 2 that is resolved by consent decree. While Defendants in such cases often must admit liability under Section 2 in order for a court to have jurisdiction to order a new method of election,20 typically they are not willing to admit to unconstitutional conduct and there is no need for them to do so in order for Plaintiffs to obtain a remedy. Thus, the record of many cases resolved under Section 2 of the Voting Rights Act by consent decree is also some evidence that unconstitutional discrimination in matters affecting voting may have occurred.
Another indirect source of evidence concerning unconstitutional conduct by local officials is the record of Section 5 submissions that are withdrawn by the jurisdiction before the Department of Justice makes its determination. The National Commission on the Voting Rights Act obtained information concerning all "more information" letters written by the Department of Justice from 1982 through the end of 2004 under the Freedom of Information Act. Those records revealed that during that period, 501 proposed changes affecting voting were withdrawn by jurisdictions after receipt of a "more information" letter. In these instances Section 5 review by the Department of Justice resulted in the abandonment of potential voting changes with discriminatory impact or purpose before an objection was issued. The fact that jurisdictions were willing to abandon their proposed changes in 501 instances rather than seek a judicial

determination that the change is valid under the Voting Rights Act is some evidence of an acknowledgement of a discriminatory purpose or effect.
Thus, there are numerous sources of evidence that discrimination in voting, whether by diluting minority voting strength, or by manipulating voting procedures to disadvantage minority voters has occurred in circumstances that meet the Arlington Heights21 and Washington v.
19 Johnson v. Hamrick, No. Civ. 2:91-CV-002, (June 10, 1998) 1998 WL 476186, (citations omitted); see also, Escambia County v. McMillan, 466 U.S. 48, 51 (1984) (declining to decide whether at-large system violates the constitution because the Court affirms judgment under Section 2 of the Voting Rights Act); White v. Alabama, 74 F.3d 1058, 1071 n. 42 (11th Cir. 1996) ("Because we dispose of the district court's judgment on the ground that it violates the Voting Rights Act, we need not, and indeed should not, discuss whether the judgment violates the Equal Protection Clause by setting aside race-based seats on Alabama's appellate courts." See Ashwander v. Tennessee Valley Auth., 297 U.S. 288, 347, 56 S. Ct. 466, 483, 80 L. Ed. 688 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.").
20 See Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Commissioners, 142 F.3d 466 (1997).
21 429 U.S. 252 (1977).

Davis22 standards for demonstrating constitutional violations. Fortunately for many minority voters, a significant percentage of those new laws and practices never went into effect because the Department of Justice issued an objection. The fact that so many significant objections have been issued since 1982, and the continuing prevalence of racially polarized voting, are powerful indicators of the continued need for Section 5 preclearance.
Some may suggest that the permanent provisions of Section 2 are sufficient to protect minority voting rights. The record in North Carolina is particularly instructive on this point because it makes clear how Section 5 operates to protect the gains that plaintiffs obtain through Section 2 litigation. In Pasquotank County, for example, after black voters and the NAACP filed suit opposing Elizabeth City's at-large method of election, the City agreed in a consent decree to implement single-member districts.23 Ultimately, however, the City adopted a plan with four single-member districts and four at-large residency districts. The plaintiffs to the suit opposed continued use of such extensive at-large voting, because it unnecessarily diluted black voting strength. When the City applied for preclearance, the Attorney General interposed an objection, explaining that the City had chosen a plan that would elect half the governing body "in a manner identical to that which the decree was designed to eliminate." Though the use of limited at-large voting might be acceptable, the plan chosen contained "the very features that characterized the plan abandoned by the consent decree" and was adopted over readily available alternatives that would allow some at-large representation without "unnecessarily limiting the potential for blacks to elect representatives of their choice to office." The plan was, in fact, enacted "with knowledge of the disparate impact" it would have.24 Elizabeth City has since adopted an election scheme with four wards that each elect two council members. There are currently four black members on the Council.25 In the case of Elizabeth City, and elsewhere, Section 5 has provided a long-term guarantee that the promises made in Section 2 suits are actually implemented.
This example is only one of many. In Florida, following the November 2000 election, the NAACP brought litigation under the Voting Rights Act to address many of the election practices that had a discriminatory impact on minority voters in that election.26 It was only through Section 5 review, however, that enforcement of key aspects of the settlement agreement in that case remained in place for subsequent elections.27 In South Carolina, the Department of Justice and private plaintiffs recently proved that the county's at-large election method of electing the county council violated Section 2.28 The County Council spent more than $2 million and three years defending its at-large system, and ultimately paid private plaintiffs' attorneys
22 426 U.S. 229 (1976).
23 See NAACP v. Elizabeth City, No. 83-39-CIV-2 (E.D.N.C. 1984).
24 Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, to M.H. Hood Ellis (March 10, 1986) (Section 5 objection letter regarding the Elizabeth City City Council, Pasquotank County, North Carolina).
25 Information on the current Elizabeth City City Council and method of election available at http://www.cityofec.com/.
26 See NAACP v. Harris, No. 01-120-CIV-Gold (S.D. Fla. July 6, 2001).
27 See JoNel Newman, Voting Rights in Florida: 1982-2006, 13-15, 36-37 (March 2006).
28 See United States v. Charleston County, 316 F. Supp. 2d 268, (D.S.C. 2003), aff'd 365 F.3d 341 (4th Cir. 2004), cert. Denied, 125 S.Ct. 606 (2004).

fees.29 When, in 2003, the South Carolina General Assembly enacted a law that would have changed the method of electing the Charleston County School Board to the one successfully challenged in the County Council case, the

Department of Justice objected to the change on the ground that it would decrease minority voting strength.30 In Mississippi, the experience with dual registration requirements that were implemented intentionally to disadvantage minority voters involved Section 2 litigation,31 a Section 5 enforcement action,32 and an objection under Section 5.33 In these and many other instances, while litigation plays a role, the Section 5 preclearance requirement is a powerful and necessary supplement to prevent discriminatory voting changes.

Since only 40 of North Carolina's 100 counties are covered, the contrast between covered and non-covered counties there is instructive. Recently a number of counties and one city previously sued under Section 2 of the Voting Rights Act and required by court order to abandon at-large systems have filed motions seeking to dissolve the consent decrees or court orders that currently bind them. In the case of Montgomery County Branch of the NAACP v. Montgomery County, No. C-90-27-R, (E.D.N.C.), the plaintiffs and the county ultimately negotiated a new settlement. The Court's Supplemental Order, issued July 2, 2003, provides a new method of election that moves from a 4-1 system, with one commissioner elected at-large, to a 3-2 system that retains one majority black district, but has two at-large seats. The Order also provides that the case will be dismissed after five years, thereby dissolving any court order that there must be a majority black district for the board of county commissioners. Montgomery County is not covered by Section 5 of the Voting Rights Act. A similar motion was granted in November, 2004 to terminate the Consent Order in NAACP v. City of Thomasville, No. 4:86CV291 (M.D. N.C.). In two other counties, Beaufort County and Columbus County, efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court. Of all these local jurisdictions, only Beaufort County is covered by Section 5. There, the minority voters have the added protection of the non-retrogression requirement. Any new method of election adopted in Beaufort County will need to afford minority voters the same opportunity they now have to elect candidates of their choice. Thus, Section 5's non-retrogression principle is an important protection to safeguard the court orders and consent decrees that have been obtained to provide non-dilutive, fair and non-discriminatory methods of election under Section 2 of the Act.

It is also important to recognize that Section 5 review is well adapted to prevent new forms of discrimination in elections. In February of 2005 the North Carolina Supreme Court ruled that approximately 12,000 ballots cast on Election Day by voters outside their home

29 National Commission on the Voting Rights Act, supra note 9, at 55-56.

30 Letter from R. Alexander Acosta to C. Havird Jones, Esq., 26 Feb. 2004, available at http://www.usdoj.gov/crt/voting/sec_5/pdfs/l_022604.pdf.

31 Operation PUSH v. Allain, 674 F. Supp. 1245 (N.D. Miss 1982), aff'd 932 F.2d 400 (5th Cir. 1991).

32 Young v. Fordice, 520 U.S. 273 (1997).

33 Letter from Isabelle Katz Pinzler to Sandra M. Shelson, September 22, 1997, available at: http://www.usdoj.gov/crt/voting/sec_5/ltr/l_092297.pdf.

precincts would not be counted.34 The ballots under question were cast disproportionately by black voters. Statewide, the estimates are that 36% of the ballots cast out of precinct on election day were cast by black voters although they were just 18% of the electorate. In some counties the disparity was even greater. For example, 41% of Wake County's provisional ballots were cast by black voters. Many of these voters were never notified where to vote by the state, due to a backlog of new registrants. In addition, many voters were advised by local election officials that provisional ballots votes cast outside their home precincts would count. As one researcher reported, out-of-precinct voting in North Carolina "especially helps working class, young and minority voters. Our research shows that black voters cast more than one third of the state's out-of-precinct ballots, while less than one fifth of all votes in November's elections came from African-Americans." Additionally, black voters disproportionately live in low income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.35 While this case was ultimately resolved by legislative action, Section 5 of the Voting Rights Act would be a bar to any change in voting rules that rejects a disproportionate number of ballots cast by black voters.

Finally, there is a particular aspect of state law in North Carolina that makes the non-retrogression principle especially important for that state's minority voters. Following enactment of the state legislative redistricting plan in 2001, a lawsuit was filed in state court seeking to enforce a provision of the State Constitution that previously had been found to be in conflict with the Voting Rights Act, namely the "whole county provision" which requires legislative districts to be made up, to the extent possibly, by whole counties.36 As a result, the only counties that can be divided in drawing legislative districts are those covered by the non-retrogression requirement of Section 5 of the Voting Rights Act, or where there is potentially a Section 2 violation. Dividing counties is generally necessary to draw majority-black districts.

In 2004 the Fourth Circuit held that in order to show a potential violation of Section 2 of the Voting Rights Act, plaintiffs must demonstrate that they constitute 50% or more in a single-member district, foreclosing the possibility of influence or coalition district claims.37 If Section 5 is not reauthorized, application of the whole county provision may

result in the loss of eleven of the state's twenty-one districts that elect an African American to the North Carolina General Assembly.

While the Voting Rights Act has been enormously successful in overcoming the overt and violent suppression of the black vote that occurred prior to 1965, subtle and persistent forms of intentional discrimination continue to disadvantage minority voters. Section 5 remains an important and powerful tool to combat that discrimination. Levels of registration of minority voters do not begin to tell the complete story of political participation, particularly at the local level. Without the non-retrogression principle in place, many covered jurisdictions would revert

34 James v. Bartlett, No. 602P04-2, (N.C. February 4, 2005).

35 Bob Hall. "Voters Disenfranchised by N.C. Supreme Court." 11 Feb 2005

36 Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002) (Stephenson I) and Stephenson v. Bartlett, 358 N.C. 219, 595 S.E.2d 112 (2004), (Stephenson II).

37 Hall v. Virginia, 385 F.3d 421 (4th Cir. 2004). 8

to at-large election methods and other schemes that dilute the voting strength of minority voters. With racially polarized voting remaining a barrier to the effective political participation of minority voters in numerous areas and with the recent record of objections documenting the need for the Act, it is imperative that Congress reauthorize Section 5 and restore it to the force it had in 1982.

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APPENDIX 1

Post-August 1982 Voting Discrimination in States Covered Statewide by Section 5

State
Pre-August 1982
Section 5
Objections ?
August 1982 - 2004
Section 5
Objections ?
August 1982 - 2004
Section 5 Withdrawals
August 1982 - 2004 Successful
Section 5 Enforcement Cases
August 1982 - 2005
Successful
Section 2 Cases
August 1982 - 2004
Number of Elections with Observer Coverage

Alabama
59 (12)
46 (7)
15
22
192
67

Arizona ?
6 (3)
19 (5)
5
3
2
40

Georgia
97 (11)
83 (16)
38
17
69
55

Louisiana

56 (8)
103 (13)
22
5
17
15
Mississippi
65 (15)
120 (11)
29
15
67
250
North Carolina
26 (13)
43 (10)
10
3
52
6
South Carolina
52 (6)
74 (6)
20
10
33
23
Texas ?
96 (7)
105 (10)
54
29
206
10
Virginia
18 (5)
15 (2)
4
1
15
0
TOTALS
475 (80)
608 (80)
197
105
653
466
Source: National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at Work 1982-2005 (summarizing DOJ statistics).
? The number in parentheses indicates the number of statewide Section 5 objections for the period noted.
? Statewide Spanish Heritage coverage under Section 4(f)(4). Alaska, which is covered statewide for Alaska Natives, is not included because of lack of enforcement activities.
APPENDIX 2
TABLE 1: CHANGE TYPES TO WHICH OBJECTIONS WERE INTERPOSED, BY DECADE
Change Type 1970s % 1980s % 1990s % Totals
Annexations 34 (7%) 47 (11%) 24 (6%) 105

At-large 110 (22%) 57 (13%) 31 (8%) 198
Elections
Enhancing 182 (37%) 93 (22%) 73 (18%) 348
Devices
Districting 86 (17%) 165 (38%) 209 (52%) 460
Ballot Access 77 (15%) 64 (15%) 56 (14%) 197
Other Changes 9 (2%) 5 (1%) 9 (2%) 23
Totals: 498 (100%) 431 (100%) 402 (100%) 1331
Note: In this and the following tables, the column headed "1970s" is actually the period 1968-1979, but few objections were interposed until 1970. The number of change types to which objections were interposed is greater than the total number of objections, because numerous objection decisions affected two or more change types. See Note 155, supra.
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TABLE 2: LEGAL BASES FOR OBJECTION DECISIONS, BY DECADE
Legal Basis 1970s % 1980s % 1990s % Total
Exclusive Categories
Intent 9 (2%) 83 (25%) 151 (43%) 243
Dilutive Effect 34 (9%) B B 34
Retrogression 297 (77%) 146 (44%) 73 (21%) 516
Technical 17 (4%) 15 (5%) 1 (0%) 33
Section 2 B 2 (1%) 6 (2%) 8
Minority Language 2 (1%) 2 (1%) 5 (1%) 9
Combined Categories
Intent/Retrogression 22 (6%) 73 (22%) 67 (19%) 162
Intent/Dilution 5 (1%) - - 5
Intent/Section 2 B 6 (2%) 41 (12%) 47
Other - 3 (1%) 5 (1%) 8
Totals: 386 (100%) 330 (100%) 349 (100%) 1065
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TABLE 3: LEGAL BASES FOR OBJECTION DECISIONS, REDISTRICTINGS
Legal Basis 1970s % 1980s % 1990s % Total
Exclusive Categories
Intent 7 (11%) 75 (44%) 122 (58%) 204
Dilutive Effect 23 (27%) B B 23
Retrogression 37 (40%) 35 (23%) 20 (10%) 92
Technical 10 (12%) 9 (5%) 1 (0%) 20
Section 2 B 1 (1%) 1 (0%) 2
Combined Categories
Intent/Retrogression 5 (7%) 40 (24%) 34 (16%) 80
Intent/Dilution 2 (2%) - - 2
Intent/Section 2 B 4 (1%) 30 (14%) 34
Other 2 - 1 (0%) 3
Totals: 86 (100%) 165 (100%) 209 (100%) 460
13