

“Voting Rights and Democratic Participation: The Decade Ahead”
Reauthorization of Sections 5 and 203 of the Voting Rights Act

A Call for Paper Proposals

Sponsored by

University of California, Berkeley, Boalt Hall School of Law
The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity

The recently-launched Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at UC Berkeley, School of Law is a center for multi-disciplinary research, policy analysis, teaching and public education on issues of racial and ethnic justice.¹ As one of our initial efforts, we are focusing on the social science and legal questions likely to be of critical importance to public debate and policymaking around the upcoming congressional reauthorization of key provisions in the Voting Rights Act of 1965. We are assembled an extraordinary advisory board for this Project (list attached), all of whom share our confidence that superb scholarship can, if focused on the crucial questions, make a critical contribution to the renewal of and reinvigorated implementation of this foundational element of democracy and civil rights.

Purpose

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. Forty years and several reauthorizations later, the Act now embraces protections for language minorities in addition to racial minority groups. It remains one of the nation’s premier vehicles for advancing the cause of racial fairness in the electoral arena. While several important provisions of the Act are permanent law, in 2007 sections 5 and 203 of the Act will expire unless reauthorized by the Congress.

In light of recently-announced constitutional principles restricting remedial civil rights legislation, reauthorizing the VRA demands an ambitious examination of whether and how sections 5 and 203 remain vital to the enfranchisement of communities of color. The increasing diversity and geographic integration of these communities raise the additional issue of how sections 5 and 203 may be amended to ensure continuing responsiveness to these new constituencies. The creation of a more inclusive democracy may also have implications for the responsiveness of elected officials and the levels of voter turnout among all groups in society. The Act’s reauthorization and/or amendment, and its subsequent implementation by the Executive Branch and the federal courts, may depend on the effective research and persuasive argument of advocates and scholars. These key voices must demonstrate how the Act has served (and might better serve) to facilitate the political engagement of racial, ethnic and language minority groups.

¹ In significant respects, it is modeled after The Civil Rights Project at Harvard, co-founded by Harvard Professors Gary Orfield and Christopher Edley (now Dean of Berkeley’s Boalt Hall School of Law).

Call for Proposals

To this end, the Warren Institute of the University of California at Berkeley, School of Law is commissioning a series of research and policy papers. We invite proposals for scholarship related to the following topics.

Section 5

Section 5 of the VRA requires jurisdictions with a history of discrimination to “preclear” all changes to their election rules and procedures with the federal government. Research priorities for reauthorization of section 5 fall loosely into four areas. Methodology may be qualitative or quantitative.

1. Documentation of continued discrimination in covered areas:
 - What barriers have restricted political participation, or have produced other disparate impacts among communities of color?
 - Has section 5 functioned as an effective deterrent to discriminatory voting practices? If so, in what ways? Work may highlight cases in which section 5 prevented discriminatory practices, or show effects of section 5 in empowering minority communities. Work may also evaluate the formal and-or informal deterrent effect of the preclearance mechanism.
 - How does minority voting strength (ability to elect candidates or choice, or participate in the political process) in covered jurisdictions compare with that in non-covered jurisdictions?
2. Evaluating effective mechanisms for “triggering” section 5 coverage
 - What factors should be considered in determining whether a jurisdiction ought to be covered by section 5? Studies might assess the importance or comparative importance of a range of factors, including:
 - Presence or persistence of racially polarized voting;
 - History of public and-or private discrimination;
 - Participation and-or turnout rates;
 - History of noncompliance under section 5 or litigation under section 2;
 - Contemporary “tests and devices.”
3. Increasing the effectiveness of Section 5
 - Alternatives to the existing retrogression standard.
 - Research that responds to the test articulated by the Supreme Court in *Georgia v. Ashcroft*. Papers may analyze the administrability of the *Ashcroft* test,

or assess whether Congress should clarify or overrule the test, by considering questions including:

- How have federal decision-makers assessed whether a jurisdiction has tried to balance, or has appropriately balanced, the “ability to elect” versus the “ability to influence” of a particular covered group, and/or how should they make such assessments?
- How have jurisdictions, and federal decisionmakers, defined or established priorities between the creation of districts in which minorities can elect a candidate of choice and districts in which minorities can exercise “influence,” and/or how should they make such assessments?
- How is substantive representation evaluated by any of these decisionmakers, and what has been the result of using “influence?” How should such evaluation be undertaken?
- Research that considers amending section 5 to overturn the definition of retrogressive purpose articulated by the Supreme Court in *Bassier II*.
- Research that considers whether the bailout standard should be changed.
- Research analyzing the effect of section 5 preclearance on the relative voting strength of political parties, at the national, state, or local level(s).

4. Broad questions of electoral representation

- Should the VRA continue to protect and encourage the formation of majority-minority districts?
- What defines a minority “candidate of choice?”
- What are the comparative benefits of directing section 5 enforcement toward the goal of (1) descriptive representation; (2) substantive representation, or (3) enhancing the “ability to participate in the process,” more broadly?
 - Is there a way to clarify definitions for “influence,” “coalition,” or “majority-minority” districts? Is the political science definition appropriate for minority voters and can it be transformed into a judicially manageable standard?
 - Who decides what constitutes adequate substantive representation?
 - Do minority voters make decisions between being directly represented and substantively represented? Do different minority groups approach these choices differently?
 - Is the divide between descriptive and substantive representation a false dichotomy?
- What conditions lead to the election of a minority community’s candidate of choice?

Section 203

Research priorities for section 203, which requires certain jurisdictions to provide multi-lingual and translated ballots and election materials, fall largely into the following areas

- The cost of enforcing following, and expanding section 203. What are the general costs of enforcing section 203? Are there cost-saving measures that could increase compliance and should costs be distributed among state or local governments? What would be the additional cost of adding certain language groups to section 203 coverage?
- Issues of section 203 coverage. What localities and voters are not covered by existing 203, and the feasibility of extending coverage. Which and how many more areas – and voters – could be reached?
- The implementation and effectiveness of section 203: Research could collect and analyze data on the successful and unsuccessful implementation of section 203. This work could analyze problems in implementation and consider the effects of newer technology on compliance and costs.

The Civil Rights Project at Berkeley also intends to fund a few larger empirical studies that address one or more of the following topics as they relate to the VRA and its reauthorization or amendment.

- I. Racially Polarized Voting
- II. Registration and Turnout Among Minority Voters
- III. The Quantification of “Influence” as a Measure of Minority Political Participation

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The proposal’s cover page should include (1) the title of the paper; (2) the author(s) and affiliations(s); (3) the name of the primary contact with email and telephone number; and (4) the category into which the proposal fits (which specific empirical study; or under which general topical area). Paper proposals that are not related to the specific, larger empirical studies should be no longer than 5 double-spaced pages, excluding references, and should include a separate 250-word abstract (on a separate page). All proposals should describe (1) the questions and hypotheses to be addressed and the parameters of the research; (2) the data sources to be drawn upon; (3) the theoretical framework; (4) an indication of the amount of work already completed; (5) the paper’s expected length; (6) initial conclusions and-or results, if available. **Proposals for the specific empirical studies should address the same questions, but may be more extensive.**

We will provide honoraria to authors completing large, empirical studies and more modest honoraria (est. \$1,500) to other authors, contingent upon funding, which seems likely. Lead authors are expected to be available to participate in a conference in late 2005 or early 2006.

Final papers must be received by October 30, 2005. Please submit proposals electronically to warreninstitute@berkeley.edu. Authors will be notified of selection.

For more information, please contact Ana Henderson, Fellow of the Warren Institute at ahenderson@law.berkeley.edu. The co-directors of this initiative are Professor Kathryn Abrams and Dean Christopher Edley, Jr., both of the University of California, School of Law at Berkeley’s Boalt Hall.