Senate Judiciary Committee
Testimony of Michael A. Carvin
Jones Day
June 25, 2014

Mr. Chairman and distinguished members, I appreciate this opportunity to testify concerning "The Voting Rights Amendment Act, S. 1945: Updating the Voting Rights Act in Response to *Shelby County v. Holder*."

I. INTRODUCTION AND SUMMARY

In my view, the fundamental constitutional and public policy problem with any legislative proposal to "restore" Section 5 is that there is simply no cognizable need in 2014 to restore a provision that was always intended to be a temporary and limited supplement to Section 2 of the Voting Rights Act. Although some have suggested in the wake of *Shelby County* that invalidating Section 5 somehow leaves minority voters unprotected, the reality is that Section 2 is extraordinarily effective civil rights legislation that fully protects minority voters against any electoral practices with disparate statistical "results."

This is not to say that racial discrimination in voting has ended, any more than it has ceased in employment, higher education or housing. It is to say that Section 2, particularly given its extremely expansive "results" prohibition, is more than adequate to address any unconstitutional discrimination. Just as Title VII's prohibition against discriminatory "effects" in employment and Title VI's prohibition against higher education discrimination and Title VIII's prohibition against housing discrimination do not need to be supplemented by a Section 5-type requirement to "preclear" all employment, educational and housing policies with the Justice Department, Section 2 no longer needs to be complemented by Section 5's unprecedented and onerous preclearance regime. This is particularly true because voting discrimination is easier to detect and challenge than discrimination in these other areas, because all voting practices are

openly conveyed to the public through laws and regulations in order to conduct elections, while potentially discriminatory employment, education and housing decisions are usually made in private, confidential sessions.

The absence of a remedial justification to supplement Section 2 with a "new" Section 5 is not just a public policy issue, it also renders S. 1945 unconstitutional because, like the version of Section 5 established in 2006, it would not be an appropriate exercise of Congress' authority to "enforce" the Fourteenth and Fifteenth Amendments. To be sure, the coverage formula in S. 1945 somewhat ameliorates the *temporal* flaw in the 2006 version, by looking at events in the preceding 15 years, rather than electoral data that was 34-42 years old. Yet the new formula has the same *substantive* flaw that doomed the 2006 version in *Shelby County*—the coverage formula does not identify jurisdictions where Section 5 is somehow needed because case-by-case adjudication under Section 2 is inadequate to effectively extinguish unconstitutionally discriminatory voting practices. Thus, while the proposed legislation's formula is more "current" than that used in 2006, it still wholly fails to identify the "current *conditions*" extant in the covered jurisdictions that somehow would evade effective Section 2 scrutiny, thus necessitating the extraordinarily strong additional medicine of Section 5 preclearance. *Shelby County v. Holder*, 133 S. Ct. 2612, 2627 (2013). Indeed, the "voting rights violations" used to trigger coverage, if anything, refute the notion that the covered jurisdictions can somehow evade effective Section 2 remedies and, like the 2006 formula, certainly do not accurately identify jurisdictions that are so recalcitrant and racist that they need a special preclearance regime not applied to the vast majority of states or political subdivisions.

In all events, the substantially more demanding *substantive* preclearance standards added to Section 5 in 2006 invalidate *any* effort to revive Section 5 under any coverage formula,

because those substantive standards cannot reasonably be justified as an effort to enforce the Constitution's prohibition against intentional discrimination. Finally, the proposed amendment to the "judicial preclearance" provision of the Voting Rights Act, Section 3(c), is even more obviously unconstitutional because it seeks to impose an extraordinary preclearance regime on jurisdictions that have never engaged in unconstitutional discrimination in modern times, much less unconstitutional discrimination that cannot be adequately addressed by Section 2.

II. S. 1945'S COVERAGE FORMULA IS UNCONSTITUTIONAL BECAUSE IT IS NOT APPROPRIATE ENFORCEMENT LEGISLATION UNDER THE FOURTEENTH OR FIFTEENTH AMENDMENTS.

It is important at the outset to identify the constitutional basis that Congress has to eliminate racial discrimination in voting. As the Supreme Court has repeatedly noted, "the Framers of the Constitution intended the states to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections." *See e.g.*, *Gregory v. Ashcroft,* 501 U.S. 452, 461-462 (1991); *Shelby County*, 133 S. Ct. at 2623. In light of this, it has always been recognized that any potential congressional power to impose preclearance must be found in the enforcement clauses of the Fourteenth and Fifteenth Amendments, which authorize Congress to "enforce" the Fourteenth and Fifteenth Amendment's prohibitions against abridging voting rights on account of race. *See South Carolina v. Katzenbach,* 383 U.S. 301, 308-310 (1966); *Shelby County*, 133 S. Ct. 2629. These Amendments, however, prohibit only *intentional* discrimination in voting; *i.e.*, disparate treatment of voters based on their race. *Mobile v. Bolden,* 446 U.S. 55 (1980); *Washington v. Davis*, 426 U.S. 229 (1976). Accordingly, while Congress has very broad power to "enforce" these nondiscrimination commands, it can only enact laws with some nexus to eradicating or remedying such purposeful discrimination—it cannot enact laws not fairly described as enforcing purposeful discrimination prohibitions, simply because the laws "help" minorities. *See City of Boerne v. Flores*, 521 U.S. 507 (1997).

The dispositive constitutional question, then, is whether Section 5 is needed to enforce the Civil War Amendments' prohibitions against purposeful discrimination, even though Section 2 of the VRA already prophylactically prevents any such potential discrimination, by prohibiting even *neutral* actions that have disproportionate "*results*" for minority voters. 42 U.S.C. § 1973(a). In prior cases, the Court found that Section 5 served a permissible enforcement role precisely and only because its extraordinary preclearance regime was necessary to supplement Section 2, by effectively curing problems that were difficult to resolve through Section 2's "case-by-case litigation." *See Katzenbach*, 383 U.S. at 328; *City of Rome v. United States*, 446 U.S. 156 (1980). The inference that Section 5 played a valuable supplementary role was quite reasonable in the 1960s and 1970s, given the level of entrenched Southern intransigence and the limited scope of Section 2, which in those decades only prohibited *purposeful* discrimination. *See Mobile* at 66. But, given the dramatic improvements in the covered jurisdictions since the 1960's and the fact that Section 2 has been greatly expanded to now prohibit discriminatory "results," it is quite difficult to infer that Section 5's extraordinary and extra-constitutional regime is needed *on top of* Section 2's very effective remedies. And if Section 2 is effective at preventing and remedying unconstitutional discrimination in the covered jurisdictions, then Section 5's burdens are, by definition, gratuitous and unnecessary to vindicate the Constitution's guarantees.

If Section 2 broadly and effectively precludes all actions with a discriminatory "result"—as it does—there is simply no need to supplement this effective antidiscrimination law with the burdensome preclearance requirement, just as it would be unconstitutional to supplement Title VII's "effects test" with a law requiring public employers to preclear all hiring decisions with the Justice Department by proving the absence of such effect. Even

Judge Tatel, who wrote the *Shelby County* D.C. Circuit opinion *upholding* Section 5, acknowledged this obvious point; stating that Congress would have "*no* justification for requiring states to preclear their voting changes" "if Section 2 litigation is adequate to deal with the magnitude and extent of *constitutional* violations in covered jurisdictions" because the "critical factor" in the Supreme Court cases upholding Section 5 was that " case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting." *Shelby County v. Holder,* 679 F.3d 848, 863-64 (D.C. Cir. 2012) (emphasis added).

1. The question therefore is whether S. 1945 is reasonably designed to get at "unconstitutional discrimination" that Section 2 fails to adequately address. It plainly is not, for reasons already set forth in *Shelby County* itself. As noted, the proposed legislation's coverage formula is somewhat more "current" than the 2006 Congress' formula, since it goes back 15, rather than 34 to 42, years. But, as *Shelby County* emphasized, coming up with a more "current" formula is hardly a cure-all. Rather, it is merely an "*initial prerequisite* to a determination that exceptional conditions still exist justifying such an 'extraordinary departure from the traditional course of relations between the States and the Federal Government.'" *Id.* at 2631, quoting *Presley v. Etowah County Comm'n.*, 502 U.S. 491 at 500-501 (1992). And, again, the only condition "justifying" the "extraordinary departure" from the "traditional" rule that state enactments are presumptively valid until a plaintiff proves otherwise, is a showing that this traditional presumption of innocence precludes effective eradication of constitutional violations; *i.e.*, that "case-by-case litigation ha[s] proved inadequate to prevent such racial discrimination in voting." *Id.* at 2624.

Satisfying this standard is an extraordinarily daunting task because Congress has, quite correctly, determined that Section 2 is adequate to eliminate all potentially unconstitutional

voting discrimination in the vast majority of the United States. And it is quite difficult in modern times to reasonably argue that there are states that are so much worse than the others that they can somehow evade the Section 2 remedies that are effective throughout the rest of the Nation.

It seems clear that the proposed legislation's coverage formula clearly does not remotely satisfy this demanding test, because it is not even designed to identify those areas where the Section 2 case-by-case approach that suffices for the rest of the United States is somehow inadequate in the jurisdictions being targeted. Specifically, the coverage formula subjects states to Section 5 preclearance if there have been five "voting rights violations" in the past 15 years, including one by the state itself. S. 1945, 113th Cong. § 3(a)(1) (proposed subsection (b)(1)(A) to 42 U.S.C. § 1973b(b)); *see also id.* (Under proposed subsection (b)(1)(B), political subdivisions are covered if they have had three violations during that period or one violation plus "extremely low minority turnout during the previous 15 calendar years."). "Voting rights violations" consist of final Section 2 or Section 5 judgments by a court, or an unreversed Section 5 objection by the Attorney General, in addition to constitutional violations. *Id.* (proposed subsection (b)(3)).

Thus, S. 1945's formula for imposing preclearance does not even attempt to focus on jurisdictions engaged in unconstitutional discrimination that is not adequately remedied by Section 2. To the contrary, coverage is largely triggered by a finding of discriminatory "results" or "effects" that do *not* violate the Constitution and on *successful* Section 2 litigation.[1] It is not logical to identify jurisdictions where traditional Section 2 litigation is inadequate by targeting

[1] I have not examined the question in detail, but seriously doubt that the formula would ensnare any states or political subdivisions if "voting rights violations" were defined as "constitutional violations."

jurisdictions where Section 2 litigation has been most successful. It is equally illogical to identify jurisdictions where *unconstitutional* discrimination cannot be remedied by focusing on jurisdictions which have been found to violate *statutory* voting rights protections.

Relying on Section 5 objections by the Attorney General is equally misguided because Section 5 also prohibits constitutionally compliant practices with a discriminatory "effect" and because the Justice Department in modern times has a well-recognized propensity to object to completely nondiscriminatory voting practices merely because they fail to maximize the interest of minorities or the Democratic Party supported by minorities. *See Miller v. Johnson*, 515 U.S. 900, 921 (1995). For example, in the case where I represented voters challenging the constitutionality of Section 5, the Justice Department had objected to a majority-black city's adoption of a rule requiring nonpartisan elections for local offices, simply because it would purportedly lead to less support for black Democratic candidates. *See LaRoque v. Holder*, 831 F.Supp.2d 183, 192-93 (D.D.C. 2011).

In short, under S. 1945's formula, a state or political subdivision that has never been adjudicated to have violated the Constitution's protection of voting rights will be deemed a jurisdiction where "flagrant" unconstitutional discrimination is so entrenched that the preclearance procedure needs to be added on top of Section 2's prophylactic ban on discriminatory "results." But, of course, jurisdictions that have never violated the Constitution cannot reasonably be identified as flagrant violators of the Constitution, such that preclearance is required to "enforce" constitutional norms.

Indeed, S. 1945's formula seems to be based on flimsier evidence than that by which the 2006 Congress sought to justify the coverage formula struck down in *Shelby County*. That is, Section 5 proponents argued that the 2006 formula was justified because the "Katz study"

showed that "successful § 2 lawsuits" remain "concentrated in the jurisdictions singled out for preclearance." *Shelby County*, 133 S. Ct. at 2642-2643 (Ginsburg, J., dissenting) (quoting *Northwest Austin*, 557 U.S. at 203). The *Shelby County* majority, however, refused to even *evaluate* this § 2 evidence because, "[r]egardless" of what it showed, "no one can fairly say that it shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Id.* at 2629 (quoting *Katzenbach* at 308, 315, 331). Needless to say, the fact that there have been *5* statutory violations in a state in *15* years also does not establish "anything approaching" the flagrant and racist discrimination of the Jim Crow South in the 1960's, or otherwise clearly distinguish the covered jurisdictions from the rest of the Nation.

The states that are subject to preclearance under S. 1945's formula further reveals the inadequacies and inconsistencies of that formula. I have been told (but have not independently confirmed) that the 4 states which currently violate S. 1945's formula are Texas, Mississippi, Louisiana and Georgia. Three of these states were part of the Jim Crow South subjected to preclearance under the 1965 Act, but all of them in modern times have voting participation rates by black voters that exceed or closely resemble those of whites. *See Shelby County*, 133 S. Ct. at 2626 (identifying participation rates in Georgia, Lousiana, and Mississippi). (Texas was not part of the Southern effort to disenfranchise black voters and was not even covered by the initial 1965 Act.)

Simply put, it cannot be persuasively shown that, for example, Texas and Georgia are so much more racist and law-defying than states like Alabama and South Carolina that they must be subjected to a preclearance regime that Alabama and South Carolina are exempted

from. Indeed, it was vigorously argued in *Shelby County* that Alabama was the paradigmatic example of a state that needed to be subjected to preclearance under *any* reasonable coverage formula. *See id.* at 2645-48 (Ginsburg, J., dissenting). The fact that the proposed formula excludes Alabama, standing alone, is powerful evidence that it does not "accurately" target "those jurisdictions uniquely characterized by voting discrimination 'on a pervasive scale.'" *Id.* at 2625.

2. Finally, and most generally, it should be noted that Section 5 proponents' arguments concerning Section 2's ineffectiveness and Section 5's necessity grossly distort both Section 2 and Section 5. The most obvious falsehood is that Section 2 litigation focuses on voting problems "only after the fact," requiring tolerance of illegal voting schemes "for several electoral cycles" so that a "§ 2 plaintiff can gather sufficient evidence to challenge" the system. *Shelby County*, 133 S. Ct. at 264 (Ginsburg, J., dissenting.) This is demonstrably untrue.

It is quite clear that Section 2 vote dilution challenges to redistricting schemes occur in the same time-frame and are based on the same evidence as any Section 5 redistricting dispute. Virtually all Section 2 challenges are brought before the first election under a new redistricting scheme and all of them rely on precisely the same analysis of racially polarized voting and potential minority success as is analyzed in Section 5 cases. That is, both Section 2 and Section 5 courts project future minority electoral success and racially polarized voting based on past electoral returns. There is no reason to believe, and no evidence to suggest, that courts adjudicating Section 2 challenges are somewhat slower than the D.C. courts resolving Section 5 challenges. If anything, experience proves otherwise. In the highly publicized challenge to Texas' statewide redistricting, for example, the Texas three-judge-court adjudicating the Section 2 challenges resolved the case and entered a remedial plan in November of 2011, while

the D.C. three-judge-court waited until late August of 2012 to resolve the Section 5 challenge, well past the time needed for relief that could effectively cure any problems prior to the upcoming elections. *See Perez v. Perry*, 835 F. Supp.2d. 209 (W.D. Tex. 2011); *Texas v. United States*, 2012 WL 3671924 (D.D.C. Aug. 28, 2012). (For this reason, S. 1945's new standard for preliminary injunctions—which virtually guarantees that state laws will be enjoined before upcoming elections—is both unnecessary and, as a practical matter, improperly revives the presumption *against* the validity of state voting laws. *See* S. 1945 § 6.)

In short, Section 2 clearly addresses the "second generation" vote dilution issues referenced by the 2006 Congress at least as well as Section 5. And with respect to "first generation" discriminatory denials of ballot access, the 2006 Congress unequivocally found that ballot access discrimination—such as moving polling places or unreasonable voter qualification requirements—was not a special problem in covered jurisdictions, especially given that minority registration and turnout in those areas equaled or exceeded the rate in noncovered jurisdictions. *See Shelby County*, 133 S. Ct. at 2625-26. Since all agree that Section 2 is adequate to ensure nondiscriminatory minority voting participation in noncovered jurisdictions, and since such participation is *higher* in the covered jurisdictions, it necessarily follows that Section 2 is adequate in the covered jurisdictions—eliminating the need for additional Section 5 burdens.

III. THE JUDICIAL "BAIL-IN" PROCEDURE AMENDMENT OF S. 1945 IS NOT PERMISSIBLE ENFORCEMENT LEGISLATION UNDER THE FOURTEENTH OR FIFTEENTH AMENDMENTS.

The new judicial preclearance section of S. 1945 is even more obviously unconstitutional than the general coverage formula. While previously a court could require a jurisdiction found to have violated the *Constitution* to be subjected to Section 5 preclearance, S. 1945 now authorizes courts to impose this burden based on any violation "of any Federal

voting rights law that prohibits discrimination on the basis of race, color, or membership in a language minority group" (except for some violations based on voter ID requirements). *See* S. 1945, § 2(a). Thus, the entire purpose and effect of this amendment is to empower courts, with no constraints on their discretion, to subject states or political subdivisions to preclearance for any violation of a federal voting rights law, no matter how far removed that statutory violation is from a constitutional violation. For the reasons stated, subjecting states to preclearance for five statutory violations is not reasonably characterized as an effort to enforce the Constitution's nondiscrimination mandates. *One* such violation is therefore plainly inadequate.

This is particularly true because the statutes being violated need not be the Voting Rights Act, but any federal "voting rights" law that prohibits racial or ethnic discrimination, and the violation found need not relate to the part of the federal statute prohibiting discrimination, but extends to violating any part of the statute, no matter how unrelated to voting discrimination. Since most federal laws dealing with elections have a nondiscrimination command, this would include violations of laws such as the National Voter Registration Act. *See* 42 U.S.C. § 1973gg-6(b) (requiring that any state effort to confirm voter registration be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965"). Thus, violations of the NVRA having nothing to do with racial or ethnic discrimination would somehow provide a predicate for finding that the jurisdiction is a frequent violator of the Constitution's guarantees against racial discrimination.

For example, the Eleventh Circuit recently opined that the NVRA prohibits states from having programs removing *non-citizens* from the voting rolls, even though that statute makes it a federal crime for non-citizens to both register and to vote, and even though there was no dispute that the database for identifying non-citizens was a fully accurate one used by the

Department of Homeland Security (which is why even the Justice Department dropped its objections to the program when the Department of Homeland Security database was employed by Florida). *See Arcia v. Florida Secretary of State*, 746 F.3d 1273 (11th Cir. 2014).

Needless to say, *protecting* citizens' votes by excluding non-citizens from the electorate hardly suggests that the political subdivision has a predisposition to *exclude* minority citizens from the ballot. Yet, under S. 1945, a single absurd decision like *Arcia* would be sufficient to subject an entire state to preclearance.

Even strong supporters of Section 5, such as Professor Rick Hasen of the University of California-Irvine, have recognized that this provision of S. 1945 is "likely unconstitutional." As Professor Hasen put it, "I am quite skeptical the current court would allow states or political subdivisions to be bailed back into coverage based upon conduct which has not been found to be unconstitutional. Doing so would exceed Congress's power to enforce the 14th and 15th Amendment and violate principles of state sovereignty by being not congruent and proportional to the extent of state violations." (Professor Hasen clarified that this was not his personal view, but a "predictive judgment about how the current Roberts Court would decide these congressional power questions." Richard Hasen, *Initial Thoughts on the Proposed Amendments to the Voting Rights Act, Election Law Blog* (Jan. 16, 2014, 1:32 PM), http://electionlawblog.org/?p=58021.)

Finally, this "bail-in" provision will create mischief by leading to a number of lawsuits challenging technical violations of NVRA-like laws, in order to provide a basis for the judiciary to subject an entire state or subdivision to extended Section 5 preclearance.

IV. S. 1945 IS NOT PERMISSIBLE ENFORCEMENT LEGISLATION BECAUSE IT PERPETUATES THE 2006 CONGRESS' SUBSTANTIVE CHANGES TO SECTION 5.

Even assuming "current conditions" could justify imposing *some* preclearance requirement, S. 1945 would still be unconstitutional because it perpetuates the new, "expanded" substantive requirements to secure preclearance, added to Section 5 for the first time in 2006. These new substantive standards cannot be justified as "enforcing" the Constitution's prohibitions of purposeful discrimination because they invalidate practices that are not even arguably unconstitutional and, indeed, seem to clearly *violate* the Constitution's nondiscrimination commands by requiring and authorizing racially preferential treatment.

First, the 2006 Congress absolutely prohibited "diminishing" a minority groups' "ability . . . to elect their preferred candidates of choice," regardless of whether changed demographics or traditional districting principles compelled such diminution. *See* 42 U.S.C. § 1973c(b), (d). Thus, the 2006 Congress imposed a draconian quota floor under minority electoral opportunities until 2032, for the avowed purpose of overturning *Georgia v. Ashcroft*, 539 U.S. 461 (2003) which granted jurisdictions far more flexibility in arranging their electoral districts, precisely to avoid the serious constitutional questions created by the inflexible regime imposed by the 2006 Amendments. *Id.* at 480-82. This mandate to prefer certain groups based on race does not enforce—indeed, violates—the Constitution's requirement of equal treatment for all "persons." Notably, *Shelby County* emphasized precisely this danger of racially preferential requirements under the "current application of Section 5" caused by the 2006 Amendments. *Shelby County*, 133 S. Ct. at 2627. As the Court noted, "considerations of race that would doom a redistricting plan under the 14th Amendment or § 2 seem to be what saves it under § 5." *Id.*, quoting *Ashcroft*, 539 U.S. at 491 (Kennedy, J., concurring). Since S. 1945

does not alter this quota floor, it is unconstitutional regardless of whether the coverage formula is valid.

Second, the 2006 Congress required covered jurisdictions to affirmatively prove the *absence* of "any discriminatory purpose," 42 U.S.C. § 1973c(c), notwithstanding the difficult burden of proving that negative. *See Shelby County*, 679 F.3d at 887-88. Such an expansion is clearly unwarranted—it could not possibly be the case that intentional discrimination that evades ordinary antidiscrimination litigation is more pervasive in the South now than it was in 1965. As *Shelby County* put it, "in light of those two [2006] amendments, the bar that covered jurisdictions must clear has been raised even as the conditions justifying that requirement have dramatically improved." *Id*. at 2627.

More generally, the Supreme Court cases overturned by the 2006 Amendments were expressly designed to alleviate the pressure on covered jurisdictions to engage in racially preferential redistricting and other voting practices. By reviving these invalid interpretations of Section 5, the 2006 amendments ensured that the preclearance requirement, far from being a deterrent to racial gerrymandering, would be the moving force behind racial, as well as political, gerrymandering. . As has been extensively documented, the Justice Department in the 1990s used its Section 5 powers to impose a "black-max" districting policy on covered jurisdictions, requiring them to discard traditional districting principles to maximize the number of grotesque majority-minority districts. *See Miller v. Johnson*, 515 U.S. at 921. Indeed, every racially gerrymandered district invalidated under *Shaw v. Reno*, 509 U.S. 630 (1993) and its progeny is directly traceable to the Justice Department's requirement to mandate such districts, even though they were irreconcilable with traditional districting principles.

In addition to being a powerful engine for racial gerrymanders, Section 5 has also been extensively used to require political line-drawing to advance parochial partisan interests. In the 1990 and 2000 redistricting cycles, Republicans used Section 5 to create or maintain majority-minority districts, because those districts served their political interests. (Majority-minority districts typically benefit Republicans because it makes the adjacent, predominantly white districts more amenable to Republican success.) *See, e.g.*, Steven Hill, *How the Voting Rights Act Hurts Democrats and Minorities*, THE ATLANTIC, June 17, 2013 ("The GOP has found the VRA to be a great ally . . . [because] as traditionally applied, it has helped the party win a great number of legislative races.").

In the latest round of redistricting, Democrats used Section 5 as a partisan tool to preclude any diminution of their potential electoral success. For example, the 2012 decision in *Texas v. United States*, No. 11–1303, 2012 WL 3671924 (D.D.C. Aug. 28, 2012) squarely held that Section 5 prohibits diminishing the electoral fortunes of white Democrats solely because they receive the support of most minority voters in general elections, even though there is no indication that the district could elect a minority Democratic candidate or of racially polarized voting. *Id.* at *38-44. Specifically, the Texas court concluded that Section 5 protected the district of white Democratic Congressman Lloyd Doggett, even though whites constituted the vast majority of voters in his district. *Id.* at *39. Consequently, far from protecting minority voters against denials of equal opportunity "on account of race," Section 5 granted preferential partisan treatment of the nonminority candidate preferred by minorities in general elections (virtually always the Democratic candidate), in every district where there was a cognizable minority population. Needless to say, such a preference for one political party has nothing to do with protecting minorities against race-based discrimination and therefore has nothing to do

with enforcing the Fourteenth and Fifteenth Amendments' guarantees of racial equality in voting.