



**PROTECTING DEMOCRACY:
USING RESEARCH TO INFORM THE VOTING RIGHTS
REAUTHORIZATION DEBATE**

RESEARCH ABSTRACTS

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ABSTRACTS

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ABSTRACT #1

**AN ASSESSMENT OF RACIALLY POLARIZED VOTING
FOR AND AGAINST LATINO CANDIDATES**

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ABSTRACT

Latino population growth figures are well known, and the subsequent growth in registration and voting is becoming more familiar. However, Latino elected representation may not keep pace with growth of Latino voters in the presence of racially polarized voting by non-Latinos. We assess 15 elections in California from 1994 – 2003 to determine the extent to which Latino candidates for office fail to win the support of non-Latinos, in the event that they are preferred candidate among Latinos. Through ecological regression and ecological inference, we determine that non-Latinos continue to systematically vote against Latino candidates and that Latino voters demonstrate very high rates of racial bloc voting in favor of co-ethnic candidates. Based on this analysis, and a careful review of the relevant VRA legal history, we conclude that Latino voters continue to need this important civil rights protection.

ABSTRACT #2

LANGUAGE ACCOMMODATION AND THE RIGHT TO VOTE

Angelo N. Ancheta

In October 2005, a federal district court approved a settlement agreement between the federal government and the City of Boston that spotlighted both overt discrimination against limited-English-proficient voters and the importance of providing language assistance to those voters – not only as a congressional remedy for past discrimination but as a vehicle for increasing civic engagement and political participation. In *United States v. City of Boston*, the U.S. Department of Justice alleged that the City had violated section 203¹ of the Voting Rights Act of 1965 – the Act’s major language-assistance provision – by failing to provide adequate translation of election materials in Spanish and by failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll workers.² In addition, the complaint alleged that the City of Boston had violated multiple sections of the law, including section 2, the Act’s general antidiscrimination provision, in a variety of ways: by treating limited-English-proficient Latino and Asian American voters disrespectfully; by refusing to permit these voters to be aided by an assistor of their choice; by improperly influencing, coercing, or ignoring the voters’ ballot choices; by failing to make bilingual personnel available to the voters; and by refusing or failing to provide provisional ballots.³

Typical of many recent cases, the court order in *United States v. City of Boston* contains sections applicable to Latino and Asian American voters that require improved translations of elections materials, an adequate supply of bilingual poll workers, greater dissemination of multilingual information, federal election monitoring, the designation of a language assistance coordinator, and the creation of a community-based advisory body.⁴ The case is unusual, however, in that the order extended language-based remedies for section 2 violations to groups of voters that were not explicitly covered by section 203’s protections. Although the Latino population in Boston was large enough to trigger section 203 coverage, the populations of limited-English-proficient Chinese Americans and Vietnamese Americans each fell well below the statistical thresholds necessary to invoke section 203; neither group constituted more than five percent of the voting age citizens in the jurisdiction or more than a total of 10,000 voting age citizens.⁵ As remedies for violations of section 2, the mandates in *United States v. City of Boston* illustrate the central role that language assistance can play in redressing discrimination against limited-English-proficient voters, even if those voters do not constitute a large-enough population to invoke formal coverage under section 203.

Cases such as *United States v. City of Boston* illuminate an important trend in voting rights law, one in which language assistance is not simply a structural remedy bound by the four corners of the Act, but a vehicle designed more broadly to accommodate differences among minority voters

¹ 42 U.S.C. § 1973aa-1a.

² Complaint, *United States v. City of Boston*, No. 05-11598 WGY (D. Mass. 2005).

³ *Id.*

⁴ *United States v. City of Boston*, No. 05-11598 WGY (D. Mass. Oct. 18, 2005) (three-judge court).

⁵ 42 U.S.C. § 1973aa-1a. Chinese Americans numbered approximately 5,000, while Vietnamese Americans numbered approximately 3,000 <Confirm numbers> Presentation by Susana Lorenzo-Giguere, U.S. Department of Justice, at National Asian Pacific American Bar Association Annual Convention, Chicago, Ill. (Oct. 22, 2005).

and to promote meaningful access to the political process. In other recent cases, the Justice Department has obtained settlements that have required language assistance to groups falling below the statistical benchmarks for section 203 coverage,⁶ as well as to groups that are not covered by section 203, such as Arab Americans.⁷ Moreover, voluntary assistance to non-covered groups has become increasingly common in major cities with growing immigrant populations. The Chicago Election Board, for example, is required under section 203 to provide language assistance in Spanish and Chinese, but also provides voluntary assistance in languages such as Polish, Russian, Greek, German, Korean, and Serbian.⁸ And the City of Boston, notwithstanding the Justice Department's 2005 lawsuit, had already made commitments to provide voter materials in Spanish, Haitian Creole, Vietnamese, Cape Verdean Creole, Portuguese, Chinese, and Russian.⁹

Yet, moving beyond a strictly remedial basis for language assistance under the Voting Rights Act raises significant political and constitutional questions. Political support for language assistance in voting is hardly universal. Arguments for English-only elections to limit financial costs and to underscore the role of English as a civic *lingua franca* continue to animate opposition to language assistance under the Act. Indeed, there have been numerous attempts in recent years to repeal the language assistance provisions.¹⁰ Additionally, recent U.S. Supreme Court cases have limited the scope of congressional power to remedy constitutional and civil rights violations committed by state governments, and have made antidiscrimination litigation increasingly problematic.¹¹ Without careful limitations and an especially strong factual record to justify congressional action, legislation designed to enforce guarantees of equality under the Fourteenth and Fifteenth Amendments may be constitutionally suspect.

This paper examines the expansion of language assistance under the Voting Rights Act from a structural remedy for past discrimination to a broader vehicle of language accommodation that encourages political participation by limited-English-proficient voters. In doing so, the paper examines constitutional requirements for existing mandates under the Voting Rights Act, while also cautioning against overly expansive measures that might arise in the course of reauthorizing section 203 and the Act's other language assistance provisions. Part I of the paper examines various antidiscrimination models under the Voting Rights Act, including section 203 and the Act's more general civil rights protections for limited-English-proficient voters. Part II offers a model of language accommodation that expands current voting rights jurisprudence, drawing on legal theories of language rights and extant antidiscrimination standards outside of voting. Part III suggests a framework for incorporating language accommodation norms into enforcement of the Voting Rights Act, as well as alternative vehicles for protecting language rights, such as Title VI of the Civil Rights of 1964 and election reform legislation such as the Help America Vote Act of 2002.

⁶ See *United States v. San Diego County*, No. 04CV1273JEG (S.D. Cal. 2004) (requiring language assistance in Vietnamese where population numbers fell just below 10,000).

⁷ See *United States v. City of Hamtramck*, No. 00-73541 (E.D. Mich. Aug. 7, 2000) (requiring language assistance in Arabic and Bengali as remedies for voter intimidation and harassment).

⁸ See <http://66.107.4.19/English2004.htm#LanguageASS> (last visited Oct. 30, 2005).

⁹ See <http://www.cityofboston.gov/newbostonians/voterkit.asp> (last visited Oct. 30, 2005).

¹⁰ In August of 1996, for instance, the House of Representatives passed H.R. 123, the "Bill Emerson English Language Empowerment Act of 1996," which would have declared English to be the official language of the United States and would have repealed the language assistance provisions of the Voting Rights Act. The Senate did not vote on the bill.

¹¹ See *infra* notes ___ to ___ and accompanying text (discussing constitutional limitations on changes to the Voting Rights Act).

ABSTRACT #3

SAVING SECTION 5: REFLECTIONS ON *GEORGIA V. ASHCROFT*, AND ITS IMPACT ON RENEWAL OF THE VOTING RIGHTS ACT

By
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Abstract

The 2003 case of *Georgia v. Ashcroft*, 539 U.S. 461, substantially changed the face of Section 5 of the Voting Rights Act. Prior to *Ashcroft*, redistrictings in jurisdictions subject to Section 5 were analyzed according to the standard enunciated in *Beer v. United States*, 425 U.S. 130 (1976), which held that Section 5 prohibits retrogression in the ability of minority voters with respect to their opportunity to effectively exercise the franchise, as defined by the ability of minority voters to elect candidates of their own choice. However, the *Ashcroft* decision changed this standard substantially, redefining the “effective exercise” standard, instead opting for a more vague “totality of the circumstances” test where a covered jurisdiction could comply with Section 5, even if it reduced the ability of minority voters to elect candidates of their choice, if the jurisdiction otherwise increased the number of “influence districts,” or districts which might elect candidates “sympathetic to the interests of minority voters.”

This decision resulted in a lot of concern among advocates of the Voting Rights Act. Several commentators, including Professors Samuel Issacharoff and Richard Pildes, have wondered whether such a nebulous standard be administered, and whether the *Ashcroft* opinion render Section 5 toothless and meaningless in today’s political climate. Prof. Issacharoff in particular has concluded that the *Ashcroft* standard is irredeemably complex, particularly when compared to the pre-*Ashcroft* standard, which he perceives to have been so simple and mechanical as to be routinely mathematically applied. Both Profs. Issacharoff and Pildes reached the conclusion that political developments with regard to racial minorities had so improved in this country, in large part due to the success of the Voting Rights Act, that Section 5 as applied could actually *harm* the rights of minority voters.

This Essay will suggest that the concerns of commentators like Profs. Issacharoff and Pildes are somewhat overstated. I will assert that the views of those commentators who perceive simplicity

in the pre-*Ashcroft* standard, and who question the continued utility of Section 5 (at least in the context of redistricting), are colored by misconceptions regarding the facts of the *Ashcroft* case, and some possible misinterpretations of the opinions in that case. In Part I of this Essay, I contend that the pre-*Ashcroft* standard, as first established in *Beer*, was not nearly as rigid, mechanical or simple as Prof. Issacharoff would suggest. Indeed, the pre-*Ashcroft* standard was very complex, requiring the analysis of many diverse elements, and amply contemplates and promotes the building of coalitions between racial groups. In Part II, I discuss the facts of redistricting in Georgia as applied to the law at the time of the *Ashcroft* case, correcting many of the misconceptions that have permeated this discussion. In particular, I will discuss the actual electoral power of minority voters, as testified to by expert witnesses, using both demographic measurements as well as other indications of voting clout. The facts suggest that minority voters have not come as far in Georgia as some suggest, and further demonstrate that black legislators were not nearly as unanimous in their support of the Georgia redistricting as some believe. Finally, in Part III, I discuss the fallout from the *Ashcroft* opinion, and suggest that even if an *Ashcroft*-fix is not in our future, a Voting Rights Act with Section 5 in its present state is constitutional and administrable, and is immeasurably preferable to a Voting Rights Act without any preclearance provisions at all. While the *Beer* standard, as applied pre-*Ashcroft*, is a far more effective standard for measuring true retrogression under Section 5 – and I would strongly advocate that Congress consider restoring the *Beer* standard when renewing the Voting Rights Act – contrary to the views expressed by Profs. Issacharoff and Pildes, the facts of *Ashcroft* amply demonstrate the continued need for Section 5 in some form.

ABSTRACT #4

**Language Protections for All?
Extending the Language Protections
of the Voting Rights Act to Arab American Citizens**

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Section 203 of the Voting Rights Act (“VRA”)¹² was added to the VRA in 1975 after Congress found that “language minorities have been effectively excluded from participation in the electoral process” as the result of “unequal educational opportunities” that resulted in “high illiteracy and low voting participation.”¹³ Congress meant the provision to remain in place so long as educational and other inequalities harmed the protected populations.¹⁴ Currently, Section 203 applies to Latinos, Asian American, Native Alaskan, and American Indian citizens.¹⁵ As interpreted by the U.S. Census Bureau, the protections are afforded to voters of the following descents: Hispanic, Chinese, Filipino, Japanese, Korean, Vietnamese, American Indian, and Native Alaskan.¹⁶

Conspicuously absent from the language protections under are other language minorities who face similar barriers to the full exercise of their right to vote. Most notably absent are Arab American citizens, who comprise a growing population in various areas of the United States,

¹² 42 U.S.C. 1973 aa-1a (2000).

¹³ Voting Rights Act Amendments of 1975, Pub. L. No. 94-73 (1975).

¹⁴ S. Rep. No. 295, 94th Cong., 1st Sess. 34 (1975) (explaining that the language protections of Section 203 would be temporary as they were as “necessary to fill that hiatus until genuinely equal educational opportunities are afforded language minorities” through more permanent federal protections for bilingual education).

¹⁵ 42 U.S.C. §1972aa-1a(e) (2000) (“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.”).

¹⁶ Id. Two years after the completion of each decennial census, the Director of the Bureau of the Census publishes a revised list of areas covered under Section 203. For the most recent list of covered areas, see Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48871, 48871-77 (July 26, 2002).

including Wayne County, Michigan and Los Angeles, California.¹⁷ They are also members of a minority language group that has encountered various forms of discrimination, often resulting in barriers to electoral participation, particularly in recent years.¹⁸

This study will examine the omission of Arab Americans from the federal language protections provided in Section 203 in an effort to determine whether civil rights groups and political leaders should consider including the group in the provision's definitions of "language minority". The analysis suggests that, for purposes of Section 203 coverage, Arab Americans endure similar educational disparities and barriers to political participation that Latinos, Asian Americans, Native Americans and Alaska Natives experience. It speaks to a need to extend Section 203 to cover Arab Americans – a change that, as the evidence implies, would be welcomed by the Arab American community in Wayne County.¹⁹

Such an analysis invites consideration of an amendment to Section 203 to include Arab Americans within its scope of protections, in support of the testimony Ihsan Al-Khatib, President of the Detroit Area ADC, who recently called upon the National Commission on the Voting Rights Act to consider expanding the VRA "to include areas with concentrations of Arab Americans."²⁰

¹⁷ U.S. CENSUS BUREAU. *The Arab Population: 2000*. (December 2003) at 2. ("The Arab population, which numbered over 1 million in 2000, increased by nearly 40 percent during the 1990s. In 2000, 1.2 million people reported an Arab ancestry in the United States, up from 610,000 in 1980 (when data on ancestry were first collected in the decennial census) and 860,000 in 1990."); Id. at 4 (noting that from 1990 to 2000, the Arab American population in California "increased by 48,000, more than any other state"); Id. ("the Arab population in Michigan grew by 51 percent, from 77,000 in 1990 to 115,000 in 2000.").

¹⁸ See, e.g., U.S. v. Hamtramck No. 0073541 (E.D. Mich. 2000).

¹⁹ See, e.g., personal interview with Dawud Walid, Executive Director, CAIR (Council on American-Islamic Relations) ("I do believe in the need for including Arabic at polling areas where there are large concentrations of Arabs, especially in ... Detroit and Dearborn.").

²⁰ Testimony of Ihsan Alkhatib, President, Detroit Chapter, Arab American Anti-discrimination Committee, to the Natl. Commission on the Voting Rights Act, Midwest Regional Hearing 1 (July 22, 2005) at http://www.votingrightsact.org/hearings/pdfs/alkhatib.ihsan_testimony.pdf.

ABSTRACT #5

The Deterrent Effect of Section 5 of the Voting Rights Act:
The Role of More Information Requests

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Abstract

In this essay we systematically examine the role of more information requests (MIRs) in deterring jurisdictions from implementing electoral procedures and practices that are likely to deny or abridge the right to vote by African Americans and language minorities. The traditional measure used to assess the impact of Section 5 is the number of objections issued by the Department of Justice (DOJ). Using data gathered from DOJ records, we analyze the frequency, distribution by change type and state, and the final outcomes of the issuance of both objections and MIRs for the period 1990-2005. We find that MIRs were issued far more frequently than objections. There is considerable variation by change type, state, year, and presidential administration. We also find that MIRs deterred the implementation of just over the same number of changes as those affected by the issuance of objection letters. MIRs doubled the impact of the deterrent effect of Section 5. We again specify these documented outcomes by change type, state, year, and presidential administration. We conclude that any comprehensive assessment of Section 5, and related determinations of the continued need for Section 5, must include a full assessment of the potential deterrent effect of MIRs.

ABSTRACT #6

Report on San Antonio Hearings Related to the Extension and/or Expansion of the Federal Voting Rights Act

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Executive Summary

We sponsored a hearing on the Voting Rights Act in conjunction with the League of United Latin American Citizens (LULAC). We had lots of folks who have litigated and fought for voting rights in Texas testify along side academics and minority elected officials.

The special provisions of the Voting Rights Act were first applied to Texas after the 1975 expansion and extension. Compared to the States fully covered by Section 5, Texas currently has a:

1. larger total population than all of the other fully covered states combined.
2. larger minority population than all of the other fully covered states combined.
3. larger Hispanic or Latino population than all of the other fully covered states combined.
4. larger African American or Black population than any of the other fully covered states.
5. larger number of has Section 5 Objections than any of the other fully covered states.

There are a large number of jurisdictions which hold elections in Texas. These include:

1. 254 Counties
2. more than 1,000 school districts.
3. more than 1,000 cities.
4. More than 1,000 special purpose districts (water districts of several kinds, utility districts, navigation districts etc.) which hold elections.

In total, there are in the neighborhood of 10,000 electoral districts in Texas.

Texas has an unblemished record since the application of the Federal Voting Rights Act of never passing a statewide redistricting plan after the initial publication of the Census that stood up to State or Federal Section 2/Constitutional challenges or Section 5 clearance.

In the last decade, the Texas Population grew by more than 3,000,000 persons. Hispanics made up well over 70% of that growth. There was a Voting Rights Objection in 2001 to the State House Redistricting plan, passed at the instance of Leader Delay. The Department of Justice found that in spite of the growth of Hispanics, it would have reduced the number of Hispanic State Representatives by 3-4 and eliminated the potential for reelection of the Chairman of the Hispanic Caucus by reducing his District from 55% to 45% Spanish Surnamed Registration. This, of course, is exactly the sort of racial shenanigan that Section 5 was designed to deal with. There is a power point presentation discussing this objection.

The Congressional redistricting plan adopted by the 2003 session of the Texas Legislature at the instance of Majority Leader Delay, eliminated two Congressional Districts in which Hispanics and or African Americans were on the verge of dominating. That same plan reduced the number of minority impact districts (Districts in which minority voters made up the margin of victory or of dominance) by 7. There is a lengthy power point presentation on this Delaymandering. Recent disclosures by the Washington Post and New York Times as well as a journal article by the Consultant to Congressman Delay's effort have disclosed that the professional staff of the Department of Justice recommended an objection and they were ignored by the political appointees at the Department.. In this month's Texas Monthly Magazine, this was referred to in the Texas vernacular as the fix was in.^{21/}

An examination of the White/Senate Factors indicates:

1. Texas wrote the book on racial discrimination with a major emphasis on election discrimination and intimidation. In addition to a poll tax, a series of statutes that prohibited African Americans from voting altogether, Texas also had a statute that was in effect through the mid 1970s that required voters to sign the back of their ballots. Texas was the first state where the U.S. Supreme Court upheld a finding that at-large elections discriminate against minority voters.

2. Virtually all Texans live in Jurisdictions in which racially polarized voting has been documented in judicial opinions or Voting Rights Objections. Attached to the paper is a list of more than 100 successful Section 2 lawsuits and a list of successful Section 5 Objections as well as a 2003 data used in an expert report offered by the State of Texas.

3. Texas is home to extremely large election districts. Judges constitute the majority of Texas partisan elected officials. They are elected at-large and those in Bexar (San Antonio), Dallas and Harris (Houston) Counties have larger constituencies than more than a third of the Governors in the United States. Some of our Courts of Appeals (all such Judges are elected at large) have more than 4,000,000 persons. Texas State House Districts will be in the 170,000 range after the next Census. State Senate Districts will approach 700,000 persons. After the next Census, a County Commissioner in Harris County will have an election district that approaches 1,000,000 persons. A city councilman in Houston has a constituency of almost 200,000 persons. The majority vote requirement and other restrictions on single shot voting are found virtually in all elections.

Of course for statewide elected officials, size is overwhelming. There are well over 20,000,000 persons in Texas. When a Southwest airliner from Houston to Los Angeles stops in El Paso it is more than half way there. When snowbirds travel from their winter homes in and around Brownsville to their farms in the Midwest, they are just short of half way when they pass out of Texas at Texline. All of these distances (geographic and otherwise) make public and/or private enforcement of state and federal election laws difficult. In this regard, more than one of the

²¹ Feb Tx Monthly "the midcycle congressional redistricting, another DeLay-inspired adventure, which now faces review by the U.S. Supreme Court amid revelations that the fix was in when the Department of Justice gave the plan its blessing...."

witnesses at the hearing pointed out that the Department of Justice has not been actively involved in voting litigation in Texas. In addition, few of the national civil rights groups such as the Lawyers Committee and the Legal Defense Fund have been involved in voting litigation in Texas—particularly in recent years. It has been left to LULAC, private litigants, local chapters of the NAACP and regional groups such as the Mexican American Legal Defense Fund to support efforts on behalf of African Americans and Hispanics.

4. There are no slating groups with the consistent success as the DCRG in *Graves/White* and there will probably never be such a successful slating group. However, the Republican Party of Texas has become a slating group of sorts. The Governor appoints persons to serve out an unexpired term and that person runs for office as an incumbent with all of the advantages of an incumbency. The problem is that slated minority candidates not infrequently loose to Anglo candidates in the almost totally white Republican primary elections. This has been referred to in newspaper articles as the “Hispanic Republican Curse.” For example in 2002, a Hispanic who was appointed to the Texas Supreme Court by the Governor and ran as an incumbent was defeated by the attorney whose claim to fame was handling and fomenting the successful reverse discrimination case against the admission practices of the University of Texas Law School (*Hopwood*). Justice Rodriguez carried only 26 of the Texas’ 254 counties.

5. In all indicators of social and economic well being which correlate with voting, Hispanics and African Americans are significantly below the Anglo population. These include income, education, functional literacy and employment/unemployment. These social distances have not changed appreciably since 1980.

6. Hispanics and African Americans continue to be substantially under represented in all elected positions in the state. The larger the district the greater the level of under representation. It is beyond the scope of this examination, but it would hard to successfully argue that something other than the Federal causes of action under Sections 2 and 5 caused the increase in minority representation.

7. The State continues to exhibit poor performance toward Hispanic and African Americans. The most recent example can be seen in the failure of the Legislature to even attempt to fix school finance even though directed to do so by the Texas Supreme Court. On all lists of which states do the least for the poor, Texas is found with its fellow bottom feeders Alabama and Mississippi.

But, there have been changes:

In 1971 (the date of the litigation of the original *White v. Register* (nee *Graves v. Barnes*), no citizen in Texas lived in a city or a school district that elected representatives by single member districts. Now close to 60% do. None of these jurisdictions that moved to single member districts without a Court Order or a Voting Rights Objection except those that did it because of the pendency or threat of one.^{22/}

²² / Attached to the paper is a non-exhaustive list of approximately 150 lawsuits or Voting Rights Objections which led to the adoption of single member districts.

In 1971, only two (2) African Americans had been the nominees of the Democratic Party for any position in Texas.²³ / At that Date, only in the areas in South Texas where Hispanics were in the majority had Hispanics been elected to any partisan position. The only exception to this was in 1968 then a Hispanic and an African American were elected to the Texas House of Representatives in 1968 from a judicially resulting reapportionment of Harris County. This was a precursor litigation to the *Graves/White* cases.

In 1971, the African American Caucus in the Texas Legislature could meet in a phone booth and the Hispanic caucus could travel together in a sedan. Today there have been advancements and Blacks and Hispanics are elected in large numbers albeit not in the range of the population that they represent. But that situation has been the result of these hundreds of lawsuits and not of the some sort of maturity in the political process in Texas. Morality in the form taken by the Voting Rights Act can be legislated. But without that legislation, the well understood Southern concept of “backsliding” rules the roost. In other words, the ultimate promise of Section 5 may be limited by a politically flawed Justice Department. Section 2 may be hamstrung by Federal Judges who miss morality by looking for abstract historically inaccurate Constitutional analysis. However, the short of it is that the Voting Rights Act does limit backsliding.

The political/legal position of the minority community is probably well protected in our large cities where Hispanics and African Americans make up more than half of the population. Wealth and political power, even in the hands of a political underclass speaks volumes in Texas. But half of our minority population live in the vast expanses of rural areas that are a full day’s drive from the large urban centers. These are farmworkers, cowboys, merchants and other small town residents who do not have access to that sort of power. The experience with enforcement of the act is that the Department of Justice and the National Civil Rights Organizations have spent little time in Texas. That is left to the private Bar and to regional civil rights organizations such as LULAC.

Without the continued protection of Sections 5 and 2, many of these advancements would be threatened. This is particularly true because politicians in Texas look at single member districts and other electoral reforms which stem from Section 5 objections as being inefficient. Inefficiency is the new politically correct catch word that enforcement of the Voting Rights Act will face.

It probably should be observed that our study is not intended as a diatribe against the Republican Party or Leader Dealy. When the Democrats were in control of Texas in the 70s-the late 1990s, the same discriminatory problems. Indeed, the reason for the original extension of the Voting Rights Act to Texas was Democratic Discrimination.

²³ / At the time, Texas was a one party state. Only a hand full of Republicans had been successful. The two positions to which African Americans had been the nominee of the Democratic Party were in Dallas County where they were the nominees only because they had been slated by the all powerful Dallas Committee for Responsible Government. The U.S. Supreme Court dismissed this as “participation through the benevolence of the White Community” which it described as “no participation at all.”

ABSTRACT #7

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 in the Wake of *Georgia v. Ashcroft*

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Abstract

What causes legislators to represent the substantive needs of black constituents in their districts as measured by roll-call voting *as well as through distributive policy-making*? Are legislators who are African-American more likely to reach out to black constituents than other legislators? Are legislators from black-majority or from black “influence” districts more likely to reach out to and effectively represent black constituents? Specifically, this research determines the effect of (1) electing black representatives; and (2) drawing black-majority districts or black influence districts on the substantive representation of black constituents. Few scholars have disentangled the separate effects of these factors. Also unlike previous researchers, these questions are answered by examining different modes of substantive representation in Congress: roll-call voting and federal “pork” project allocation. Quantitative analyses from districts in the 104th-106th Congresses (supplemented with interviews) are conducted to examine project allocation. Analyses from the 1970s and 1990s are conducted to examine civil rights policy change in Congress. The findings are as follows: (1) civil rights policy outcomes in the U.S. House have changed little between the 1970s and 1990s, and thus studying distributive policy decisions such as federal project allocation are preferable when assessing black-majority versus black influence districts and the effect of descriptive representation; (2) descriptive representation yields substantive representation in Congress, when measured as federal project allocation to black constituents. To increase the substantive representation of black interests as measured by the delivery of goods and services to black constituents, the best predictor is the election of black legislators. Specifically, the “best” district for achieving substantive representation of African-American voters is a black influence district where a black legislator is able to achieve victory. Thus, I argue that a combination of black-majority districts ($\geq 50\%$ black) and black influence districts (see *Georgia v. Ashcroft*) that are 40-49% black (depending on the local context and the extent of racially polarized voting) should be suggested in redistricting plans when enforcing section 5 of the Voting Rights Act.

ABSTRACT #8

Transforming Votes into Victories: Turnout, Institutional Context, and Minority Representation in Local Politics

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Abstract

When the Voting Rights Act was passed, it sought to improve minority representation by expanding access to the vote and eradicating institutional barriers that reduced the influence of that vote.

However, forty years later, minorities still vote much less regularly than whites and institutional arrangements that may hurt minority interests still exist in most American cities. In this article, we investigate whether low turnout and adverse institutional structures continue to be a factor behind minority under-representation. We find that low turnout leads to substantial reductions in the representation of Latinos and Asian Americans on city councils. For African Americans district elections and off-cycle local elections are more important barriers to representation.

ABSTRACT #9

An Assessment of the Bailout Provisions of The Voting Rights Act

J. Gerald Hebert

Abstract

The marches, protests, struggles and sacrifices of the civil rights community and the Nation culminated in 1965 with the passage of the Voting Rights Act – the crown jewel of civil rights laws. Prior to 1965, case-by-case adjudication of voting disputes had proven ineffective in securing minority citizens an equal opportunity to register to vote and cast their ballots, so Congress took a fresh and unique approach in enacting the Voting Rights Act of 1965 (“VRA” or “the Act”). Sections 4 and 5 combined to establish a formula subjecting certain jurisdictions to administrative or judicial preclearance of all changes affecting voting. This insured that each and every change made by a covered jurisdiction was free of a racially discriminatory purpose and effect before it was implemented. Recognizing the coverage formula most likely reached some jurisdictions that had not employed racially discriminatory voting practices, Congress set up a means for those jurisdictions to bailout from coverage if they could prove that any tests or other devices they had used as a prerequisite to registering to vote had not been used with the purpose or effect of discriminating on account of race or color.

This article will address the bailout provisions of the Voting Rights Act. In addition to providing background and explanation of the bailout provisions themselves, the paper examines whether the bailout provisions have worked effectively, and whether they should be changed.

At the outset, I believe the standards for establishing bailout eligibility that currently exist have proven to be both workable and practical. Since Congress amended the Act in 1982, ten jurisdictions have sought and obtained bailout, and at least two bailout requests are pending. As explained below, jurisdictions subjected to the Act's special remedial provisions, such as the preclearance provisions, have an effective opportunity to bailout today if they can prove nondiscrimination. Moreover, the bailout provisions are tailored in such a way as to require a covered jurisdiction to prove nondiscrimination in voting on the very issues that Congress intended to target when it enacted the special remedial provisions in the first place. The Act's special provisions target those jurisdictions with a long history of discrimination. The bailout provisions require those jurisdictions to show that those practices not only have been abandoned, but further that they have no lingering effects. The current bailout provisions, by allowing State and local governments with a history of discrimination the ability to avoid some of the Act's more intrusive requirements, insure that the Act remains consistent with sound principles of federalism.

The first part of this paper will identify the goals that Congress had in mind when it amended the Voting Rights Act in 1982, and whether the bailout provisions as amended have fulfilled those goals. Second, I look at the jurisdictions that have taken advantage of the bailout provisions, and the three phases that they go through to bring about a bailout. Part two also examines whether the bailout process has been shown to be cost-effective, timely and efficient. Part three examines whether the current bailout option is a realistic and fair opportunity to exempt jurisdictions from coverage. This part will also review what has worked and what has not worked with the legislation, and offer some explanations why more jurisdictions have not yet pursued the option. The final part of this paper will discuss whether Congress should make any changes to the bailout formula and what those changes might be.

ABSTRACT #10

**REAUTHORIZATION OF SECTION 203 OF THE VOTING RIGHTS ACT:
THE IMPACT OF MODIFYING COVERAGE THRESHOLDS ON
ASIAN AND SPANISH LANGUAGE MINORITY GROUPS AND
POLITICAL SUBDIVISIONS SUBJECT TO THE LAW**

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ABSTRACT

To facilitate the full participation of limited-English proficient (LEP) voters in elections, Section 203 of the Voting Rights Act requires certain states and political subdivisions in the United States to provide language assistance to voters belonging to language minority groups. In anticipation of Section 203's expiration and possible reauthorization in 2007, the Asian Pacific American Legal Center's Demographic Research Project used the U.S. Census Bureau's Voting Rights Determination File, the Census 2000 special tabulation used to determine Section 203 coverage, to examine the impact of modifying Section 203 coverage thresholds on Asian and Spanish language minority groups and political subdivisions subject to the law. The study found (1) lowering percentage thresholds are likely to benefit Spanish language minority groups only, while changes to the numerical threshold are likely to benefit Asian language minority groups primarily and Spanish language minority groups secondarily, (2) lowering both percentage and numerical thresholds can expand the geographic scope of coverage, and (3) eliminating the illiteracy rate requirement has little impact on coverage.

Verifying Implementation of Language Provisions in the Voting Rights Act

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Abstract

This is a study of the implementation of Section 203 of the Voting Rights Act (VRA). Given the centrality of the Voting Rights Act for the incorporation of ethnic and racial minorities into American electoral politics, we know remarkably little of how Section 203 has been implemented, or of the effects of its implementation.

To verify implementation of the provisions of Section 203 of the Voting Rights Act, field researchers conducted site visits with county clerks or registrars in 63 Section 203 covered counties in 15 states and 28 non-covered counties in 3 states. These site visits determined the availability of voter registration and voting materials in Section 203 covered languages, the presence of other materials (posters, etc.) in covered languages, and access to staff speaking Section 203 covered languages.

The findings indicated significant non-compliance with Section 203 provisions. Focusing on Spanish-language materials (all 63 of the covered counties in our sample were required under section 203 to provide materials for Spanish-language minorities), we found that in practice:

- 1) Only one in three of the 63 covered counties could offer, upon request, registration materials in Spanish.
- 2) 80 percent claimed to have Spanish-speaking personnel on staff for non-English speaking registrants; however, these personnel were not necessarily always present.
- 3) Levels of compliance ranged widely across states, with states in the Northeast (Connecticut, Massachusetts, New Jersey and Rhode Island) and the Midwest (Kansas) generally having lower compliance rates, and larger states with significant Latino populations (California, Florida and Texas) having among the highest compliance rates.

Earlier analyses (Jones-Correa 2005; Jones-Correa and Ramakrishnan 2004) have indicated that Section 203 coverage has a significant effect on registration and voting rates of language minorities residing in those counties. The findings here suggest that this effect is present even though Section 203 compliance is very uneven, and therefore that the effects found in earlier research would be even greater if Section 203 compliance were universal. Greater emphasis needs to be placed on verification of the voting and registration standards set under the law.

ABSTRACT #12

Judicial Findings Under Section 2 of the Voting Rights Act Since 1982

Final Report of the Voting Rights Initiative
University of Michigan Law School

Ellen Katz
with
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Abstract

I. Introduction

This year marks the fortieth anniversary of one of the most remarkable and consequential pieces of congressional legislation ever enacted. The Voting Rights Act of 1965 (“the VRA”) targeted massive disenfranchisement of African-American citizens in numerous Southern states. It imposed measures drastic in scope and extraordinary in effect.

The VRA eliminated the use of literacy tests and other “devices” that Southern jurisdictions had long employed to prevent black residents from registering and voting. The VRA imposed on these jurisdictions onerous obligations to prove to federal officials that proposed changes to their electoral system would not discriminate against minority voters.

Resistance was immediate both in the streets and in the courts, but the VRA withstood the challenge. The result was staggering. The VRA ended the long-entrenched and virtually total exclusion of African Americans from political participation in the South. Black voter registration rose and black participation followed such that, by the early 1970s, courts routinely observed that black voters throughout the South were registering and voting without interference. That increased participation exposed less blatant inequalities and problems—complex issues such as racial vote dilution, the contours of which courts are still tackling today.

These persistent problems have led Congress to extend and expand the VRA each time its non-permanent provisions were due to expire. The ban on literacy tests, as well as the “preclearance” provisions contained in Section 5, initially were enacted to last for only five years. Nonetheless, Congress decided to extend these provisions in 1970, again in 1975, and for twenty-five more years in 1982. During the last renewal, Congress also expanded the terms of the core permanent provision of the Voting Rights Act—Section 2.

Four decades after their original enactment, the non-permanent provisions of the VRA are once again set to expire. Congress must once again determine whether it should renew these provisions, make substantive alterations to them, or simply let them lapse. To make this determination, Congress needs information about the past and present status of minority participation in the political process.

The Voting Rights Initiative (“VRI”) at the University of Michigan Law School was created during the winter of 2005 to help address this need and to help inform the nationwide discussion on voting rights now under way. A cooperative research venture involving 100 students working under faculty direction set out to produce a detailed portrait of litigation brought since 1982 under the core permanent provision of the Voting Rights Act. This Report evaluates the results of this survey. The comprehensive data set may be found in an analytically structured as well as searchable form at <http://www.votingreport.org>. The aim of this report, the accompanying website, and the project as a whole is to contribute to a critical understanding of current opportunities for effective political participation on the part of those minorities the Voting Rights Act seeks to protect.

ABSTRACT #13

**Racial Redistricting and the Election of African-American
County Supervisors in Mississippi**

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Abstract

Contrary to the findings of many recent studies of U.S. House elections, we find that the creation of black-majority districts remains crucial to the election of African Americans to the Board of Supervisors in Mississippi counties. Like several studies of national politics, we show that racial redistricting facilitates the election of greater numbers of Republicans. However, unlike these studies, we find little evidence that racial redistricting has greatly undermined black substantive representation by promoting the election of many new Republicans on the Board of Supervisors in most Mississippi counties. Black supervisors, usually elected from black-majority districts, served in 61 of Mississippi's 82 counties. In contrast, Republicans won election in only 22 counties despite the concentration of black voters into black-majority districts. Only seven mostly heavily-white counties had a Republican majority on the Board of Supervisors. These findings suggest the continuing necessity of analyses specific to offices and jurisdictions in order to correctly apply recent Supreme Court rulings on racial redistricting.

ABSTRACT #14

*Assessing the Effectiveness of Section 5 Pre-clearance of
Annexations in North Carolina*

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Abstract

Municipalities in areas covered by Section 5 are required to prove that an annexation does not have the purpose or effect of making minority voters worse off than they were before the annexation. This paper presents a methodology that allows an empirical determination how annexations change the racial composition of a municipality. We demonstrate that all of the 10 “Section 5” municipalities in our preliminary sample used annexation in such a way as to decrease the percentage of the population that was African-American during the 1990s, and 3 of them would have been majority-African-American without annexation, but all remained majority white.

To measure the effect of annexation on racial composition, we decompose or separate changes in the racial composition of municipalities between 1990 and 2000 that are attributable to changes in the population within the 1990 borders and those attributable to annexation. We present results of this analysis for a set of towns in five south central North Carolina counties covered by Section 5 and from three towns in a county not covered. We choose North Carolina for two reasons. First, our preliminary research shows that African American neighborhoods are systematically excluded from annexation in many smaller cities and towns in North Carolina, while predominantly white areas are regularly annexed. This pattern of exclusion is attributable in part to the requirement

that municipalities consider the fiscal impact of any annexation, resulting in annexation of high-value properties and the exclusion of lower-valued (and often African American occupied) properties. Second, this paper lays the foundation for a wider analysis of North Carolina where forty of the 100 counties are covered by Section 5 of the Voting Rights Act, while the others are not. This partial coverage provides the opportunity to assess the relative effects of Section 5 coverage on annexation controlling for any effect of differences in annexation laws and procedures that could account for variation in comparisons between two or more states. We compare the changes between 1990 and 2000 rather than for single annexations because we have detailed census data, including municipal boundaries, from the decennial censuses conducted in those years.

Refusal to annex any areas could also disadvantage minorities. In North Carolina, refusal to annex limits the political voice of excluded neighborhoods because Extraterritorial Jurisdiction (ETJ) statutes in North Carolina grant municipalities control over zoning, permitting and land-use decisions up to three miles from the town limits, depending on the size of the municipality. The residents of the ETJ have no vote for the government that controls their property. We discuss a case where refusal to annex appears to have the effect of making minorities who cannot vote worse off. As social scientists we defer to lawyers about the legality of these practices with respect to the VRA, but the impact on minority voices in the political system is dramatic.

ABSTRACT #15

Majority-Minority Districts, Co-ethnic Candidates, and Mobilization Effects

Gary M. Segura and Nathan D. Woods

Abstract

We estimate the effects of district demography and the possibility of co-ethnic representation on voter turnout and its political effects. We will examine vote histories from 1996-2000 for all registered voters in five California counties - Los Angeles, Orange, San Bernardino, Ventura, and Riverside, and data from 1996-2002 for all five boroughs of New York City. Moving beyond existing work, where we previously demonstrated the positive relationship between living in majority-minority electoral jurisdictions and the probability of voter turnout, we examine in greater detail the dynamics of the relationship between district population distributions and voter turnout. Using a continuous measure of Latino population share among registered voters and its square, we first replicate our previous findings, but in so doing demonstrate that the relationship between minority population share and turnout is both complex and non-linear. Findings simply comparing majority and non-majority contexts miss the important variation across levels of population. Second, we use data from both southern California and the five boroughs of New York, demonstrating that while the hypothesized effects are somewhat generalizable across Latino national origin groups and geographic context, there is important variation. Third, we examine the effect of turnout on electoral opportunity, and demonstrate how turnout differentials across Latino and non-Latino populations, coupled with the underlying population distributions among registered voters, can allow us to estimate important thresholds of political control. In the wake of the Supreme Court's decision in *Georgia v. Ashcroft*, we can use those functions and varying assumptions about white racial polarization and Latino unity to estimate the conditions under which potential political control can be translated into a legitimate chance for minority group members to elect a first-choice candidate.

**Enfranchising Language Minority Citizens:
The Bilingual Election Provisions of the Voting Rights Act**

Rodolfo Espino and James Tucker

Abstract

The minority language assistance provisions of the Voting Rights Act were designed to remove language barriers to voting and to provide limited-English speaking American citizens with a full and meaningful opportunity to cast ballots that accurately reflect their own political judgments. The basic mandate, contained in sections 4(f)(4) and 203 of the Act, prohibits jurisdictions with prescribed levels of limited-English proficient citizens of voting age from conducting English-only elections.

Despite the increasing importance of minority language assistance throughout the United States, the federal bilingual election requirements are probably the least known and most widely misunderstood provisions of the Voting Rights Act. Many English-speaking voters cannot comprehend why it is necessary to provide election information in any language other than English. Although the bilingual election provisions of the Voting Rights Act enjoyed strong bipartisan support in Congress when they were adopted and each time they were up for renewal, the provisions at times have come under fire by proponents of legislation to establish English as the official language of government. Much of their criticism rests upon a misapprehension of the purpose of the bilingual election provisions, and the effects of implementing language assistance requirements.

This Article strives to dispel misinterpretations of this important legislation by describing the powerful impact the federal bilingual election provisions have had in helping to enfranchise millions of language minority citizens. Part II outlines the legislative history and substance of the Voting

Rights Act's bilingual requirements, explaining how these provisions have continued to evolve to improve the access of limited-English proficient voters to the political process. Part III addresses criticism of the provisions by assessing the demand for and costs of providing bilingual language assistance and materials to remove barriers to language minority voters. Part IV details efforts by the United States Department of Justice to enforce the federal bilingual elections mandate. The fourth part uses case studies to illustrate the significant impact that successful enforcement activities has had on the opportunity of three language minority groups to cast meaningful ballots. The bilingual election provisions of the Voting Rights Act do not divide American citizens along ethnic lines. Instead, the provisions remove barriers posed by English-only elections to ensure that, in Senator Hatch's words, citizenship is not "just an empty promise" for language minority citizens who want to be integrated into American society and the democratic process.