

**CHIEF JUSTICE EARL WARREN INSTITUTE ON RACE, ETHNICITY AND
DIVERSITY**

UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW



**Voting Rights Act Reauthorization:
Research-Based Recommendations
to Improve Voting Access**

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I. SUMMARY OF POLICY RECOMMENDATIONS

1. Restore discriminatory intent as a rationale for objecting to a voting change pursuant to Section 5
2. Disallow substituting “ability to elect” districts with “influence districts” in Section 5 review
3. Establish a Commission to Study Revising the Section 5 Coverage Formula
4. Ensure that partisan block voting does not mask racial block voting in Section 5 and Section 2 analyses
5. Adjust Section 203 coverage formula – 1. cover jurisdictions with 7,500 or more limited English proficient voting age citizens of the same language & 2. exempt jurisdictions with fewer than 25 LEP voting age citizens of the same language group
6. Require covered jurisdictions to submit bilingual plans to DOJ for review.
7. Assist Section 203 compliance by providing funding and assistance.
8. Expand federal observer jurisdiction to Section 203 covered jurisdictions.
9. Clarify that Section 208 applies to voters with limited English language abilities.
10. Bring parity to fines for violations.
11. Authorize the Attorney General to collect civil penalties for non-compliance.
12. Make expert witness fees recoverable.

II. INTRODUCTION

The passage of the Voting Rights Act of 1965 provided the single greatest legislative victory in the African-American struggle for political equality and democratic voice. The statute marked the beginning of an extended federal campaign to give effect to the rights contained in the Fifteenth Amendment and to make America live up to its promises of political liberty and freedom. In 1975, the Act was amended to extend protection and guarantee voting rights to language minorities – Latinos, Asian Americans, Native Americans, and Alaska Natives. Forty years and several reauthorizations later, the Act continues to embrace protections for both racial and language minority groups. It remains one of the nation’s premier vehicles for advancing the cause of racial fairness in the electoral arena.

While portions of the Voting Rights Act (“the Act”) are permanent, the “special” or temporary provisions of the Act are set to expire in 2007. These include those sections that require certain jurisdictions to obtain preclearance, or permission, before instituting changes to their voting practices (“Section 5”), require certain jurisdictions to provide all election related information and assistance in certain languages other than English (“Section 203”), and allow the Federal government to send Federal Observers and Examiners to observe election day activities and participate in registering voters (“federal observer provisions”).

In 2005, the Chief Justice Earl Warren Institute for Race, Ethnicity, and Diversity at Boalt Hall School of Law commissioned several studies pertaining to the temporary provisions of the Voting Rights Act to help inform the reauthorization debate with scholarly research. The result of this effort was the production of nearly twenty studies,

including both quantitative and legal analyses, pertaining to various aspects of the expiring provisions. Based on the results of these studies, as well as research conducted by Warren Institute staff, the Institute has formulated several policy recommendations that Congress should consider during the reauthorization debate. This paper sets forth a summary of the research commissioned and conducted,¹ policy recommendations informed by that research, and model modifications to the current text of the Voting Rights Act that will effectuate the policy recommendations discussed.

III. SYNTHESIS OF RESEARCH:

A. Summary of Section 5 Research

1. Continuing Need for Section 5 preclearance requirements

Several studies addressed the continuing need for Voting Rights Act protections in general, and Section 5 protections, in particular. Studies analyze evidence of continuing discrimination, both from the first hand experience of advocates and community leaders and from cases regarding voting discrimination. Two studies address current administration of the Act to gauge its effectiveness and the reasonableness of its continuation.

One study examined voting discrimination cases brought under Section 2 of the Act since 1982 to determine the extent to which the discrimination Section 5 seeks to remedy and prevent persists.² Section 2 cases are germane to reauthorization because they provide both direct evidence of constitutional violations of the right to vote as well as reasoned judicial determinations that discriminatory voting practices continue,

¹ Drafts of several of the papers commissioned are available on the Warren Institute's website (www.law.berkeley.edu/centers/ewi/research/index.html#votingrights) and will be produced in a print volume.

² Ellen D. Katz, "The Senate Report in Court: A Comprehensive Portrait of Section 2 Decisions since 1982."

including in Section 5 covered jurisdictions subject to such litigation. Evidence in Section 2 cases reveal that four decades after the enactment of the Voting Rights Act, racial discrimination in voting is far from over. Federal judges adjudicating Section 2 cases over the last twenty-three years have documented an extensive record of conduct by state and local officials that they have found intentionally racially discriminatory.³ Such evidence supports and justifies reauthorization of Section 5, which was designed to prohibit the application of discriminatory voting changes as well as remove the onus on private individuals to challenge such practices after they were applied.

The study identified 322 Section 2 cases with published resolutions filed since 1982.⁴ Plaintiffs prevailed in 117 (36.3%) cases, with more successful cases in Section 5 covered jurisdictions than non-covered jurisdictions. The most commonly challenged practice was at-large elections (138 cases), nearly half of which were held to violate Section 2. The second most common lawsuits were challenges to redistricting (106 lawsuits), of which 42 ended with a favorable outcome for the plaintiffs.⁵ Plaintiffs seeking to prevent dilution of influence districts (where the minority population

³ A short list of examples of recent findings of intentional voting discrimination: 2004's Shirt v. Hazeltine, 336 F.Supp.2d 976 (D.S.D. 2004), opinion documents how county officials in South Dakota purposely blocked Native Americans from registering to vote and casting ballots; United States v. Charleston County, SC, 365 F.3d 341 (4th Cir. 2004), reveals deliberate and systematic efforts by County officials to harass and intimidate African American residents seeking to vote; Dillard v. Town of North Johns, 717 F.Supp. 1471 (M.D. Ala. 1989), describes the town mayor's refusal to provide black candidates state law mandated registration forms; Harris v. Graddick, 593 F.Supp. 128 (M.D. Ala. 1984), sets forth the county's refusal to hire black poll workers for white precincts; a Philadelphia case, Marks v. Stinson, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994), describes deliberate and collusive efforts by party officials and City election commissioners to trick Latino voters into casting illegitimate absentee ballots that would never be counted; and United States v. Town of Cicero, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000), documents an 18 month residency requirement designed to stymie Hispanic candidacies.

⁴ The actual number of Section 2 cases is likely much larger since many cases are resolved without published opinions; the study estimates that more than 1,600 Section 2 cases were filed since 1982.

⁵ Other cases identified included: 30 challenging election procedures (e.g. voter registration or residency requirements, polling place action by election officials), 13 of which ended with a favorable outcome for the plaintiff; 11 challenging majority-vote requirements (e.g., run-off requirement, anti-single shot provisions, or numbered-place system), six of which were held the practice to violate Section 2; and 32 challenging annexations, felon disfranchisement rules, and appointment practices, none of which ended with a favorable outcome for the plaintiff.

constituted less than a majority and did not demonstrate an ability to elect a candidate of choice) pursuant to Section 2 did not prevail. On the other hand, partisan politics play a role in adjudication of Section 2 claims: courts that determined that partisan preference explained white voters' failure to vote for minority candidates also ruled in favor of defendants.

Another study regarding the continuing need for “the Act” in Texas highlighted live testimony from community leaders, advocates, and expert witnesses and found that discrimination against Latino and black voters in Texas persists.⁶ Based on this testimony, the authors conclude that minorities' voting rights would take a dramatic turn for the worse if Section 5 and other Voting Rights Act protections were abandoned. Indeed, they contend that the findings support the argument that “the Act” plays an important role in protecting minority voting rights in Texas, both as a tool to remedy discriminatory practices and as a deterrent to possible violations. For example, the authors note that Texas has been subject to more Department of Justice (“DOJ”) objections to voting changes than any other state covered by Section 5. In particular, witnesses cited the objection to Texas's 2001 reapportionment of the Texas House of Representatives, which they characterized as a gerrymander against Hispanic voters that would have eliminated three Hispanic districts despite large growth in Hispanic population in the state between 1990 and 2000. In addition, witnesses complained that in the Fifth Circuit, racial impacts on districts are ignored if defendants offer a partisan rationale for redistricting decisions.

⁶ Richard Gambiatta, George Korb, & Rodolfo Rosales, “A Day Without the Voting Rights Act.”

Updating some evidence Congress considered when passing and renewing the temporary provisions of the Act, witnesses noted that socio-economic disparities between Latinos and African Americans and the Anglo population in Texas persist, including significantly lower levels of educational attainment and income for Latino and black Texans. In addition, witnesses noted that Latinos and African Americans are underrepresented in elected bodies in Texas on the statewide, county, and local level.

Another study gauged Section 5's effectiveness by analyzing how the Department of Justice acted upon election changes submitted from Section 5 covered jurisdictions from 1990 to 2005⁷, focusing on the issuance of more information requests ("MIRs") – a formal letter requesting the submitting jurisdiction provide additional information about the proposed change – rather than solely on objections to changes. Issuing an MIR can prevent implementation of a discriminatory voting change because upon receiving an MIR, a covered jurisdiction may choose whether or not to respond, but still cannot implement the proposed voting change without receiving preclearance.

In this first-ever analysis of MIRs, the authors find that MIRs play a significant and more far-reaching role than objections in two ways. First, more MIRs are issued than objections. While the number of both objections and MIRs issued has declined dramatically since 1995, the number of MIRs issued (6,717) between 1990 and 2005 exceeds the number of objections by a factor of eight. Second, MIRs are issued regarding a larger variety of proposed election changes than objections. While method of

⁷ Luis Fraga & Maria Lizet Ocampo, "The Deterrent Effect of Section 5 of the Voting Rights Act: The role of More Information Letters." The study finds that 261,390 changes were submitted to DOJ for review during that time. The largest number of changes, 59,002 (22.6%) were submitted for approval to modify polling places, followed by annexations at 54,760 (20.9%), precincts at 36,253 (13.9%), and voter registration procedures at 22,002 (8.4%), combined accounting for a total of 65.8% of all changes submitted.

election, redistricting, and annexations accounted for nearly all (82.3%) objections issued, these topics only comprised 49.5% of MIRs issued. A substantial portion of MIRs was also issued for submissions regarding polling place changes, precincts, and voter registration.

Analysis of the final outcome of changes receiving MIRs shows their preventive effect. Between 1990 and 2005, 365 submissions receiving MIRs were ultimately resolved with an objection to the proposed change (of 792 total objections). Moreover, an additional 855 submissions receiving MIRs ended with withdrawals, superseded changes, and no responses, effectively invalidating these proposed changes and increasing the impact of the DOJ on submitted changes by 110% more than objections alone.

Another study reviewed the function of the bailout provisions of Section 5 since last amended and how the provisions might be improved during reauthorization.⁸ This study posits that bailout is not overly burdensome, in terms of expense or time, despite the low number of jurisdictions that have taken advantage of the option. The author, who has represented jurisdictions that have applied for bailout, estimates that the process costs approximately \$5,000 in legal fees. He opines that the standards for bailout are not too onerous, as they closely mirror Section 5 requirements,⁹ and points out that all jurisdictions that have applied for bailout since the 1982 reauthorization have been successful. Moreover, he contends that the option of bailing out of Section 5 coverage and the fact that the bailout procedure is not overly burdensome demonstrate that Section

⁸ J. Gerald Hebert, “The Voting Rights Act: Is it Time to Bailout?”

⁹ He suggests that the requirement to show Section 5 compliance, which some have suggested is too onerous, should be retained because compliance is not difficult to prove and jurisdictions are not penalized for inadvertent failure to submit and are allowed the chance to submit late, even after applying for bailout in fact.

5 is narrowly tailored because jurisdictions that should not be covered can be exempted from coverage.

To improve Section 5's bailout procedures, the author suggests allowing political subjurisdictions within covered counties to pursue bailout even if the county as a whole has not yet been bailed out of coverage. Currently, counties within covered states may pursue bailout independently of the states, but political subjurisdictions, such as cities or special districts, may only pursue bailout after the county in which they are located has successfully obtained bail out from coverage. Allowing political subdivisions to act independently of counties would increase options for covered political subjurisdictions.

2. Electoral Representation and Standard of Review: Measuring Participation, Representation, and Influence

Several studies analyzed issues of electoral representation, influence, and participation. These issues are particularly germane to reauthorization in light of 2003's Georgia v. Ashcroft decision, in which the Supreme Court introduced a new standard of review for redistricting plans submitted for Section 5 review by introducing the idea of "influence districts" possibly compensating for lost "majority minority" districts. The commissioned studies analyzed various aspects of minority access and influence, including: identifying obstacles to minority participation, the demographic requirements for minority voters to elect their candidates of choice, which districts provide "influence" to minority voters, how to define "influence," and the proper standard for review in redistricting plans submitted for pre-clearance. Commissioned quantitative research found that descriptive representation – being represented by a representative of one's own racial/ethnic background – was most likely to indicate successful substantive representation, or protection/advocacy for voters' interests.

a. Access and Participation

One study assessed the relationship between electoral structures, the political participation of blacks, Latinos, and Asian Americans, and the ensuing representation, or lack thereof, of these groups in the context of city council elections.¹⁰ It notes that despite gains in minority representation since “the Act” passage, minority political representation still lags behind that of non-minority. Indeed, although blacks, Latinos, and Asian Americans combined constitute more than 25% of the US population, they constitute only 5% of elected officials nation wide. Latino citizens are the most under-represented.¹¹

After analyzing several possible election-related causes for this underrepresentation, the authors identified two. First, electoral representation for blacks is adversely affected by institutional aspects of elections,¹² such as type of election (at-large vs. district), timing of election, form of government, etc. Changing city council elections to fall on the same day as national elections and changing the method of election from at-large to districts would increase black representation on city councils by just over 6 percent, all else equal.¹³ Second, Latino and Asian American representation was

¹⁰ Zoltan L Hajnal and Jessica Trounstine, “Transforming Votes into Victories, Turnout, Institutional Context, and Minority Interests in Local Politics.”

¹¹ In cities where they represent five percent or more of the population, Latino representation averages 13 percent below parity. Asian Americans average 9 points below parity and African American council representation averages 8 points below parity.

¹² The study focused on six sets of institutions that prior research identified as potentially related to minority representation: at-large vs. district elections, election timing, candidates’ party affiliation, term limits, city council size, and current form of government (mayor council form vs. council manager).

¹³ None of the other proposed institutional solutions such as term limits, partisan elections, larger council size, or the mayor-council form of government is significantly related to African American city council representation.

adversely affected by low voter participation. Also, for Latinos and Asian Americans, underrepresentation greatly increases as the population of each group grows.¹⁴

Another study analyzed the extent to which a district's racial composition affects turnout of minority voters with an eye to what levels of Latino population are needed to secure Latino voters' ability to elect their candidate of choice.¹⁵ The study analyzes voter turnout information for general elections from 1996 to 2002 in assembly districts in Southern California and New York City. Based on their analyses, the authors conclude that the demographic composition necessary for Latinos to elect candidates of choice varies from district to district and may not necessarily be determined by a numerical majority of Latinos in a district. For example, they find that the actual proportion of Latino voters needed in a district to produce more than 50% Latino turnout is higher in New York than it is in California. Thus, they advocate abandoning a mechanical reliance on whether a district is majority Latino in favor of district by district analysis of a variety of factors that affect Latino voters' ability to elect a representative of their choice, such as population, citizenship, registration, turnout, etc. Their analysis informs the "influence" district debate because they found that Latino voter participation was highest in districts with higher Latino populations and lower when Latino population was lower. Moreover, the relationship between Latino population and turnout was not linear, so one cannot assume that a given level of Latino population will consistently lead to a corresponding level of Latino turnout or influence.

¹⁴ In cities where they represent at least a quarter of the population, Latinos are 25 points below parity and Asian Americans are 22 points below parity.

¹⁵ Gary Segura and Nathan Woods, "Majority-minority Districts, Co-ethnic Legislators, and Mobilization Effects Among African-American and Latino Registered Voters."

One study analyzed the election of County Supervisors in Mississippi to test the frequently proffered idea that the creation of majority-minority districts has harmed minority representation by concentrating black voters in fewer districts, leaving more districts dominated by white conservative voters, who are more likely to elect Republicans, and leading to a net loss of Democratic elected officials.¹⁶ This study found that at the county government level in Mississippi this theory does not hold – the creation and/or maintenance of majority black County Supervisor districts in Mississippi has not led to the election of greater numbers of Republican Supervisors. Moreover, the study finds that the maintenance of majority black districts is vital to maintaining the ability to elect black representatives and that black voters are well represented by black elected officials.

Another study analyzed racial block voting in elections in Los Angeles County, California involving Latino candidates and ballot initiatives of concern.¹⁷ The study conducted four types of statistical analyses on elections between 1994 and 2003 involving Latino candidates or propositions that affected Latinos. The study found that in Los Angeles County, Latinos vote overwhelmingly for Latino candidates while non-Latinos generally vote against Latino candidates.

Another study explored how the racial composition of districts and the race of Congressional representatives affect responsiveness to black constituents by analyzing the provision of economic opportunities, in the form of federal project allocation or

¹⁶ David Lublin & Cheryl Lampkin, “Racial Redistricting and the Election of African American County Supervisors in Mississippi.”

¹⁷ Yishaiya Absoch, Matt Barreto & Nathan Woods, “An Assessment of Racially Polarized Voting For and Against Latino Candidates.” The ballot initiatives included Propositions 187 (restricting undocumented immigrants’ access to public services), 209 (outlawing affirmative action in State run institutions), and 227 (prohibiting bilingual education as an instruction method for English language learners).

“pork,” to predominantly black counties (and thus black constituents) within a district.¹⁸

The author found that since civil rights policy outcomes in the U.S. House have changed little between the 1970s and 1990s, studying distributive policy decisions such as federal project allocation to assess responsiveness to black constituents is a better measure of responsiveness than analyzing how representatives vote on civil rights legislation.

The study finds that black representatives provide goods and services to black constituents at a higher rate than white representatives, regardless of the racial composition of the representative’s district. In fact, a county with a black representative will receive 22.5 more projects than a similar county represented by a white legislator. Thus, being represented by a black official (descriptive representation) leads to more advantageous outcomes for black voters (substantive representation). The “best” district for achieving substantive representation of African-American voters is a district over 40% black where a black legislator is able to achieve victory. Thus, any county in a black legislator’s district with a significant black population (≥ 40 percent) is likely to receive a larger number of projects.¹⁹ For white representatives, the black population of their districts appears to have little effect on the number of projects allocated to black constituents.²⁰

One legal study analyzed the Section 5 standard of review for redistricting in light of the Supreme Court’s decision in Georgia v. Ashcroft and concludes that the standard

¹⁸ Christian R. Grose, “Black-Majority Districts or Black Influence Districts? Evaluating the Effect of Descriptive Representation on the Substantive Representation of African-Americans in Black-Majority and Black Influence Districts”

¹⁹ Other factors that have an effect on the number of projects allocated include: county population, the percent over age 65, the presence of a state capital; and the three congressional variables that affect increased project allocations are the previous general election margin of the House representative, the presence of a Senator on the Appropriations committee, and the combined seniority of Senators. Party, however, was not significant.

²⁰ Only one black-majority district during this time period is represented by a white representative (Pennsylvania’s 1st district). This district’s population is 52 percent black.

set forth in Ashcroft should be abandoned.²¹ The author notes that Section 5 review prior to Ashcroft included a broad ranging analysis of multiple factors and was not limited to a simplistic comparison of minority population levels pre and post redistricting. In addition, coalitional districts, where minority voters constitute less than a majority of a district's population but are able to elect their candidate of choice, were maintained. He proposes that the standard not be merely a numerical analysis of the proportion of voting age bodies in a district – indeed he advocates abandoning the term “majority minority district” – but whether voters have the ability to elect a representative of choice, which he calls an “ability to elect” district.

He further justifies abandoning the Ashcroft standard because the Supreme Court's influence district argument is both difficult to administer and was proven false in Georgia. He states that influence is hard to quantify, but may best be measured by the somewhat burdensome two-prong standard DOJ proffered in the Ashcroft litigation on remand: (1) expert testimony regarding past election results, including incidence of racial block voting, in districts purported to be influence districts and (2) testimony from experts and lay witnesses about the extent to which legislators from alleged influence districts consider the interests of the minority community. In addition, the author notes that assuming that a small minority population can influence white elected officials is undermined by evidence from Georgia, where in the highly-publicized 2003 vote to remove the Confederate battle emblem from the Georgia state flag, twelve of the nineteen white senators elected from districts with more than 25 percent black voting age population voted *against* removing the emblem.

²¹ David J. Becker, “Administration of Section 5 of the Voting Rights Act Before, During, and After Georgia v. Ashcroft – A Response to Professor Samuel Issacharoff and Others Who Question The Continued Viability of Section 5 Post-Ashcroft”

B. Summary of Section 203 Research

Several commissioned studies addressed issues related to Section 203. Two studies analyzed covered jurisdictions' compliance with the Act, one through a survey of jurisdictions about their compliance and the other through information gathered through site visits to election administrators in several covered jurisdictions. Other studies focused on how Section 203 could be revamped through reauthorization to be more responsive to limited English proficient ("LEP") citizens. These included an analysis of how changing the coverage formula would affect LEP citizens, a study that investigates extending coverage to Arabic language, and another that assesses whether and how changing the language assistance provisions is constitutionally possible. A final paper addresses the continuing need for bilingual assistance with an eye to providing evidence needed for reauthorization.

To gain a snap-shot of current Section 203 compliance, one study analyzed responses to a survey about compliance sent to covered jurisdictions.²² On the positive side, responses indicated that election officials in covered jurisdictions generally support continuing Section 203 requirements, that providing language assistance does not require a great deal of a jurisdiction's election related costs, and that many jurisdictions are providing assistance. However, responses also indicate that a large number of responding jurisdictions do not provide any assistance and relatively few covered jurisdictions provide the most helpful kinds of assistance, such as hiring a bilingual individual to coordinate administration of the jurisdiction's bilingual assistance program.

²² Rodolfo Espino and James Tucker, "Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act"

Another study regarding Section 203 compliance analyzed information gathered during field visits to voting officials/offices in 63 Section 203 covered jurisdictions in 15 states to assess the extent to which Spanish language materials and information were available.²³ These on-the-spot checks for Spanish language registration and voting materials and availability of Spanish-speaking staff showed that the actual provision of assistance is lacking. The study found that one in seven jurisdictions could offer translated registration forms upon request, that one in four jurisdictions had no employees who could provide Spanish assistance, and that levels of compliance varied widely from state to state, with the states with larger Latino populations generally providing better assistance than those with smaller Latino populations.

Another study analyzed how changing the formulas under which jurisdictions become subject to Section 203's language assistance requirements would affect language minority citizens.²⁴ It found that reducing the percentage threshold of LEP citizen voting age population below 5% would benefit Spanish speaking LEP voters, and to a lesser degree LEP citizens who speak Asian languages, by increasing the number and geographical dispersion of covered jurisdictions. Reducing the numerical trigger threshold would increase assistance for Asian languages but would not substantially affect coverage for Spanish language. Specifically, lowering the numerical threshold from 10,000 LEP voting age citizens of a single language minority group to 7,500 such citizens would have a large effect, for example expanding coverage to Asian Indians and Cambodians, language minority groups currently not triggering coverage. On the other

²³ Michael Jones-Correa, Israel Waismel-Manor, "The Implementation of Section 203 of the Voting Rights Act: A Proposal"

²⁴ Daniel K. Ichinose, "Reauthorization of Section 203 of the Voting Rights Act"

hand, eliminating the literacy requirement would not significantly increase the number of jurisdictions covered under Section 203.

Another study considered evidence proffered in support of language assistance for limited English proficient Latinos, Asian Americans, American Indians and Alaskan Natives and questioned whether Arab Americans should be brought within Section 203 coverage.²⁵ Based on census data and reports, this piece sets forth parallels between language ability, educational attainment, voting participation and experiences of discrimination among Arab Americans and the information cited to justify inclusion of currently covered language minorities. The study notes that including Arab Americans in the definition of language minorities under the Act would require no more than six jurisdictions to provide Arabic language materials and information.

Another study analyzed the language provisions of the Act in the larger context of various civil rights statute models.²⁶ The author believes that current structures in the Act to protect language minorities are at once under and over-inclusive in that they include some members of groups who do not need assistance but exclude many language groups despite the presence of limited English proficient citizens within those groups. Some of this might be addressed by including “national origin” within the protected bases under the Act. However, Congress must take great care in making any changes to the Act given current Supreme Court Fourteenth Amendment jurisprudence.

Another study reviews information that supports the continuing need for the bilingual assistance provisions and addresses some arguments proffered against such

²⁵ Jocelyn Benson, “Language Protections for All? The Viability of Extending the Language Protections of the Voting Rights Act to Arab American Citizens”

²⁶ Angelo Ancheta, “Remediation and Accommodation in Federal Voting Rights Law”

assistance.²⁷ It notes that Section 203 requirements were established to remedy the history of discrimination against Latinos, Native Americans, Alaska Natives, and Asian Americans and to address education inequities suffered by native born language minorities that proved to be a barrier to political participation. Analysis of census data shows that, nationwide, language minorities still obtain lower levels of education and thus suffer from higher rates of illiteracy than both the national average and non-language minority citizens, as defined by the Act. Census data is buttressed by education research finding that language minorities experience higher drop out rates and perform more poorly on skills testing than do non-language minorities.

IV. POLICY RECOMMENDATIONS

Based on the research commissioned, as well as research conducted by Warren Institute staff, we conclude that the special provisions of “the Act” should all be renewed for an additional ten years. The research conducted demonstrates that the protections guaranteed in the special provisions of the Act are important tools to guarantee the right to vote is not abridged because of race, color, or membership in a language minority group. These provisions are still necessary because discriminatory practices that disenfranchise minority voters persist and interfere with such voters’ rights under the Fourteenth and Fifteenth Amendments to the Constitution.

Section 5’s preclearance provisions both protect minority voters from potentially discriminatory voting changes and place the onus for effectuating such changes on the jurisdictions seeking to implement them rather than on individual voters to defend against them. Section 203’s language assistance provisions provide vital mechanisms for LEP citizens to understand, access, and participate in our democratic system of government.

²⁷ Ana Henderson, “The Continuing Need for Sec.203.”

Without such language assistance, many LEP citizens would be denied their right to vote because they would not fully understand and be able to cast a meaningful ballot. Finally, the federal observer provisions of the Act provide an important mechanism to observe elections and safeguard against potential voting rights violations by sending in neutral officers to witness procedures in the polls and the counting of ballots. These special provisions of the Act should be maintained.

In addition, we suggest the following changes to specific provisions of the Act:

A. Section 5 Policy Recommendations

* Restore discriminatory intent as a rationale for objecting to a voting change

Congress should specify that voting changes made with discriminatory or retrogressive intent are just as infirm as those having only retrogressive effects. Currently a voting change made for overtly discriminatory or retrogressive reasons can survive Section 5 review as long as it does not have a retrogressive effect on voters' ability to exercise their right to vote. This state of affairs turns the intent of "the Act" on its head and allows officials to make decisions based on prohibited characteristics and with the purpose of disadvantaging voters based on race and language minority status as long as their actions do not have that effect. Congress should reverse this standard and mandate that Section 5 review invalidate any voting change either made with discriminatory or retrogressive purpose or having a discriminatory or retrogressive effect.

* Disallow substituting "ability to elect" districts with "influence districts"

Congress should specify that "influence districts" cannot replace "ability to elect" districts in redistricting plans.²⁸ We define "influence district" as a district with less than

²⁸ If not an outright rejection of "influence districts" in the Section 5 analysis, Congress must define what elements should be considered when analyzing a purported "influence district." This is not to suggest a

majority minority population in which the minority voters are not able to elect the candidate of their choice. A district with less than majority minority population in which minority voters are able to elect their candidate of choice, as well as a district in which minority voters constitute more than half of the population and are able to elect their candidate of choice, is an “ability to elect district.”

* Establish a Commission to Study Revising the Section 5 Coverage Formula

Congress should appoint a legislative study Commission to report back on whether a better formula to determine which jurisdictions are subject to Section 5 requirements can be devised. The Commission’s analysis should be informed by social science analysis of current patterns of discrimination and voting participation behavior, and that analysis should be conducted by the National Research Council of the National Academies of Science to ensure that it is non-partisan and meets the highest academic standards. The current formula rests on practices and voter participation as they stood in 1964, 1968, or 1972. As such, it almost certainly covers some jurisdictions that may no longer need Section 5 review to protect minority voters and almost certainly leaves uncovered some jurisdictions that, based on their history of discrimination and minority voter participation since the last reauthorization of the Act, should be covered. Thus, the current trigger leads Section 5 to be both over- and under-inclusive. This problem of “fit” is less problematic on Constitutional grounds if Congress considers the evidence and the alternatives yet concludes that the legislative balance of burdens, benefits and feasibility is appropriate.

rigid percentage based formula, since our research demonstrated that there is no magic number at which minority voters gain the ability to influence elected officials that are not their candidates of choice, but a list of factors or criteria that must be satisfied for a district to qualify as an “influence district” in Section 5 analysis.

The Commission should consider alternative methods to revamp the trigger to address both the over- and under-inclusiveness. The Commission may want to consider, for example, the following two-pronged approach:

1. To address over-inclusiveness, the Commission could consider allowing a one-time exemption opportunity for currently covered jurisdictions to prove they no longer need to be covered. This test should be less onerous than the current bailout requirements, but should address key issues, such as whether any voting change has been objected to, whether federal observers, including DOJ staff, have been certified or sent to observe elections, whether any changes submitted to DOJ or for declaratory judgment were withdrawn after DOJ or court action short of an objection (such as more information letters, etc.), any findings of liability in cases brought to enforce voting rights, any Section 5 enforcement actions leading to voting changes, whether the minority voting age population is small (10% or less), and whether the jurisdiction has complied with Section 5 requirements thus far. Affected voters or DOJ could challenge the granting of the objection for a period of 10 years and seek its termination should any of the proven factors change. This exemption process would be a formal administrative adjudication conducted by an Administrative Law Judge acting as hearing officer, with final agency action by the Attorney General, subject to conventional judicial review.
2. To address the trigger's current under-inclusiveness, the Commission could consider extending coverage to jurisdictions that have been found to violate voting rights since 1982, have been subject to federal observer requirements pursuant to a court order, or have been required to submit voting changes for preclearance pursuant to a court order should become subject to Section 5 coverage. In addition, the Commission could

consider extending coverage to jurisdictions in which minority voter registration and/or participation is significantly lower than that of non-minority voters (based on the average registration or participation in the 2000 and 2004 November elections) and other evidence of decreased voting opportunities for minority voters.

* Ensure that partisan block voting does not mask racial block voting in Section 5 and Section 2 analyses

Several studies noted that the intersection between partisan politics and racial voting behavior can make analyzing voting rights claims difficult. In the best case, this requires a more searching review to tease out voting rights issues, such as racial block voting, from partisan issues. In the worst case, partisan politics defenses are perceived to trump voting rights claims.

Congress should direct that Section 5 review, and also adjudication of Section 2 cases, must go beyond claims of partisan politics. For example, where partisan politics make it difficult to perceive racial voting patterns in general elections, courts and the DOJ should assess primary elections for evidence of such voting patterns. Judges and DOJ must analyze all aspects of elections to ensure that race, color, or language minority status does not play a role.

B. Section 203

* Adjust Section 203 coverage formula

The numerical trigger for Section 203 coverage should be lowered from the currently required 10,000 LEP voting age citizens of the same language group to 7,500 LEP voting age citizens of the same language group. In addition the Attorney General should be given regulatory authority to further reduce the numerical or percentage

thresholds for Section 203 coverage through regulation in light of, for example, changes in voting technology. Lowering the numerical threshold this relatively minor amount will provide a significant increase in language access, particularly to Asian American voters. This reduction is also equitable because it brings greater parity to LEP voters who live in areas with large populations and thus need significant numbers in order to constitute 5% of the population, while LEP citizens living in rural jurisdictions can trigger coverage under the 5% rule with comparatively low numbers.

In addition, the formula should include a floor under which intensive assistance is not required. A quirk of the current percent-based formula, in particular the Indian reservation trigger, is that some jurisdictions with very small and in some cases no population become officially covered because there is reservation land located within the jurisdiction. The law should specify that counties with very few, perhaps less than 25, or no LEP voting age citizens should not have to provide intensive assistance. This will help tailor the coverage more narrowly.

* Require covered jurisdictions to submit bilingual plans for review

The two studies regarding Section 203 compliance noted that many jurisdictions do not comply with the law's requirements. One way to ensure compliance is to require Section 203 covered jurisdictions to submit their bilingual plans to the DOJ for review. Such reviews would aid compliance in two ways: first, it would require covered jurisdictions to develop plans to comply with the law knowing that such plans would be reviewed by an enforcement agency, and second, it would provide a more efficient mechanism than the current jurisdiction-by-jurisdiction investigation method for DOJ

staff to ascertain which jurisdictions were acting sufficiently to comply with the law and which were not.

* Assist compliance by providing funding and assistance

Some jurisdictions and Section 203 opponents claim that Section 203 is a costly unfunded mandate. Congress could assuage some of these concerns by providing funding for translating materials and other bilingual assistance. In addition, Congress could mandate the translation of federal forms and election related information into the most commonly spoken covered languages, which in turn could be shared with covered jurisdictions and any other interested jurisdiction thus lowering the cost of translations. The Election Assistance Commission could coordinate this effort. Finally, the Attorney General should be authorized to require state election officials, in states with multiple counties covered for the same language(s), to coordinate translations of statewide ballot measures and forms and provide those translations to county election officials. State-produced translations would aid financially strapped counties who now shoulder the burden of translating materials. They would also have the added benefit of reaching LEP voters who live in counties not covered independently.

C. Federal observer provisions

* Expand federal observer jurisdiction to Section 203 covered jurisdictions

The federal observer program is an excellent way for federal officials to gauge compliance with “the Act” requirements and to discourage problems at the polls on Election Day. This is especially true for language assistance where oral assistance provided at the polls is so important to successful voting for LEP citizens. Unfortunately, under the current structure of the Act, federal observers can only be dispatched to a

jurisdiction covered under Section 5 or subject to federal observer coverage subsequent to a Voting Rights Act lawsuit. Many Section 203 covered jurisdictions are not subject to Section 5 and thus not eligible for federal observer coverage. In fact, in the history of the Act, just 148 jurisdictions have been certified for federal observers, only 26 of which are covered by Section 203.

The federal observer provisions should be expanded to include all Section 203 covered jurisdictions. In addition, the conditions under which the Attorney General can certify a county for federal observer coverage should be revamped to include a jurisdiction's failure to provide language assistance as required under Section 203 or 4(f)(4).

D. Additional provisions

* Clarify Section 208's application to English language abilities

Section 208 allows voters who have disabilities, are blind, or are unable to read or write to receive assistance from a person of their choice, with certain limitations. While this provision is often interpreted to apply to LEP voters, it would assist compliance if limited English proficiency were specified as a basis for assistance under Section 208. In addition, Section 208 should specify that it applies to aspects of the voting process other than assistance in the polls, in particular to absentee or by mail voting. Some jurisdictions presently restrict the number of voters any individual may assist. This conflicts with Section 208's proposition that a qualified voter may be assisted by the person of his or her choice.

* Bring parity to fines for violations

An alteration to the Act that would increase fairness and perhaps compliance is to bring parity to the punishment provisions of the Act. Currently, the Act allows higher monetary penalties for voter fraud (\$10,000) than for individual acts or conspiracy to deprive or attempt to deprive individual voters of rights secured by the Act (\$5,000).²⁹ Congress should amend these provisions so that violations of voting rights are punished at least as severely as voter fraud.

* Institute civil penalties for non-compliance

A modification that might increase compliance is to allow the Attorney General to recover civil penalties from non-complying jurisdictions. Current non-compliance, noted in the studies, is enabled, in part, by the fact that the Act provides no monetary damages against jurisdictions that do not comply while simultaneously requiring jurisdictions to expend resources on complying with the law. As such, the Act presents a perverse incentive not to comply with the law. Instituting civil penalties not exceeding \$55,000 for the first violation and not exceeding \$110,000 for any subsequent violation of the Act, will pose a limited risk to jurisdictions for non-compliance which may induce compliance.³⁰ The civil penalties provision does not open jurisdictions to jury awards to

²⁹ Compare 42 USC § 1973j(a) & (c) (allowing fines of up to \$5,000 and/or imprisonment of not more than five years for individual acts or conspiracy to deprive voters of their rights enumerated by the Act) and § 1973j(b) (allowing fines of up to \$5,000 and/or imprisonment of not more than five years for destroying or altering the marking of a paper ballot or altering any official record of voting in any jurisdiction in which a federal examiner has been appointed) with 42 USC § 1973i(c) (permitting fines up to \$10,000 and/or imprisonment of not more than five years for individual acts or conspiracy to register or vote illegally in a general, primary, or special election where the ballot contains federal offices); § 1973i(e) (permitting fines up to \$10,000 and/or imprisonment for not more than five years for voting more than once in a federal election) and § 1973i(d) (providing false testimony or information in any matter within the jurisdiction of a federal examiner).

³⁰ The identical terms are present in the Fair Housing Act. See 42 U.S.C. § 3614(d)(1)(C).

compensate victims of voting discrimination, but does offer a “stick” to induce jurisdictions to comply.

* Make expert witness fees recoverable

Several commentators have stated that a large portion of the costs of bringing a voting rights lawsuit is the cost of expert witnesses. Voting rights cases are extremely technical, and bringing suit without an expert witness is often impossible. Especially since the Act does not provide for damages that could defray some of the costs of litigation, Congress should consider making expert witness fees recoverable along with attorney’s fees and costs.

V. MODEL AMENDMENTS

A. Section 5-related

1. Sec. 1973c Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court (Section 5)

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose ~~and or will not have~~ the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person

shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

Jurisdictions may not dilute voting strength by substituting districts where voters are able to elect a representative of their choice with districts where voters are not able to elect a representative of their choice.

2. Section 4 (Section 5 trigger)

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this

section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A Commission on Section 5 shall be convened to research and report to Congress regarding whether any alternations to the methods, set forth in the previous three sentences, through which any state or political subdivision of a state is determined to be subject to subsection (a) of this section are necessary. Such Commission shall base its recommendations on social science research of current patterns of discrimination and voting behavior which shall be conducted by the National Academy of Science.

B. Language related issues

1. Section 203:

Sec. 1973aa-1a Bilingual election requirements (Section 203)

(a) Congressional findings and declaration of policy

The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement

(1) Generally

Before ~~August 6, 2007~~ **[Month Day] 2016**, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions

(A) Generally

A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on census data, that -

(i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than ~~40,000~~ **7,500** of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception

(i) The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(ii) The prohibitions of this subsection do not apply in any political subdivision where the Census Bureau identifies fewer than 25 citizens of voting age who are members of a single language minority and are limited-English proficient, even if such quantity constitutes more than five percent of the total population.

(3) Definitions

As used in this section -

(A) the term "voting materials" means registration or voting notices, forms, instructions, assistance, or other materials or information, **provided in auditory, oral, paper, or electronic form**, relating to the electoral process, including ballots;

(B) the term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term "Indian reservation" means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term "citizens" means citizens of the United States; and

(E) the term "illiteracy" means the failure to complete the 5th primary grade.

(4) Special rule

The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language:

Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials

Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions

For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

2. Section 208

Any voter who requires assistance to vote by reason of blindness, disability, or inability ***or limited ability*** to read or write ***English*** may be given assistance, ***including assistance in languages other than English,*** by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. ***This applies to all aspects of the voting process, including registration and absentee or by mail voting.***

C. Roll of federal observers:

Sec. 1973a Proceeding to enforce the right to vote

(a) Authorization by court for appointment of Federal examiners

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the Director of the Office of Personnel Management in accordance with section 1973d of this title to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

Section 6:

Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) ***or section 203*** that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment, ***whether the jurisdiction persists in implementing English-only elections in contravention of Sections 203 or 4(f)(4)***, or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth and fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, ...

Section 8:

Whenever an examiner is serving under subchapters I–A to I–C of this title in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States,

(1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and

(2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a (a) of this title, to the court.

D. Enforcement/Compliance issues

1. Penalties:

Section 12:

(a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, 10, ~~201, 202, or 203~~ or shall violate section 11(a), shall be fined not more than ~~\$5,000~~ **\$10,000**, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot or **paper record of an electronic ballot** which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than ~~\$5,000~~ **\$10,000**, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) shall be fined not more than ~~\$5,000~~ **\$10,000**, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them to (1) permit persons listed under this act to vote and (2) to count such votes. **In such an action, a court:**

(1) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order as is necessary to assure the full enjoyment of the rights granted by this title; and

(2) may, to vindicate the public interest, assess a civil penalty against the respondent-- (i) in an amount not exceeding \$55,000, for a first violation; and (ii) in an amount not exceeding \$110,000, for any subsequent violation.

Section 205

~~Whoever shall deprive or attempt to deprive any person of any right secured by section 201, 202, or 203 of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both. [consolidate with Section 12 so that all penalty provisions are in same section of the act]~~

Costs/fees:

42 USC 19731(e):

In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee **and a reasonable expert witness fee** as part of the costs.

Funding:

42 USC 1973o

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act. **This shall include funding for translation of materials and provision of language assistance pursuant to Sections 4(f)(4) and 203.**