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The 1982 Amendments to the Voting Rights Act

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IN 1965 CONGRESS passed the Voting Rights Act to end practices that prevented blacks and other minorities from registering, voting, and otherwise participating in elections. Each time the Act has been due to expire, it has been extended, essentially without change in its basic approach. Provisions were added in 1975 to require assistance for some citizens who do not speak English.

The Act operates in two ways to ensure access by minority groups to the political process. First, Section 2 [42 U.S.C. 1973] forbids *all* states and political subdivisions from discriminating by race in the election process. Second, Section 5 [42 U.S.C. 1973c] requires certain jurisdictions to obtain approval of either the U.S. Justice Department or the federal district court for the District of Columbia before making any change in their election procedures that affects voting or registration. A state or political subdivision is subject to Section 5 if it used a literacy test or similar device *and* if less than half of its electorate voted or registered in the 1964, 1968, or 1972 presidential elections.

In 1982 Congress once again extended the Act just before it expired—and this time made several important changes. Some of the amendments are to Section 2, and thus affect all North Carolina counties; these alterations went into effect on June 29, 1982. The other amendments are to the enforcement provisions of Section 5, and thus affect only those 40 counties that are required to have their changes in election procedures "precleared" by the Justice Department (these counties are listed below); these "bail-out" provisions become effective on August 5, 1984.

Section 2

Before the 1982 Amendments. Section 2 of the Voting Rights Act bars all states and political subdivisions from using election procedures or rules that deny or abridge the voting rights of racial or language minorities. Before June 29, 1982, this section read:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title [protection of certain language minorities].

Before 1980, many courts held that Section 2 was violated if a political unit used an election practice that had the *effect* of denying voting rights to a protected racial or language group. Under this "results" test, the plaintiff did not have to show that the political unit *intended* to discriminate against anyone in order for the court to find that the governmental unit had violated Section 2.

But in 1980, in *Mobile v. Bolden* [446 U.S. 55 (1980)], a deeply divided U.S. Supreme Court ruled that to show a

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violation of Section 2, the plaintiffs must prove that the political unit intended to discriminate. In that case the plaintiffs claimed that Mobile, Alabama, violated Section 2 by using at-large municipal elections. They also argued that the use of at-large elections violated the Fourteenth and Fifteenth amendments of the U.S. Constitution, asserting that such elections dilute minority voting strength and make it virtually impossible for a minority candidate to win election to city office. In an at-large election, a candidate must receive a majority of the votes cast city-wide, but in a ward or district election system a candidate need receive only a majority of the votes in his own district.

The plurality of four justices in *Mobile* discussed the Section 2 claim only briefly, deciding that Congress intended Section 2 to mirror the language of the Fifteenth Amendment, which provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude." Finding Section 2 and the Fifteenth Amendment to be essentially identical, the Court concluded that the plaintiffs' Section 2 claim "added nothing" to their cause of action. And, most important, the Court held that to establish a violation of the Fifteenth Amendment the plaintiffs must prove that the defendants intended to discriminate.

The "intent" test of *Mobile* appears to conflict with the Court's earlier decision in *White v. Regester* [412 U.S. 755 (1973)], in which the plaintiffs established a violation of Section 2 by showing that the use of multi-member voting districts in two Texas counties *resulted* in infringement of voting rights of ethnic and racial minorities. The *White* Court considered a number of factors that contributed to the nonelection of minority candidates—a history of racial discrimination, a majority-vote requirement, racially biased "slating" practices, etc.—and determined that, as indicated by the "totality of the circumstances," the multi-member district system resulted in discrimination. But the Court did not discuss the *intent* behind the establishment of multi-member districts.

In amending Section 2, Congress intended—according to the Senate Judiciary Committee—"to restore the pre-*Mobile* legal standard which governed cases challenging election systems" and to codify the "totality of the circumstances" test of *White* ["Voting Rights Act Extension," *Report of the Committee on the Judiciary, United States Senate on S. 1992* (Report No. 97-417, May 25, 1982), p. 27].

Present Wording of Section 2. Effective June 29, 1982, Section 2 (with new language italicized) reads:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgment of the* right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title [language minorities], *as provided in subsection (b) of this section.*
>
> (b) *A violation of subsection (a) of this section is established, if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.*

Reasons for Amending Section 2. To understand how the new Section 2 is to operate, one must first understand the reasons behind the revision. Individual congressmen may have voted for the amendments to Section 2 for any number of reasons, but the majority's "official" reasons are most fully stated in the Senate Judiciary Committee report. The full citation is "Voting Rights Act Extension," *Report of the Committee on the Judiciary, United States Senate, on S. 1992* (Report No. 97-417, May 25, 1982). The report is a thorough explanation of what Congress intended when it rewrote Section 2, and henceforth this bulletin will cite *Senate Report* to explain congressional intent.

Congress voted to restore the pre-*Mobile* results test primarily because the intent test placed too great a burden on plaintiffs in Section 2 cases [*Senate Report* at 16]. Determining why an at-large election system or any other challenged law was passed is always difficult, but the task becomes even harder when the law is old and there are no witnesses to testify about its purpose. Determining the motives behind the at-large election system challenged in *Mobile* meant going back to newspaper accounts as much as 165 years old.

Congress also eliminated the intent test because it "diverts judicial inquiry from the crucial question whether minorities have equal access to the electoral process to a historical question of individual motives" [*Senate Report* at 16].

And, finally, the *Senate Report* states that the intent test is simply inconsistent with the original congressional purpose in passing the Voting Rights Act of 1965, as reflected in many Supreme Court cases and other federal court decisions handed down before *Mobile*.

Effect of the Amendments. It will be some time before there is clear case law interpreting the amended Section 2 test, but certainly the amendments can be expected to have several consequences. If nothing else, they should clarify the test to be used and the burden of proof that a plaintiff must carry in a Section 2 case. As intended, the amendments should make it significantly easier for a plaintiff to prove that a violation of Section 2 has occurred. It is surely easier to find evidence of the objective factors that make up the results test than to establish the subjective intent required by *Mobile*.

It should not be forgotten that a plaintiff may still show a Section 2 violation by proving an intent to discriminate, although he is not required to do so. If plaintiff has such evidence, he may follow the "intent" route; the "results" route is a new alternative for him [*Senate Report* at 27].

How a Section 2 Violation Is Proved. A violation of Section 2 is established when a plaintiff proves that, judged from "the totality of the circumstances," the political processes leading to nomination or election are not equally open to participation by members of a protected minority group. Although they are not part of the official statutory language, the *Senate Report* lists a number of factors that a court may consider in determining whether Section 2 has been violated. "[S]ubsection (b) [of Section 2] embodies the test laid down by the Supreme Court in *White*" [*Senate Report* at 27], and consequently those factors were derived chiefly from that Court opinion. The factors and examples of their proof are:

1. *A history of official discrimination involving the right of minorities to register, vote, or participate in the electoral process.* A "history" of discrimination was shown in *White* by proof that Texas law permitted poll taxes until 1966, supported segregated schools in the past, and excluded blacks from primary elections until the 1920s [412 U.S. at 769, citing *Graves v. Barnes*, 343 F. Supp 704, 725 (W.D. Tex. 1972)]. Obviously a similar history can be shown for North Carolina and its counties.

2. *The extent to which voting is racially polarized.* In *Jordan v. City of Greenwood* [534 F. Supp. 1351, 1354 (N.D. Miss. 1982)], the federal district court noted that city elections were racially polarized because no black had ever been elected to the city council and black candidates received very few votes from the all-white precinct.

3. *The extent to which the political unit has used unusually large election districts, majority-vote requirements, anti-single-shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination.* In *White* the Court noted that the multi-member legislative districts were large and that candidates were not required to live in particular subdistricts within the district. Therefore it was possible that all legislators could be selected from outside the minority residential areas [412 U.S. at 767, n. 10].

North Carolina's record is mixed on these voting practices. North Carolina is one of only nine states, all southern, with a majority-vote requirement for party primaries. It uses multi-member voting districts extensively but permits single-shot voting. The size of state multi-member legislative election districts varies. The largest is the 36th State House district, Mecklenburg County, which elects eight representatives; the 21st district, Wake County, elects six. Many North Carolina counties elect all five of their county commissioners at large; of the few counties that have seven commissioners, several elect them at large, though the candidates must run as residents of particular districts. In the overwhelming majority of cities, all council members are elected at large.

4. *Whether members of the minority group have been denied access to a candidate-slating process.* The *White* Court found that the Democratic Party in Dallas County, Texas, was controlled by the slating group of the white-dominated Dallas Committee for Responsible Government. Only two blacks had been slated by the committee since Reconstruction [412 U.S. at 767-68]. There should be few North Carolina communities in which a slating group exercises such control as to make this factor relevant.

5. *The extent to which the minority group bear the effects of discrimination in areas like education, employment, and health—areas in which deficiencies hinder ability to participate effectively in the political process.* Courts have recognized that low educational, income, and employment levels lead to low political participation. "[W]here these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus between their socio-economic status and the depressed level of political participation" [*Senate Report* at 29, n. 114]. Apparently this means that a plaintiff need only show low political participation by minority groups plus low socioeconomic indicators among minority group members in order to establish the existence of this factor. The court would then combine this factor with any other indicators to determine whether the "totality of the circumstances" shows denial of voting rights to minority group members.

The socioeconomic factors considered in *White* were the high unemployment rate and poor housing of Mexican-Americans in Bexar County, Texas [412 U.S. at 768]. Also, the Court noted that the "typical Mexican-American suffers a cultural and language barrier that makes his participation in community processes extremely difficult" [*id.*].

Because the incidence of unemployment, health problems, and low educational levels is proportionately higher for blacks and other minority groups than for whites in North Carolina, it is probable that a Section 2 plaintiff

would be able to demonstrate the existence of this factor in this state. And once those facts were compiled for one case, they likely would be transferable to almost any similar litigation in North Carolina.

6. *Whether political campaigns have been characterized by overt or subtle racial appeals.* This factor is self-evident. Though surely the incidence of this sort of election behavior has decreased in recent years, it will still be a factor in some cases.

7. *The extent to which members of the minority group have been elected to public office in the jurisdiction.* Section 2(b) of the amended Act specifically provides that minorities are not guaranteed the right to proportional representation. Nevertheless, the success rate of minority candidates is one factor that may contribute to a showing that the "totality of circumstances" proves denial of minority voting rights. In *White*, for instance, the Court noted that since Reconstruction only two blacks had been elected to the Texas House of Representatives from one of the two counties in question [412 U.S. at 766]. Although blacks are now being elected in increasing numbers in North Carolina, their representation has never equaled their proportion in the population, and in many communities no blacks have ever been elected to office. In 1982, for example, more blacks were elected as county commissioners than ever before; but even so, of all 494 commissioners in the state, only 35 were black.

How Court Decisions Will Differ. Congress intended its revision to make it easier for plaintiffs to establish violations of Section 2. In what kinds of cases might the revised Section 2 be expected to have this result? Perhaps the best way to answer this question is to look at several cases in which (a) no Section 2 violation was found under the *Mobile* intent test but (b) the result would have been different (according to the *Senate Report*) under the new statute.

In two Mississippi cases—*Kirksey v. City of Jackson* [663 F.2d 659, *reh. denied*, 669 F.2d 316 (5th Cir. 1982)] and *Jordan v. City of Greenwood* [534 F. Supp. 1351 (N.D. Miss. 1982)]—plaintiffs were unable to show that the at-large method of electing the mayor and the city commissioners was adopted with the intent to discriminate against minorities. The laws in question were enacted at the turn of the century, when Mississippi blacks were already barred from voting. Thus the *Kirksey* and *Jordan* courts reasoned that the challenged laws could not have been adopted with the purpose of denying voting rights to blacks [*Senate Report* at 39]. They held that the plaintiffs did not show a violation of Section 2 "despite strong evidence of present-day discrimination" [*id.*].

In *Jordan* the plaintiffs did show a history of discrimination against minorities, including the use of poll taxes and literacy tests. They pointed to several successful court actions to stop local restrictive voting practices and also presented evidence of both widespread poverty among the district's minority group members and racially polarized voting [534 F. Supp. at 1357].

No black had ever been elected to city office in either Jackson or Greenwood, although in 1980 Jackson's population was almost 47 per cent black and Greenwood had a slight black majority.

The Senate Judiciary Committee considered all of these facts sufficient to establish a violation under the new version of Section 2.

According to the *Senate Report*, there was also adequate evidence to show a violation in *Cross v. Baxter* [639 F.2d 1383 (5th Cir. 1981)]. Plaintiffs in that case showed that an all-white civic group supervised the Moultrie, Georgia, city council elections, which were at large; that a polling place had been moved from a location convenient to black voters to a less convenient place; that blacks had problems campaigning in white neighborhoods; and that only two blacks had ever been elected to the city council. Further, they presented proof that blacks in the city had been discriminated against; that they suffered from educational, employment, and economic disadvantages; that city recreational facilities in black neighborhoods were inferior to those in white neighborhoods; and that while 45 per cent of whites were registered to vote, only 27 per cent of the blacks were registered.

In each of these cases there was also evidence on the other side—evidence that public services were provided equally in black and white neighborhoods, that blacks had been appointed to city boards, that blacks served as election officials, and so on. The *Senate Report* does not elaborate on how its writers weighed the evidence presented in the *Kirksey*, *Jordan*, and *Cross* cases to conclude that plaintiffs would prevail under the amended results test. Nevertheless, the cases illustrate the kinds of factors a court would probably consider in future Section 2 cases. And clearly some of those factors could be found in North Carolina.

The New Bail-Out Provisions

Introduction. Forty North Carolina counties are required by Section 5 of the Voting Rights Act to submit any changes in election law or procedure to the U.S. Justice Department or the federal district court for the District of Columbia for approval before the change may take effect.

All the counties in North Carolina that are subject to preclearance are covered under the provisions concerning discrimination based on race or color; the proposed changes must be precleared in order to assure that they will not diminish black voting strength. The covered counties

are Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, and Wilson.

Jackson County is also subject to the Section 5 preclearance requirement because of its significant number of citizens (American Indians) who do not speak English. Changes in election procedures in that county are reviewed for their effect on the language minority group as well as on blacks. Jackson, Hoke, Robeson, and Swain counties are all subject to provisions of the Voting Rights Act that require voting materials to be provided in Indian languages, but they are not required to preclear election changes.

Bail-Out Under Present Law. The procedure for a Section 5 jurisdiction to bail out appears in Section 4 [42 U.S.C. 1973b]. Under the current Act, which remains effective until August 5, 1984, a covered jurisdiction may bail out by showing the federal district court for the District of Columbia:

> that no such test or device [for voting, such as literacy test] has been used during the nineteen years preceding the filing of the action [to bail out] for the purpose or with 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 [the other sections of the Voting Rights Act].

This provision requires a county that is seeking to bail out to show that it stopped using literacy tests for voters before such tests were banned by Congress in August 1965. Each time the Voting Rights Act has been extended, this provision has been revised to require the jurisdiction to show that no voting tests or devices have been used since 1965. When, as part of the 1982 amendments, the present bail-out provisions were extended to August 5, 1984, the determinative period was extended to 19 years. This requirement will remain the law until the new bail-out formula takes effect.

The New Bail-Out Test. The amendments that will take effect in 1984 make it easier in some ways, harder in others, for a county to exempt itself from Section 5. The new test is easier in that the period under review will be only the *ten* years preceding the county's bail-out suit, rather than the *nineteen* years currently required. With the new ten-year determinative period, a county is not forever burdened by history. On the other hand, it must prove that it has made detailed, *active efforts* to end voting discrimination rather than merely showing that it has used no voting test or device since 1965, as the current law provides.

(Another effect of the amendments is to permit counties to bail out separately even when the jurisdiction covered by Section 5 is the whole state. This does not affect North Carolina because only individual counties have been subject to preclearance. The Act does *not* permit cities within covered counties to bail out separately. To do so would make enforcement impossible [*Senate Report* at 57, n. 192].)

Beginning on August 5, 1984, to remove itself from the preclearance requirements of Section 5 of the Voting Rights Act, a county must establish that for the ten years preceding the bail-out suit (the italicized language closely paraphrases the statute):

1. *No voting test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color. Counties covered by the language minority provision must make the same showing with regard to language discrimination.* This is the same test as under the present act and should not be difficult for the county that seeks to bail out, since such tests have been banned under the Voting Rights Act for more than ten years.

2. *No final judgment has been entered in a United States court finding a violation of the Voting Rights Act in the county; nor has a consent decree, settlement, or agreement been entered to abandon a voting practice challenged on such grounds; nor has a declaratory judgment alleging a Voting Rights Act violation been entered while the bail-out action is pending.* An interlocutory decision or order of a court is not a final judgment. A court decision is considered final, however, even if it is appealed.

Simply stated, the county that seeks to bail out must show that for the preceding ten years there has been no judicial determination that the Voting Rights Act has been violated within the county. To quote the statute, the county must show that no court has determined that violations of the Voting Rights Act "have occurred anywhere in the territory of such . . . political subdivision . . . ." Apparently this means that if a discriminatory practice took place anywhere within the county, the county would be barred from bailing out even though it was not a party to the disqualifying judgment, consent decree, or settlement—as, for example, when the suit was brought against a city within the county.

Note that not all consent decrees affect bail-out—only those that include the county's abandonment of a challenged voting practice.

3. *No federal examiners have been assigned to the county under the Voting Rights Act.* The Act provides for appointment of federal officials to register voters in places with a history of discrimination. Examiners have never been appointed for any North Carolina county.

4. *The county and all political units within it have submitted all election changes required to be precleared under Section 5 and have repealed all such changes to which the Justice Department successfully objected.* This test will be the most difficult of all for counties that are seeking to bail out. Many election changes have been made that are required to be precleared under Section 5 but never were submitted. A county is disqualified from bailing out if it fails to submit a change, even if it later turns out that the change itself is unobjectionable. And, in this instance, the ten-year disqualifying period is counted from the last date the unsubmitted change was in effect [*Senate Report* at 48].

In the early years of the Voting Rights Act some failures to submit were understandable because there was confusion over what had to be precleared; for example, it was uncertain at first whether city annexations had to be submitted, but that confusion disappeared some time ago. Any change in election procedure that might affect minority voting must be submitted, no matter how insignificant it might seem: city annexations, changes from district to at-large elections or vice versa, redrawing of precinct lines, relocation of voting places, alteration of residency districts, switches from paper ballots to machines or vice versa, new hours of registration, adoption of staggered terms, and so on. Submitting the proposed changes is the responsibility of the jurisdiction's chief legal officer—that is, the county or city attorney. If the political unit does not have an attorney—for example, a small city or a school board—the chief administrative officer should take responsibility for submitting the change.

It is doubtful that any of North Carolina's covered counties has submitted for preclearance all of the voting changes it has instituted within the last ten years. This amendment to the bail-out provisions provides a strong incentive for complying with the preclearance requirement. If a county wishes to bail out, officials of all governments within the county need to be alert to the need to submit voting changes, no matter how minor they may seem. A county attorney for a covered county will be neglecting his duty if he concerns himself only with submitting changes initiated by the county commissioners and does not watch for changes initiated by city councils, the elections board, the school board, or others. And he should keep in mind that it matters not whether the change resulted from legislation, administrative action, or just a change in practice.

If a voting change was found objectionable and is of a type subject to repeal—a local ordinance changing terms of office, for example—it must be repealed in order to prevent it from later taking effect.

5. *No voting change submitted for preclearance has been successfully objected to, and no change is pending for clearance.* This requirement builds on and partially restates the requirement just summarized.

A covered county usually submits its changes to the U.S. Justice Department for approval. A seldom-used alternative is to ask the federal district court for the District of Columbia for a declaratory judgment approving implementation of the change. To satisfy the test stated above, the covered county must show either (a) that the Justice Department has not objected to any change submitted for clearance, or (b) that if the Justice Department *has* objected, the objection has been overturned by a court. And if the county has used the clearance procedure through the D.C. district court instead, it must show that the court has ruled in favor of the change.

6. *The county and all political units within the county have:*

(a) *Eliminated election procedures that inhibit or dilute equal access to the electoral process;*

(b) *Taken constructive efforts to eliminate intimidation and harassment of voters protected by the Voting Rights Act; and*

(c) *Made other constructive efforts to increase minority participation in the electoral process, such as appointing members of minority groups as election officials and increasing the opportunity for minorities to register and vote.*

This provision places on the county the burden of proving that the election system does not result in the denial or abridgment of the right to vote. The test is the same "results" test that is the basis for determining whether a violation of Section 2 has occurred [*Senate Report* at 72]. Apparently the jurisdiction must prove that the main features of its elections system do not discriminate, even if the system has not been challenged; the *Senate Report* states that a jurisdiction that is seeking to bail out must show that the "essential elements" of its election system are nondiscriminatory. And if other aspects of the election system are challenged by the Attorney General or anyone else, the county must prove that no discrimination results from those election practices [*Senate Report* at 72].

The anti-intimidation provision requires only that the county make a good-faith effort to eliminate discrimination and harassment. A county is not absolutely liable for all acts by private citizens; but if there have been complaints that voters have been intimidated, it should be prepared to document the steps taken by its officials to stop the intimidation.

Finally, the county must show that it has taken positive steps to increase the participation of minority members in the electoral process—like appointing blacks as elections board employees and as precinct officials, using blacks as special registration commissioners, holding registration

drives in the black community, and promoting registration and voting in black newspapers.

Evidence of Minority Registration and Voting. To help the court determine whether bail-out should be permitted, the county "*shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.*" Although this requirement is written in terms of a simple factual presentation, with no burden on the county to show a particular level of registration and voting by minority-group members, undoubtedly the county must show that more blacks are registered and vote than when the county first came under the coverage of Section 5. The county was placed under Section 5 because of the low participation of its minority-group citizens in the elections process; "it would be anomalous to terminate coverage where no gains have been made in the levels of minority participation"[*Senate Report* at 73]. Still, there is no set level of participation that must be shown.

Besides showing increases in registration and voting statistics, a county may properly show how minority candidates have fared in elections in the county. "The fact that a jurisdiction with significant minority populations has never elected any minority officials would be relevant" [*Senate Report* at 73].

If the county does not already do so, it should begin compiling the data that will be needed to satisfy this portion of the bail-out section. Congress intended that the evidence presented be reliable, objective, statistical data "rather than subjective or anecdotal" [*Senate Report* at 73]. In North Carolina the State Board of Elections regularly publishes statistics on registration by blacks and Indians; the county elections board should be able to provide other necessary information.

Evidence of Discrimination. Though the provision seems repetitious in light of the other showings that must be made, the statute specifies that bail-out is not permitted if the county has discriminated in the elections process on the basis of race or color (or language, in those designated counties with a minority group that does not speak English) within the preceding ten years. If such violations of the Constitution or federal or state law are shown, the county must prove that they "were trivial, were promptly corrected, and were not repeated." The *Senate Report* [at 74] states that this provision is intended to reach violations that have not been litigated and thus might not be included in the evidence presented under the various bail-out tests listed above. The *Senate Report* [at 74] states that no violation should be presumed to be trivial.

Other Procedural Matters. As before, a bail-out suit is an action by the county against the United States. It is heard by a three-judge panel of the United States District Court for the District of Columbia, with appeal to the Supreme Court. Efforts to amend the Act to permit bail-out suits to be heard outside the District of Columbia failed.

The new version of Section 5 will require the county that seeks to bail out to publicize its attempt in the news media and in local post offices. This requirement is intended to notify interested parties who wish to intervene in the suit. Any "aggrieved person"—someone with standing in the traditional sense—may intervene at any stage of the proceeding, including appeals.

Under present law, the court that authorizes bail-out retains jurisdiction for five years to reopen the case if new voting discrimination is alleged. The amendments will extend that period to ten years.

Review and Expiration. Congress is to review the bail-out provisions within 15 years after the 1984 amendments take effect. The entire preclearance section is scheduled to expire ten years after that—in 2009, unless extended. A similar deadline triggered the 1982 amendments to the Act.

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