Testimony of

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United States Senate Committee on the Judiciary
Reauthorization of Section 5 of the Voting Rights Act
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Chairman Specter, ranking member Leahy and other distinguished members of the Committee; I am especially honored to share my views about the renewal of Section 5 of the Voting Rights Act, a renewal that I fully support, but not in its present form.

The bill under consideration risks falling into the category of poorly crafted legislation that will not serve national interests, the interests of minority voters, or the legacy of slain civil rights activists and civil rights leaders such as Fannie Lou Hamer, Rosa Parks, and Coretta Scott King, for whom this legislation is so aptly named.

I strongly urge the Senate to withstand the interest group pressure and delay action on the Reauthorization Bill until the Congress has had sufficient time to draft legislation adequate for the task at hand: legislation that will protect the rights of all Americans while providing states and localities with incentives to comply with a national law.

George Washington is quoted as saying that the purpose of the Senate is to "cool" house legislation as a saucer cools a hot liquid. The Senate, as the more deliberative body, is to serve as a fence against the intense passions of the House and the often emotional public. By operating as the framers intended, the Senate can facilitate the national interest by serving as a hedge against ill-conceived legislation that places the needs and goals of politicians above the interest of the people.

In this statement, I make three main points about S. 2703:

(1). The preclearance provisions, which focus only on certain jurisdictions, are not adequate to protect the needs and interests of the American people. In order to ensure Congress is targeting every jurisdiction that is discriminating, and only those that are discriminating, Congress should take two steps: New voting rights protections should be enacted and extended nationwide, and bailout provisions should be made easier for covered jurisdictions who have established records of compliance.

(2) Georgia v. Ashcroft should not be treated as if it were as egregious as Reno v. Bossier Parish School Board II, a decision that would require the Department of Justice to clear plans created with a discriminatory purpose. Congress should address the latter decision by giving content to "discriminatory purpose."

(3). Section 5 of the Voting Rights Act should be reauthorized before it expires on August 6, 2007. The bill should be modified and strengthened before it is extended for another 25 years.

1. THE BILL IS FLAWED IN ITS HANDLING OF THE "PRECLEARANCE" PROVISION.

The preclearance provision requires "covered" jurisdictions to get prior approval for every voting-related change, no matter how minor, from the U.S. attorney general or the D.C. District Court before action is taken.

(a.) The bill under consideration fails to modify the preclearance provision to make "bailout" easier for covered jurisdictions where violations have ceased or have dramatically decreased. An easier bailout procedure would reward states and localities that have established histories of compliance and sensitivity to the needs of voters.

(b.) The bill under consideration does not extend protections to voters in non-covered jurisdictions where some of the most egregious violations have taken place and are likely to continue unless we adopt national uniform voting rights (See Attachment I for a list of places where violations continue). Unconstitutional violations of voting rights have occurred in uncovered states and jurisdictions that include parts of California, Florida, Hawaii, Tennessee, and Pennsylvania (see Attachment 1).

An obvious solution for the aforementioned problems is to extend the preclearance provision to the nation as a whole and to streamline the process to allow covered jurisdictions with good records of compliance to bailout. The growing diversity of the nation and the pattern of voting rights violations suggest a need for national uniform voting legislation like the 2002 Help America Vote Act (HAVA) and the 1993 National Motor Voter Registration Act (NVRA) , which operate under a different philosophy than the current voting rights model.

The enactment of national voting rights legislation and a more streamlined bailout provision would address some of the concerns raised by Professor Samuel Issachroff and others about the constitutionality of the present bill and whether it could survive Supreme Court scrutiny, especially as it relates to the "congruence and proportionality" test, which demands a relationship between where violations occur and the reach of legislation designed to address the problem (see City of Boerne v. Flores). Of course, to enact a better law, it would be necessary for the Senate to courageously place the brakes on the current bill and delay reauthorization until better legislation can be drafted. Better legislation will come from the collective efforts of concerned scholars, activists, and lawmakers working together diligently for the greater good.

2. THE CURRENT BILL UNWISELY SEEKS TO OVERTURN GEORGIA V. ASHCROFT

The interests of politicians are not always congruent with the interests of their constituents. Simply put, what serves the reelection needs of Black Democrats and white Republicans does not necessarily advance the interest of the public as a whole. Black Democrats desire safe, non-competitive seats in majority-minority districts. White Republicans prefer to represent districts where voters are more amenable to conservative appeals; because blacks vote overwhelmingly Democratic, this typically means mostly-white districts. Georgia v. Ashcroft threatens to create a measure of uncertainty for both groups of politicians. Indeed, Professor David Mayhew has argued that politicians are single-minded seekers of reelection. As such, they have a vested interest in creating systems and structures that facilitate the predictable attainment of their reelection goals.

Of course, politicians can rise above narrow self-interest. The black Democrats in Georgia who testified in favor of unpacking majority-minority districts placed the interests of their party and their constituents above their desire to have safe, non-competitive districts. Many have since back pedaled on this issue. Situations that need to be avoided legislatively are those in which incumbents are allowed to demand and retain secure sinecures for as long as they wish to remain in office.

Georgia v. Ashcroft is especially important because the Court seemingly applied a Section 2 Totality of Circumstances test to a set of factors that in the past seemed relatively straightforward. The Court ruled in favor of allowing politicians greater latitude to create influence and coalitional districts by unpacking and dispersing minority voters in what had been relatively safe majority districts. By doing so, the Court changed the non-retrogression standard developed and applied in Beer v. United States and other voting rights cases that had been interpreted to mean that localities and states had to protect existing minority electoral gains and could not take actions that would decrease the percentage of minority voters in majority-minority districts. Their aim was to increase the number of Democrats in office.

As I have argued in my book, Black Faces, Black Interests: The Representation of African Americans in Congress, there is a real trade off between descriptive representation, i.e. more black faces in office, and substantive representation, i.e. more people in legislatures to form coalitions and vote for your preferred political agenda. For the latter, political party is far more important than the race of the representative. As long as blacks hold the views that they do, they will best be represented by the election of more Democrats to office. This might change, however, if blacks are disbursed strategically so that they can affect more legislators. Packing minority voters in 50 plus 1 percent voting-age-districts can waste black votes and black influence. All voters are better off when they have more people in office who support their legislative agendas.

Georgia v. Ashcroft is a good decision because it allows for the creation of more opportunities for minorities to form coalitions and exert influence on politicians outside their own racial and ethnic groups. Most importantly, the unpacking of majority-minority districts in traditionally Democratic districts does not bar the election of qualified minority politicians who have proven again and again their abilities to garner white crossover votes. Table 1 (Attachment 2), shows that between 1970 and 1990, eight blacks were elected from legislative districts that ranged from 4 to 46 percent black in their voting-age-populations. Since then numerous blacks have been elected to statewide offices. Race is no longer a barrier to the election of qualified black Democrats in historically Democratic districts. Indeed, the success of the Republican Party's "Southern Strategy" has provided a place of refuge for whites who dislike blacks because they are black. It is not farfetched to conclude that the white southerners who remain in the Democratic Party of the new South have resolved their racial problems with blacks.

3. SECTION 5 MUST BE STRENGTHENED AND REAUTHORIZED BEFORE IT EXPIRES ON AUGUST 6, 2007

Some issues are non-negotiable. Reauthorizing Section 5 falls into the category of the non-negotiable legislation that must be passed if the nation is to maintain its progress with race relations. A failure to renew Section 5 would send a negative message to the American public who now see the issue as being about whether blacks and other minorities will continue to retain their right to cast an unfettered ballot, rather than about the more complex issues surrounding the preclearance provision, the fairness and adequacy of the bailout provision, whether to legislatively overturn recent Supreme Court decisions, and whether to maintain the provision of bilingual language ballots. The question, therefore, is whether this distinguished body will rise to the occasion and replace Section 5's outdated mechanism of requiring preclearance in certain jurisdictions with a nationwide mechanism such as HAVA that provides effective protection to all voters.

Whatever is done must be done carefully and deliberately. African Americans have a strong distrust of the Republican Party and their marriage to the Democrats often seems on rocky ground. It crucial, therefore, to educate as many voters as possible about what is truly at stake. Voters are not fools. If it is explained to them carefully about the extent of voting violations that occur nationally, the difficulty of bailout for jurisdictions covered since 1964, and the strategic value of coalitional districts and how the current bill does not serve their needs, I believe a critical mass of people who currently are misinformed about the current bill will coalesce behind those who champion a more deliberative process designed to ensure the passage of stronger, more effective legislation.

My book, Black Faces, Black Interests discusses the future of black representation in America. Chapter 10 in particular delineates several ways to increase the substantive representation of African Americans that go beyond the mere creation of majority-minority districts (Attachment 3). As our great nation grows more and more racially and ethnically diverse, the need will only intensify to protect and expand the voting rights of all Americans. We have an unprecedented opportunity to do just that as we work on the Reauthorization of Section 5 of the Voting Rights Act.

Attachment I

Cases Finding That a State Committed Unconstitutional Racial Discrimination
Against Voters

Below is a summary of all the cases located in which a court or a settlement found a constitutional violation of voting rights.

It is based on a review of the ACLU's 867-page Report on the Case for Extending and Amending the Voting Rights Act, which discusses 293 cases brought since June 1982, and the database for the University of Michigan Law School Voting Rights Report. The database was constructed by searching the "federal court" databases of Westlaw or Lexis for any case that was decided since June 29, 1982 and mentions section 2, 42 U.S.C. § 1973. Of all the identified section 2 lawsuits, 209 produced at least one published liability decision under section 2.

Only six cases resulted in a finding that a covered jurisdiction committed unconstitutional discrimination against minority voters. Six cases ended in a finding that found that a covered jurisdiction had committed unconstitutional discrimination against white voters. Four cases in non-covered jurisdictions found unconstitutional voting practices against minority voters, and two against white or majority voters.

An additional 22 cases found a constitutional violation, but these did not involve racial discrimination or any conduct addressed by the Voting Rights Act. Accordingly, these cases are not relevant evidence for reauthorization.

I. COVERED JURISDICTIONS DISCRIMINATING AGAINST VOTERS

Alabama:

1) Hunter v. Underwood, 730 F.2d 614 (11th Cir. 1984), affirmed 471 U.S. 222 (1985) (ACLU Rep., p. 51).
The ACLU represented two voters who were disenfranchised under a nearly 80 year-old law that prohibited those who had committed a "crime of moral turpitude" from voting. Id. at p. 52. The court struck down the law because there was evidence that when it was adopted in the early 1900s, the legislators intended to disenfranchise black voters. The Supreme Court unanimously affirmed that, in view of the proof of racial motivation and continuing racially discriminatory effect, the state law violated the Fourteenth Amendment.

2) Dillard v. City of Foley, 926 F. Supp. 1053 (M.D. Ala. 1995) (ACLU Rep., p. 57).
African American plaintiffs in the City of Foley, Alabama, filed a motion to require the City to adopt and implement a nondiscriminatory annexation policy and to annex Mills Quarters and
Beulah Heights. Plaintiffs also claimed that the City had violated section 5 and section 2. As a result of negotiations, the parties entered into a consent decree. The decree found plaintiffs had established "a prima facie violation of section 2 of the Voting Rights Act and the United States Constitution." Id. at p. 59.

3) Brown v. Board of School Comm'rs., 706 F. 2d 1103 (11th Cir. 1983) (U Mich. L.Rep., http://www.votingreport.org.).
A class of African American voters challenged Mobile County's at-large system for electing School Board members. In 1852, Mobile County created at-large school board elections of 12 commissioners. In 1870, the election procedures changed; instead of selecting all 12 commissioners, voters would select 9 of the 12 and the other 3 would be appointed. This system had the effect of ensuring minority representation on the school board. In 1876, the Alabama state legislature eliminated the Mobile County school board system and returned the County to the 1852 at-large election scheme which remained in effect until this suit was brought.

The district court found that by re-instating the at-large election system, the Alabama state legislature intended to discriminate against African Americans in Mobile County in violation of the Fourteenth and Fifteenth Amendment. The Eleventh Circuit affirmed.

Georgia

4) Miller v. Johnson: 515 U.S. 900 (1995) (ACLU Rep., 126-27).
In August 1991, the Georgia legislature adopted a congressional redistricting plan based on the new census containing two majority minority districts--the Fifth and the Eleventh. A third district, the Second, had a 35.4% black voting age population. The state submitted the plan for preclearance, but the Attorney General objected to it. Following another objection to a second plan, the state adopted a third plan which contained three majority black districts, the Fifth, the Eleventh, and the Second. The plan was precleared on April 2, 1992. Following the decision in Shaw v. Reno, a lawsuit was filed by white plaintiffs claiming that the Eleventh Congressional District was unconstitutional. One of the plaintiffs was George DeLoach, a white man who had been defeated by McKinney in the

1992 Democratic primary. Although the Eleventh District was not as irregular in shape as the district in Shaw v. Reno, the district court found it to be unconstitutional, holding that the "contours of the Eleventh District . . . are so dramatically irregular as to permit no other conclusion than that they were manipulated along racial lines." The Supreme Court affirmed. It did not find the Eleventh District was bizarrely shaped, but it held the state had "subordinated" its traditional redistricting principles to race without having a compelling reason for doing so. The court criticized the plan for splitting counties and municipalities and joining black neighborhoods by the use of narrow, sparsely populated "land bridges." On remand the district court allowed the plaintiffs to amend their complaint to challenge the majority black Second District, which the court then held was unconstitutional for the same reasons it had found the Eleventh District to be unconstitutional, [and] the legislature adjourned without adopting a congressional plan.

5) Common Cause v. Billups: 4:05-CV-201 HLM (N.D. Ga.) (ACLU Rep., 185-91).
The Department of Justice precleared the photo ID bill on August 26, 2005. The ACLU filed suit in federal district court, charging the law violated the state and federal constitutions, the 1965 Voting Rights Act, and the 1964 Civil Rights Act. The district court issued a preliminary injunction holding plaintiffs had a substantial likelihood of succeeding on several grounds, including claims that the photo ID law was a poll tax and violated the equal protection clause of the Constitution. The state appealed to the Eleventh Circuit, which refused to stay the injunction. In an attempt to address the poll tax burden cited by the district court in its injunction, the Georgia legislature passed a hew photo ID bill providing for free photo identification cards.

6) Clark v. Putnam County: 168 F.3d 458 (11th Cir. 1999) (ACLU Report at 384-89).
In 1997, four white plaintiffs filed a lawsuit challenging the constitutionality of the majority black county commission districts as racial gerrymanders in violation of the Shaw / Miller line of cases. In January 2001, the district court dismissed the complaint. The Eleventh Circuit reversed, holding that the district court erred in failing to find unconstitutional intentional discrimination.

Louisiana:

7) Hays v. Louisiana, 515 U.S. 737 (1995) (ACLU Rep., p. 481).
White plaintiffs successfully challenged Louisiana's Fourth Congressional District as unconstitutional "race-conscious" redistricting. Id. at p. 481. The Supreme Court granted cert., but then dismissed the case for lack of standing.

North Carolina:

8) Shaw v. Hunt, 517 U.S. 899 (1996) (ACLU Rep., p. 513).
The 12th District of North Carolina was 57% black and was persistently challenged by white voters and its boundaries were considered by the Supreme Court four separate times. The ACLU participated as an amicus in defending the constitutionality of the 12th District. In 1996, the Supreme Court struck down the plan for the 12th District on the grounds that race was the "predominant" factor in drawing the plan and the State had subordinated its traditional redistricting principles to race. Id.

South Carolina:

9) Smith v. Beasley, 946 F. Supp. 1174 (D.S.C. 1996) (ACLU Rep., p. 572).
White voters filed suit in 1995 challenging three state senate districts. A year later, another group of white voters filed suit challenging nine house districts. In both cases, the plaintiffs claimed that the districts were drawn with race as the predominant factor in violation of the Shaw/Miller line of decisions. The cases were consolidated for trial, and black voters, represented by the ACLU, intervened to defend the constitutionality of the challenged districts. Following a trial, a court issued an order in September 1996, finding three of the challenged senate districts and nine of the house districts unconstitutional because they "were drawn with race as the predominant factor." Id.

Texas:

10) League of United Latin American Citizens, 648 F. Supp. 596 (W.D. Tex. 1986) (U Mich. L.Rep., http://www.votingreport.org).

Latino plaintiffs argued that the at-large election system diluted their votes. The parties agreed to a court order that eliminated the election scheme and defendants submitted a proposal in which four trustees would be elected from single-member districts and three would be elected at large. Plaintiffs objected and filed a plan in which all seven trustees would be elected from single-member districts. The court, applying Gingles and the totality-of-circumstances tests, held that defendants' plans violated section 2 and the Fourteenth and Fifteenth Amendment. The court ordered that a seven-member district plan for electing trustees be immediately implemented according to district boundaries drawn by the court.

Virginia:

11) Moon v. Meadows, 952 F. Supp. 1141 (E.D. Va. 1997) (ACLU Rep., p. 691).
In 1995, several white voters challenged the Third Congressional District in federal court as an unconstitutional racial gerrymander. In 1997, the district court invalidated the Third Congressional District, finding that race had predominated in drawing the district and that the defendants could not adequately justify their use of race as a districting factor.

12) Pegram v. City of Newport News, 4:94cv79 (E.D.Va. 1994) (ACLU Rep., p. 714).
In July 1994, the ACLU filed suit on behalf of African American voters challenging the at-large method of city elections in the City of New Port. On October 26, 1994, a consent decree was entered in which the City admitted that its at-large system violated section 2 as well as the Fourteenth and Fifteenth Amendments. The consent decree required the City to implement a racially fair election plan.

II. NON COVERED JURISDICTIONS DISCRIMINATING AGAINST VOTERS

California:

1) Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990) (U Mich. Law School's Report. http://www.votingreport.org).
Latino voters alleged that district lines for the Los Angeles County Board of Supervisors were gerrymandered to dilute their voting strength. Plaintiffs requested creation of a district with a Latino majority for the 1990 Board of Supervisors election. The Ninth Circuit affirmed that the County had adopted and applied a redistricting plan that resulted in dilution of Latino voting power in violation of section 2, and by establishing and maintaining the plan, the County had intentionally discriminated against Latinos in violation of the Fourteenth Amendment's Equal Protection Clause.

Florida:

2) McMillan v. Escambia County, 748 F.2d 1037 (11th Cir. 1984) (U Mich. L.Rep., http://www.votingreport.org).
Black plaintiffs claimed that the at-large election of county commissioners in Escambia County diluted their voting power in violation of section 2 and the Fourteenth and Fifteenth Amendments. The district court found that the State had not implemented the plan with a racially discriminatory purpose, but it had maintained it with such a purpose.

Hawaii:

3) Arakaki v. Hawaii, 314 F.3d 1091 (9th Cir. 2002) (U Mich. L.Rep., http://www.votingreport.org)
A group of Hawaiian citizens of various ethnic backgrounds sued the State of Hawaii alleging that the requirement that those appointed to the Office of Hawaiian Affairs must be of Native Hawaiian ancestry violated the Fourteenth Amendment, the Fifteenth Amendment, and section 2 of the Voting Rights Act. The Eleventh Circuit found that the restriction on candidates running for Office of Hawaiian Affairs on the basis of race violated the Fifteenth Amendment as well section 2 of the Voting Rights Act. The Ninth Circuit vacated the district court's judgment that the Fourteenth Amendment had also been violated because plaintiffs did not have standing to challenge the appointment procedures.

New York:

4) Goosby v. Town Bd. of Town of Hempstead, 180 F. 3d 476 (2d Cir. 1999) (U Mich. L.Rep., http://www.votingreport.org).
Representatives of the Town Board of Hempstead were chosen through at-large elections. African American voters alleged that they were unable to elect their preferred candidates. The district court held that the at-large elections violated section 2 and ordered the Town to submit a six single-member district remedial plan. The Board submitted two plans. The one the Board preferred was a two-district system, consisting of one single-member district and one multi-member district. The other plan consisted of six single-member districts. The district court held that the two-district plan violated the Fourteenth Amendment, but the six-district plan did not.

The Board appealed. The Second Circuit affirmed the district court's holding that the Board's proposed two-district plan violated section 2 and the Fourteenth Amendment because blacks had no access to the Republican Party candidate slating process.

Pennsylvania:

5) Marks v. Stinson, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994) (U Mich. L.Rep., http://www.votingreport.org).
Republican candidate for State Senate, Bruce Marks, the Republican State Committee and other plaintiffs challenged the election of Democrat William Stinson for the Second Senatorial District. Although Marks received approximately 500 more votes from the Election Day voting machines than Stinson, Stinson received 1000 more votes than Marks in absentee voting. Marks and the other plaintiffs contended that Stinson and his campaign workers encouraged voters to undermine proper absentee voting procedures and requirements, such as falsely claiming that they would be out of the county or would be physically unable to go to the polls on Election Day. Plaintiffs also contended that Stinson and the other Defendants had focused their efforts to encourage illegal absentee voting on minorities.

The court held: 1) defendants violated plaintiffs' First Amendment rights of association because plaintiffs were denied the freedom to form groups for the advancement of political ideas and to campaign and vote for their chosen candidates; 2) defendants' actions denied plaintiffs' right to Equal Protection by discriminating against the Republican candidate and by treating persons differently because of their race; 3) defendants violated plaintiffs' Substantive Due Process right to vote in state elections by abusing the democratic process; and 4) defendants improperly applied a "standard, practice, or procedure" in a discriminatory fashion in violation of the VRA, targeting voters based on race and denying minority voters the right to vote freely without illegal interference. Finally, the court ordered the certification of Bruce Marks as the winner of the Second Senatorial District seat for the 1993 Special Election because Marks would have won the election but for the illegal actions of the defendants.

Tennessee:

6) Brown v. Chattanooga board of Comm'rs, 722 F. Supp. 380 (E.D. Tenn. 1989) (U Mich. L.Rep., http://www.votingreport.org).
Black citizens of Chattanooga sued the Board of Commissioners for its use of at-large elections.
The court held: 1) applying the Gingles test, the method of electing Board of Commissioners violated section 2 because the electoral practice resulted in an abridgment of black voter's rights; and 2) the Property Qualified Voting provision of the Chattanooga charter violated the Fourteenth Amendment under rational basis review because permitting a nonresident who owns a trivial amount of property to vote in municipal elections does not further any rational governmental interest.

III. CONSTITUTINAL VIOLATIONS NOT INVOLVING RACE

1) Vander Linden v. Hodges, 193 F.3d 268 (4th Cir. 1999) (ACLU Rep., p. 562).
Residents of Dorchester, Berkeley, and Charleston Counties, in South Carolina, filed suit in 1991 alleging that the counties' legislative delegation structure violated the Fourteenth Amendment's one-person, one-vote requirement and was adopted with an unconstitutional purpose to discriminate against African American voters. The district court rejected both claims. The Fourth Circuit held that the structure violated the one-person, one-vote rule (making no findings of discriminatory intent) and did not address the second claim.

2) NAACP v. Board of Trustees of Abbeville County School District No. 60, Civ. No. 8-93-1047-03 (D.S.C. 1993) (ACLU Rep., p. 583).
The Board of Trustees of Abbeville County School District 60 traditionally consisted of nine members, five of whom were elected from single member districts and two each from two multi-member districts. African Americans were 32% of the population of the school district, but all the districts were majority white and only one member of the board was African American. In 1993, black residents of the school district and the local NAACP chapter filed suit challenging the method of electing the board of trustees as violating the Constitution's one person, one vote requirement and violating section 2 by diluting minority voting strength. The court decided that the existing plan for the board "is an unconstitutionally malapportioned plan, and is in violation of sections 2 and 5 of the Voting Rights Act." Id. at 584.

3) Duffey v. Butts County Board of Commissioners: Civ. No. 92-233-3-MAC (M.D. Ga.) (ACLU Report at 237-38).
Suit challenging districting plans for Board of Education and Board of Commissioners that were determined to be malapportioned after the 1990 census. Plaintiffs sought, and obtained, a preliminary injunction finding that the election districts were "constitutionally malapportioned." Parties entered consent decree that retained five single member districts for both boards and established two majority black districts. Plan was precleared by DOJ.

4) Calhoun County Branch of the NAACP v. Calhoun County: Civ. No. 92-96-ALB/AMER(DF) (M.D. Ga.) (ACLU Report at 238-40).
1979 suit to enjoin the use of at-large elections for failure to comply with Section 5. The county had changed to at-large voting in 1967 following increased black registration. A three-judge panel enjoined the at-large scheme, finding it had never been submitted for preclearance. A consent order then created five single-member districts, two of which were majority black, and two at-large seats. After the 1990 census, black voters again sued, alleging the districts were malapportioned. According to the ACLU report, "the district court entered an order enjoining the upcoming primary election for the board of education under the malapportioned plan. The parties then agreed upon a new plan that complied with the equal population standard and maintained two of the districts as majority black."

5) Frank Davenport v. Clay County Board of Commissioners, NO. 92-98-COL (JRE) (M.D. Ga.): Civ. No. 92-98-COL (JRE) (M.D. Ga.) (ACLU Report at 256-59).
The county had failed to preclear its change to an at-large system of voting for county commissioners in 1967. In 1980, members of the local NAACP challenged the at-large system and the failure to comply with Section 5. The court found a section 5 violation, which resulted in a return to single-member districts. After the 1990 census showed the commission districts to be malapportioned (and following an attempt to create equal districts which was not precleared before a 1992 legislative poison pill provision rendered it void), the ACLU sued seeking a remedial plan for the upcoming elections. The parties entered a consent decree in which the county admitted the districts were malapportioned in violation of the Fourteenth Amendment's one person one vote requirement and agreed to the redistricting plan which had been created before the 1992 poison pill invalidated it. The plan was precleared by DOJ.

6) Jones v. Cook County: Civ. No. 7:94-cv-73 (WLS) (ACLU Report at 271-72).
The ACLU filed suit on behalf of black voters in 1994, alleging that the county board of commissioners and board of education districts were constitutionally malapportioned after the 1990 census. According to the ACLU's report, "In a hearing on December 19, 1995, county officials agreed that 'the relevant voting districts in Cook County are malapportioned in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.' A consent decree allowed sitting commission members to retain their seats but implemented a new plan, correcting the malapportionment for the 1996 elections."

7) Thomas v. Crawford County: 5:02 CV 222 (M.D. Ga.) (ACLU Report at 272-74).
2002 suit alleged single-member districts were malapportioned in violation of the constitution's one-person-one-vote principle. The plaintiffs won summary judgment and a preliminary injunction to prevent elections from taking place under the plan. The court adopted a plan that maintained two majority-black districts.

8) Wright v. City of Albany: 306 F. Supp. 2d 1228 (M.D. Ga. 2003) (ACLU Rep. 289-93).
Black residents of the city, represented by the ACLU, sued in 2003 to enjoin use of an allegedly constitutionally malapportioned districting plan and requested that the court supervise the development and implementation of a remedial plan that complied with the principle of one person, one vote, and the VRA. According to the ACLU report,

"In a series of subsequent orders, the court granted the plaintiffs' motion for summary judgment, enjoined the pending elections, adopted a remedial plan prepared by the state reapportionment office, and directed that a special election for the mayor and city commission [be] held in February 2004."

9) Woody v. Evans County Board of Commissioners: Civ. No. 692-073 (S.D. Ga. 1992) (ACLU Report at 297-300).
In 1992, the ACLU filed suit on behalf of black voters challenging an allegedly malapportioned districting plan for the county commission and board of education under the Constitution and Section 2 of the VRA. According to the ACLU report, "on June 29 the district court enjoined 'holding further elections under the existing malapportioned plan for both bodies.'"

10) Bryant v. Liberty County Board of Education: Civ. No. 492-145 (S.D. Ga.) (ACLU Report at 340-42).
"Because Liberty County was left with a malapportioned districting plan based on the 1980 census, the ACLU filed suit in 1992, on behalf of black voters seeking constitutionally apportioned election districts for the county. The court granted plaintiffs' motion for preliminary injunctive relief on July 7, 1992, and the following year the parties agreed to a redistricting plan in which two of the six single member districts contained majority black voting age populations. The plan was precleared by the Justice Department on April 27, 1993."

11) Hall v. Macon County: Civ. No. 94-185 (M.D. Ga.) (ACLU Report at 348-49).
According to the ACLU Report, "The [Georgia] general assembly failed to redistrict the two boards during its 1992, 1993, and 1994 sessions, and in 1994, the ACLU filed suit on behalf of Macon County residents against county officials seeking a constitutional plan for the 1994 elections. On July 12, 1994, the court enjoined the upcoming election and ordered the parties to present remedial plans by July 15, 1994. In March 1995, the court ordered a five district plan that remedied the one person, one vote violations and ordered special elections be held."

12) Morman v. City of Baconton: Civ. No. 1:03-CV-161-4 (WLS) (M.D. Ga.) (ACLU Report at 364-65).
Suit to block the use of a constitutionally malapportioned districting plan following the 2000 census. According to the ACLU Report, "Black residents of Baconton, with the assistance of the ACLU, then filed suit in federal court to enjoin use of the 1993 plan on the grounds that it would violate Section 5 and the Fourteenth Amendment. The day before the election the court held a hearing, and, hours before the polls opened, granted an injunction prohibiting the city from implementing the unprecleared and unconstitutional plan."

13) Ellis-Cooksey v. Newton County Board of Commissioners: Civ. No. 1:92-CV-1283-MHS (N.D. Ga.) (ACLU Report at 370-73).
According to the ACLU report, the 1990 census showed that the five single member districts for the county board of commissioners and board of education were constitutionally malapportioned. "After the legislature failed to enact a remedial plan, the ACLU filed suit on behalf of black voters in Newton County in June 1992, seeking constitutionally apportioned districts for the commission and school board. The suit also sought to enjoin upcoming primary elections, scheduled for July 21, 1992, as well as the November 3 general election. The parties settled the case the following month and the court issued an order that '[t] he 1984 district plan does not constitutionally reflect the current population.'"

14) Lucas v. Pulaski County Board of Education: Civ. No. 92-364-3 (MAC) (M.D. Ga.) (ACLU Report at 380-84).
Black residents of the county, represented by the ACLU, filed suit in 1992 to enjoin upcoming elections under an allegedly constitutionally malapportioned plan. According to the ACLU report, "On October 14, 1992, the district court entered a consent order involving the board of Education, affirming that 'Defendants do not contest plaintiffs' allegations that the districts as presently constituted are malapportioned and in violation of the Fourteenth Amendment of the Constitution.'"

15) Cook v. Randolph County: Civ. No. 93-113-COL (M.D. Ga.) (ACLU Report at 389-93).
According to the ACLU Report, "On October 5, 1993, black voters, represented by the ACLU, filed suit. They asked the court to enjoin elections for the school board and board of commissioners on the grounds that the districting plan for both bodies was either malapportioned in violation of the Constitution and Section 2, or had not been precleared pursuant to Section 5. Later that month, on October 29, the parties signed a consent order stipulating that the existing county districts were malapportioned, and agreeing on a redistricting plan containing five single member districts with a total deviation of 9.35%. Three of the five districts were majority black."

16) Houston v. Board of Commissioners of Sumter County: Civ. No. 94-77-AMER (M.D. Ga.) (ACLU Report at 420-22).
The ACLU brought suit in 1984 on behalf of black county residents charging that the five member board of county commissioners was malapportioned in violation of the Constitution and Section 2 of the VRA. The suit also charged defendants with failing to secure preclearance of a valid reapportionment plan under Section 5. According to the ACLU Report, "After plaintiffs moved for a preliminary injunction to block the 1984 board of commissioners election, a consent order was issued acknowledging that the districts were malapportioned, and instructing both parties to submit reapportionment plans to the court. . . . On February 27, 1985, after trial on the merits, the court ruled the challenged plan unconstitutional and directed the defendants to adopt a new plan and seek preclearance under Section 5 within 30 days."

17) Cooper v. Sumter County Board of Commissioners: Civ. No. 1:92-cv-00105-DF (M.D. Ga.) (ACLU Report at 422-23).
After the release of the 1990 census, the ACLU broguth suit on behalf of black plaintiffs, alleging that the county's commission districts were malapportioned in violation of the constitutional principle of one person, one vote. On July 27, 1992, the district court entered a consent order finding "malapportionment in excess of the legally acceptable standard."

18) Williams v. Tattnal County Board of Commissioners: Civ. No. CV692-084 (S.D. Ga.) (ACLU Report at 426-27).
After the 1990 census, the ACLU, on behalf of black residents, sued to enjoin further use of an allegedly constitutionally malapportioned districting plan. According to the ACLU Report, "On July 7, 1992, the district court, finding that the existing plan was malapportioned, enjoined the July 1992, primary elections for the board of commissioners and board of education until such time as an election could be held under a court ordered or a precleared plan."

19) Spaulding v. Telfair County: Civ. No. 386-061 (M.D. Ga.) (ACLU Report at 431-33).
In September 1986, the ACLU riled suit on behalf of five black voters alleging that the county board of education was malapportioned. According to the ACLU Report, "On October 31, 1986, less than a week before the November general election, the court entered a consent order staying the elections, ordering a new apportionment plan, and providing for a special election. The court found that 'Plaintiffs have established a prima facie case that the current apportionment of the Board of Education is in violation of the Fourteenth Amendment,' and required the defendants to develop and implement a new apportionment for the school board within 60 days."

20) Crisp v. Telfair County: CV 302-040 (S.D. Ga.) (ACLU Report at 439-41).
The ACLU sued in August 2002, alleging that the county commission lines were malapportioned in violation of the Constitution and Section 2 of the VRA. According to the ACLU Report, "After plaintiffs filed suit, the county stipulated that its commission districts were malapportioned, and that 'It is possible...to draw a five single member district plan with at least one majority black district in Telfair County.' The plaintiffs then filed for summary judgment and asked the court to hold the existing plan unconstitutional and order a new plan into effect. . . . Ruling that the existing plan was malapportioned and 'violates the one person, one vote standard of the equal protection clause of the Fourteenth Amendment,' the court noted that the plan had been submitted for Section 5 preclearance and ruled the motion for summary judgment was 'largely moot.'"

21) Holloway v. Terrell County Board of Commissioners: CA-92-89-ALB/AMER(DF) (M.D. Ga.) (ACLU Report at 441-44).
In June 1992, the ACLU filed suit on behalf of black voters challenging the malapportionment of the county board of commissioners under the Constitution and Section 2 of the VRA. According to the ACLU Report, "After the reapportionment suit was brought in 1992, defendants admitted the plan was malapportioned . . . . The parties negotiated a new redistricting plan, corrected the malapportionment, and created two effective majority black districts. Despite this agreement, the county proposed, and had the 1993 Georgia General Assembly adopt, a redistricting plan which plaintiffs did not support. . . . In February 1994, the Department of Justice precleared the county's redistricting plan over the objections of the black community . . . ."

22) Flanders v. City of Soperton: Civ. No. 394-067 (S.D. Ga.) (ACLU Report at 447-49).
According to the ACLU Report, "in November 1994, the ACLU again brought suit on behalf of black voters in Soperton, challenging the five member city council as malapportioned in violation of one person, one vote. . . . A

consent order was filed August 7, 1995, in which both parties agreed the city election districts were malapportioned, and adopted a districting plan with a total deviation of 6.8% that contained two majority black districts of 75.34% and 72.92% black voting age population, respectively."