

**Follow-up questions submitted for Senator Tom Coburn, M.D.
VRA Hearing June 21, 2006**

Response of Don Wright, General Counsel of the North Carolina State Board of Elections

All of my responses are subject to the same caveat as in my written testimony. The opinions I have expressed are my own in my individual capacity, and do not necessarily reflect those of the North Carolina Board of Elections.

Don Wright:

1. What do you think is the reason that so few jurisdictions have tried to bail out from coverage?

I do not think there is any single reason why jurisdictions that may be eligible for bailout have not done so. Some jurisdictions may not be aware of the bailout provision. Others may not want to bailout for some of the reasons I provided in my written testimony. Most of the North Carolina covered jurisdictions do not see Section 5 preclearance as a burden, it has become a routine administrative matter taking little time or expense to comply with. The lack of covered jurisdictions in all covered areas filing for bailouts speaks more strongly than any other fact or rhetoric that Section 5 is reasonably easy to comply with. Obviously, many jurisdictions are not and should not be eligible for bailout based upon their track records in the last ten years.

Do you have any suggestions for ways in which the bailout provision could be modified to encourage jurisdictions that no longer suffer from racial polarization or that are majority African American to bail out?

Persons assume that covered jurisdictions receive no benefits from Section 5 and that all covered jurisdictions would desire to bail out if it was "easier." Most North Carolina jurisdictions like the protection of having USDOJ preclearance as to voting changes, it acts like a shield against claims of racial discrimination. Getting a prompt federal decision that a state, county, or municipality can use guidance and approval of their actions is a rarity in our federal system of government and should be viewed in a positive light.

I also do not believe that the bailout provision should be modified because the existing provision strikes the right balance to provide covered jurisdictions with the incentive to eliminate voting discrimination and offer equal voting opportunities.

Finally, it is my understanding that the question posed does not accurately state what the existing law is and how it should remain. Section 4(a) of the Voting Rights Act

outlines all of the criteria for bailout and reflects the considerable deliberation of Congress and the record it created in 1982. Those criteria recognize that unequal voting opportunities are not just limited to the effects of racial polarization and do not just apply to jurisdictions with African American populations. Indeed, North Carolina has a county covered for American Indians. Several other states are covered in whole or in part for American Indians or Latinos. The evidence supports keeping the existing bailout structure in place. After all, it is very reasonable to expect jurisdictions to have a clean bill of health free of voting discrimination for ten years before they should be eligible to bailout.

2. If you were able to offer an amendment to this bill, would you? If so, how would you amend this bill?

I would not offer an amendment to the bill.

3. Do you think it is a good idea/ good policy for the government to take race into account when creating voting districts? Please explain.

The government has always taken race into account when creating voting districts. For far too long, it did so in a negative manner, denying equal voting opportunities on account of race. The sad legacy of the South is that prior to the 1990 round of redistricting, several states, including my own, had not elected any black Members to Congress since the end of Reconstruction. This result did not happen by chance, especially considering the large number of blacks who in some states comprised over one-third of the eligible voting population. States are always aware of where minority voters live, and used that knowledge to divide compact groups of voters between districts in which only white candidates could be elected.

I agree with the Supreme Court that race can be considered in redistricting, as long as it does not predominate over other factors. It is good public policy. It has resulted in more representative bodies legislative bodies, including Congress. It has made our government more legitimate and accountable to all voters, regardless of their race.

Also, please see my response to Senator Cornyn's fifth question, which is also responsive to this question.

4. Should race be a deciding factor in any policy decision we make, or should Congress write laws that treat all Americans equally regardless of the color of their skin? Please explain.

In some areas, including voting and elections, race should still be considered. There still exists social and intangible discrimination based upon race even after 40 years after corrective legislation, less time than that in certain states that aggressively fought the legislation into the 1970's. The formal and informal racial inequality in this country started over three hundred years ago, why would we think the remnants of it would fade quickly after only 40 years?

Also, please see my response to the third question, which is also responsive to this question.