No. 08-322

IN THE

Supreme Court of the United States

NORTHWEST AUSTIN MUNICIPAL UTILITY DISTRICT NUMBER ONE,

Appellant,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL.,

Appellees.

On Appeal from the
United States District Court for the
District of Columbia

BRIEF OF THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND THE LCCR EDUCATION FUND *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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INTEREST OF *AMICI CURIAE*

The Leadership Conference on Civil Rights ("LCCR") is a coalition of 200 organizations committed to the protection of civil and human rights in the United States.[1] It is the nation's oldest, largest, and most diverse civil and human rights coalition. LCCR was founded in 1950 by three legendary leaders of the civil rights movement—A. Philip Randolph, of the Brotherhood of Sleeping Car Porters; Roy Wilkins, of the NAACP; and Arnold Aronson, of the National Jewish Community Relations Advisory Council. Its member organizations represent people of all races and ethnicities.[2]

LCCR promotes effective civil rights legislation and policy. It was in the vanguard of the movement to secure passage of the Civil Rights Acts of 1957, 1960 and 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968. Since enactment of these landmark laws, the number of LCCR member organizations has grown, and LCCR's commitment to social justice has flourished.

The LCCR Education Fund ("LCCREF") is the research, education, and communications arm of LCCR. It focuses on documenting discrimination in American society, monitoring efforts to enforce civil rights legislation, and fostering better public under-

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[1] The parties have consented to the filing of this brief in letters on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] See Appendix A for a list of LCCR member organizations.

standing of issues of prejudice. LCCREF has published studies and reports on many subjects, including voting rights.

One of LCCR's and LCCREF's core roles is promoting voting rights, especially among racial and ethnic minorities. Beginning with the Voting Rights Act of 1965, LCCR has been instrumental in the passage of voting rights reform, including the reauthorization of the Voting Rights Act in 2006. For this latter initiative, LCCREF launched Renew the VRA, a national grassroots education campaign about the need for strong and vigorous voting rights protection. Part of this campaign included issuing a series of reports on fourteen states, which assessed the impact of the temporary provisions of the Voting Rights Act on each state over the previous 25 years. These reports showed that those provisions played a significant role in protecting minority voting rights but found that discrimination still pervades the electoral process. The work of the Renew the VRA campaign and LCCR's coordination of the national legislative effort played a significant role in Congress's decision to renew § 5 of the Voting Rights Act for another 25 years.

LCCR and LCCREF have filed only a handful of *amicus curiae* briefs before this Court. We do so only when we believe that a vital national interest is at stake. That is the case here. That national interest is the right of all citizens in the United States to vote without facing discrimination, to choose leaders that represent their interests and, by doing so, to promote the influence of the United States throughout the world as a viable and vibrant democracy.

Several other organizations that are not members of LCCR also join as signatories to this brief. These organizations and their Statements of Interest are set forth in Appendix B.

POSITION OF *AMICI CURIAE*

LCCR, LCCREF and the other supporting *amici* believe Congress's decision in 2006 to extend § 5 of the Voting Rights Act for 25 years was a reasonable and appropriate exercise of Congress's enforcement authority under the Fourteenth and Fifteenth Amendments. While the United States has made substantial progress toward eliminating racial discrimination in voting since 1965, the problems that initially prompted Congress to adopt § 5 have not been solved. Just this month, a plurality of this Court recognized that "racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions." *Bartlett* v. *Strickland*, No. 07-689, slip op. at 21 (Mar. 9, 2009) (Opinion of Kennedy, J.).

In extending § 5, Congress carefully surveyed the modern-day voting rights landscape and concluded that racial and language discrimination in voting persist in the United States and that the problem is particularly severe in the jurisdictions covered by § 5. Consequently, it concluded that special procedures are still warranted in these regions to preserve and continue the progress of the last four decades. This Court should not take the extraordinary step of second-guessing the national legislature's judgment, given the fundamental nature of the right at issue, the careful deliberation that Congress gave to the

matter, and the specific factual findings on which Congress's judgment rests.

Amici agree with the District Court and the appellees that the constitutionality of the 2006 extension should be assessed under the deferential standard applied in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), and subsequent § 5 cases. The Court's subsequent analysis in *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), does not purport to alter or displace the *Katzenbach* analysis, nor does it mandate a heightened review standard in this case. Given the specific authority granted to Congress under the Fourteenth and Fifteenth Amendments and the fundamental nature of the right to vote, Congressional enactments to protect minority voting rights are entitled to the highest level of deference from this Court. The Court has always applied the *Katzenbach* framework in considering the constitutionality of § 5 and other Voting Rights Act provisions, and should not depart from that consistent practice in this case.

Amici also agree with the District Court and the appellees that under either the *Katzenbach* or the *City of Boerne* standard, the 2006 extension of § 5 is an appropriate exercise of Congress's powers to prevent and redress voting discrimination. We write separately to emphasize that the progress the United States has made toward eradicating racial discrimination in voting since 1965, though real and substantial, is nonetheless fragile and unfinished. Without the continued protection of § 5, there is a significant risk that these gains will erode or even disappear over time.

The consequences that could ensue if this Court were to invalidate § 5 are severe. Over the years,

many jurisdictions have adopted voting changes that were never precleared and therefore could not be implemented. If § 5 were invalidated, these existing changes would become enforceable. And additional changes would certainly follow. In the next round of redistricting, many existing majority-minority districts could be eliminated. Some currently covered jurisdictions, if not bound by § 5, might restructure their governments in ways that disadvantage minority voters, *e.g.*, by switching from a system of single-member districts to at-large voting, reducing the number of seats on elected bodies, or reallocating authority from one body to another. Jurisdictions may also discriminate against minority voters by implementing new direct barriers to the right to vote, *e.g.*, by purging voters from the registration rolls, by eliminating polling places or reducing voting hours, or by simply cancelling elections altogether. In short, without the protection of § 5, many of the gains of the last four decades could be lost. As we show below, the clock of progress has been turned back before in American history. This Court must not let it happen again.

SUMMARY OF ARGUMENT

The premise of appellant's argument is that the circumstances that justified enactment of § 5 in 1965 were peculiar to that time and have since essentially disappeared. To be sure, as Congress specifically found, there have been extraordinary advances in minority political participation since 1965—advances

that are due in no small part to the effectiveness of § 5 in preventing discriminatory electoral practices.[3]

But as the *Bartlett* plurality recognized, racial discrimination and racially polarized voting are very much alive today. This is hardly surprising. The attitudes and prejudices that gave rise to the widespread and systematic discrimination that existed in 1965 were shaped over centuries. Some 88 years elapsed between the Compromise of 1877, which marked the end of Reconstruction, and the enactment of the Voting Rights Act in 1965. In 2006, the protections of the Act had been in place for only 41 years—less than half that time. In light of the deep historical roots of the problem and the extensive evidence of ongoing discrimination that Congress reviewed, it was reasonable for Congress to conclude that another 25 years was needed to eradicate the legacy of discrimination in the jurisdictions covered by § 5.[4]

We make three key points below. First, history teaches that gains in minority political participation are fragile and must be vigilantly protected by both the political branches of government and by the

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[3] *See* Pub. L. No. 109-246, 120 Stat. 577, § 2(b)(1) ("Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965.").

[4] *See* H.R. Rep. No. 109-478, at 58 (2006) (finding that "another 25 years of remedial measures (for a total of 67 years of remedial measures under the VRA until 2032) remains appropriate given the near century of discrimination the Act is designed to combat").

courts. In the decade following the Civil War, there were substantial gains in African American voter registration and political participation. But those gains were quickly erased following the end of Reconstruction. While there were numerous causes of this reversal, historians agree that a pair of decisions by this Court—*United States* v. *Reese*, 92 U.S. 214 (1876), and *United States* v. *Cruikshank*, 92 U.S. 542 (1876)—played a significant role. These decisions struck down key provisions of the Enforcement Act of 1870, 16 Stat. 140, which Congress had enacted to protect African American voting rights, and construed other provisions so narrowly that they were of little practical effect. With no effective federal statutory scheme in place to protect minority voting rights, States and local jurisdictions were free to implement a wide range of discriminatory laws and practices that effectively nullified the Fifteenth Amendment's guarantees for many generations. In light of this history, the present-day Court should be extremely hesitant to question Congress's judgment that the protections of § 5 are still necessary.

Second, Congress's determination that § 5 is still needed to preserve and extend the progress of the last four decades is reasonable and supported by the legislative record. Appellant does not dispute the underlying facts, but instead challenges the conclusions that Congress drew from those facts. But even if the Court might have weighed the evidence differently or drawn different conclusions if it were considering the matter in the first instance, it still should defer to Congress's judgment because "[t]he Constitution gives to Congress the role of weighing conflicting evidence in the legislative process." *Turner Broad. Sys., Inc.* v. *FCC*, 520 U.S. 180, 199 (1997). Viewing

Congress's findings in the appropriate deferential light, there is ample evidence to support the conclusion that the special protections of § 5 are still necessary in the covered jurisdictions.

Finally, appellant argues that § 5 is no longer necessary because there are other legal tools for combating racial discrimination in voting—most notably § 2 of the Voting Rights Act, 42 U.S.C. 1973. But while § 2 is valuable and necessary, it is not an adequate substitute for § 5. The two provisions serve different purposes. Section 2 is designed to remedy existing discrimination, while § 5 is designed to prevent discrimination from occurring in the first place. In enacting § 5, Congress drew on extensive experience showing that case-by-case litigation is not a sufficient safeguard against discriminatory voting practices. The problems with the case-by-case approach that existed in 1965 continue to exist today. Individual litigation under § 2 is time-consuming and expensive. Most minority voters simply do not have the resources to bring such actions. And without § 5, it would be relatively easy for defendant jurisdictions to circumvent court orders in § 2 cases by adopting new discriminatory practices. There is a real risk that if § 5 were not in place, many jurisdictions could revert to discriminatory practices, significantly undermining the progress that the United States has made over the last four decades toward achieving political equality for all its citizens.

ARGUMENT

I. History Shows That Gains in Minority Political Participation Can Be Reversed If the Political Branches and the Courts Fail To Vigilantly Protect Them.

The Court has frequently observed that "a page of history is worth a volume of logic." *New York Trust Co.* v. *Eisner*, 256 U.S. 345, 349 (1921).[5] With that adage in mind, *amici* believe it is instructive to consider the history of Congress's first efforts to protect minority voting rights in the post-Civil War period, the role that this Court played in invalidating those laws, and the consequences that ensued.

The gains in minority political participation that have been made in the United States since 1965 have been great. But there were also significant advances in minority voter registration and political participation in the South in the decade following the Civil War. These gains resulted from an aggressive federal effort to secure and protect African Americans' right to vote. By 1868, more than 700,000 African Americans had been registered to vote under the supervision of federal troops.[6] As a result, somewhere between 75% to 95% of eligible African American men were registered to vote in the South during the early years of Reconstruction.[7]

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[5] *Cf.* 1 GEORGE SANTAYANA, THE LIFE OF REASON; OR THE PHASES OF HUMAN PROGRESS 284 (1917) ("Those who cannot remember the past are condemned to repeat it.").

[6] BERNARD GROFMAN ET AL., MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY 5 (1992).

[7] RICHARD M. VALELLY, THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT 33 (2004).

The Fifteenth Amendment was ratified in 1870. Shortly afterward, Congress enacted the Enforcement Act of 1870, 16 Stat. 140, which among other things prohibited discrimination in voter registration and prescribed criminal penalties for obstructing voting rights. The Act was further amended in 1871 to permit federal courts to appoint election supervisors to oversee federal elections and voting registration. Act of Feb. 28, 1871, ch. 99, 16 Stat. 433.

The combination of large numbers of African-American voters and the adoption of new legal mechanisms to protect their rights had a remarkable impact on minority political participation. In the early 1870s, substantial numbers of African Americans were elected to political office at all levels of government. By the end of Reconstruction, eighteen African Americans had served in southern states in such statewide offices as lieutenant governor, treasurer, superintendent of education or secretary of state, and by 1875 there were eight African Americans serving in Congress, representing six different states.[8] More than 600 African Americans also served in state legislatures—the large majority of them former slaves.[9] African Americans made up nearly half of the lower-house delegates in Mississippi and Louisiana and were a majority in South Carolina, which also had an African American justice on its Supreme Court.[10] In the words of Professor

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[8] ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 353, 538 (1988).

[9] *Id.* at 355.

[10] MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 29 (2004)

Eric Foner, a leading historian of the Reconstruction period, this represented "a stunning departure in American politics."[11] And "[a]n equally remarkable transformation occurred at the local level, where the decisions of public officials directly affected daily life and the distribution of power."[12] According to Professor Foner, "[i]n virtually every county with a sizable black population, blacks served in at least some local office during Reconstruction."[13]

These gains proved short-lived. Reconstruction came to an end in 1877, following a compromise between Democrats and Republicans that resolved the disputed presidential election of 1876. Southern jurisdictions then began implementing a wide variety of measures to nullify African American voting rights. Many of the early measures involved racial gerrymandering techniques designed to dilute African American voting strength.[14] In the 1890s, state

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[11] FONER, *supra*, at 355.

[12] *Id.*

[13] *Id.* at 356.

[14] *See id.* at 590–91:

> "Throughout the South, . . . districts were gerrymandered to reduce Republican voting strength. Mississippi Redeemers concentrated the bulk of the black population in a 'shoestring' Congressional district running the length of the Mississippi River, leaving five others with white majorities. Alabama parceled out portions of its black belt into six separate districts to dilute the black vote. Cities from Richmond to Montgomery redrew ward lines to ensure Democratic control. Wilmington's black wards, containing four fifths of the city's population, elected only one third of its aldermen. Georgia severely restricted black voting by a cumulative poll tax requirement, a measure adopted at the behest of Robert Toombs, who professed his willingness 'to

efforts to disenfranchise African American voters became more brazen. Beginning with Mississippi in 1890, several southern states rewrote their constitutions and enacted laws adopting literacy tests, poll taxes, "good character" requirements, white primaries and other similar measures intended to exclude African Americans from the electorate.[15] As a result, the gains in minority political participation from Reconstruction were quickly erased.[16]

The reasons for this reversal are complex. But historians generally agree that this Court's 1876 decisions in *Reese* and *Cruikshank*, which struck down key provisions of the 1870 Enforcement Act and rendered others effectively unenforceable, played a significant role. In *Reese*, voting inspectors in Kentucky were indicted under §§ 3 and 4 of the Enforcement Act for wrongfully refusing to accept the vote of an African American citizen on account of his race and color. *See* 92 U.S. at 238–39 (Hunt, J., dissenting).

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face thirty years of war to get rid of negro suffrage in the South.'"

[15] *See* GROFMAN ET AL., *supra*, at 8–9.

[16] For example, in the 1880 presidential election, African American turnout in the South ranged from a low of 42% in Georgia to a high of 84% in Florida. VALELLY, *supra*, at 128. By the 1900 election, turnout had been reduced to the single digits in five southern states, and was well on its way to virtual extinction throughout the region. *Id.* By the mid-1890s, the number of African Americans in the Mississippi legislature had been reduced to zero (down from 64 in 1873), and just one African American legislator remained in South Carolina. KLARMAN, *supra*, at 32. Similarly, local office-holding by African Americans all but disappeared. *Id.*; *see also* VALELLY, *supra*, at 52 (number of African American legislators in the South fell by nearly 80% between the end of Reconstruction and 1890).

The Court affirmed the dismissal of the indictment, holding (on a strained reading of the statute) that §§ 3 and 4 were unconstitutional because they were not limited to wrongful discrimination on account of race. *Id.* at 218–20.

In *Cruikshank*, decided the same day as *Reese*, the Court reversed the convictions of three Louisiana men under § 6 of the 1870 Enforcement Act for conspiracy to deny African Americans a variety of civil rights, including the right to vote. This case arose out of a disputed election that escalated into an armed conflict—the notorious "Colfax Massacre" of 1873—in which whites seeking to expel African American and Republican officeholders stormed a courthouse in Grant Parish, Louisiana, killing more than 100 African Americans who had gathered to defend the courthouse.[17] In reversing the convictions, the Court concluded that many of the rights referred to in the indictment—including the right of peaceable assembly, the right to bear arms, and the rights of life and personal liberty—were not granted or protected by the federal Constitution. 92 U.S. at 551–54. With respect to the convictions for hindering African Americans in the exercise of their voting rights, the Court concluded that the indictment had not adequately alleged a racial motive: "We may suspect that race was the cause of the hostility; but it is not so averred." *Id.* at 556.

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[17] *See generally* FONER, *supra*, at 437. For more detailed accounts of the Colfax Massacre and its aftermath, *see* CHARLES LANE, THE DAY FREEDOM DIED: THE COLFAX MASSACRE, THE SUPREME COURT, AND THE BETRAYAL OF RECONSTRUCTION (2008); LEANNA KEITH, THE COLFAX MASSACRE (2008).

Legal scholars may continue to debate whether *Reese* and *Cruikshank* were correctly decided. But historians have long agreed that these decisions effectively gutted the federal statutory scheme for the protection of African American voting rights. In his history of this Court, Charles Warren observed that:

> "The practical effect of these decisions was to leave the Federal statutes almost wholly ineffective to protect the negro, in view of the construction of the Amendments adopted by the Court, the lack of adequate legislation in the Southern States, and the extremely limited number of rights which the Court deemed inherent in a citizen of the United States, *as such*, under the Constitution."[18]

Professor Foner describes the *Cruikshank* decision as "devastating," noting that it "rendered national prosecution of crimes committed against blacks virtually impossible, and gave a green light to acts of terror where local officials either could not or would not enforce the law."[19] Professor William Gillette likewise notes that the *Reese* case "made future enforcement [of voting rights] vastly more difficult, and in some cases clearly impossible."[20] And a recently published history notes that the two decisions "limited the likelihood of intervention to prevent systematic abuses," and that "[i]n combination with the withdrawal of troops . . . this bar to oversight em-

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[18] 2 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 604 (1926).

[19] FONER, *supra*, at 530–31.

[20] WILLIAM GILLETTE, RETREAT FROM RECONSTRUCTION 1869–1879, at 295 (1979).

powered mass intimidations and manipulations at the polls."[21] In short, the Court's failure to protect African American voting rights played a significant role in the retrenchment that followed the end of Reconstruction.

The advances in minority political participation in the United States over the last four decades are undoubtedly more solid and substantial than the gains that were made in the post-Civil War era. But the history of the post-Reconstruction period should serve as a warning that the clock of progress can be turned back if the political and judicial branches of government fail to exercise sufficient vigilance. The comments of another prominent historian, Professor C. Vann Woodward, at the hearings on the 1982 extension of the Voting Rights Act are pertinent in this regard. Asked why the history of Reconstruction is relevant, Professor Woodward replied:

> "[I]t makes evident and clear that revolutions and advances in popular rights and democratic rights can be reversed; that history can move backward; that enormous gains can be lost and jeopardized, eroded, or diluted, and abridged in spite of the enormous cost that those advances have made.
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> "The first reconstruction cost us our greatest bloodshed and tragedy. It would seem that if anything has been paid for at a higher price, it was these advances. And yet, they were eroded and lost, and only a century later they were restored.

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[21] KEITH, *supra*, at 158.

> "My history teaches me that if it can happen once, it can happen again."[22]

Given the lessons of history, Congress was properly unwilling in 2006 to allow § 5 to lapse. This Court should be equally reluctant to second-guess Congress's judgment that the protections afforded by § 5 are still necessary in the present day.

II. Congress's Determination That the Special Protections of § 5 Are Still Necessary in Covered Jurisdictions Is Reasonable and Entitled to the Highest Level of Deference.

In extending § 5, Congress recognized that the United States had made significant progress toward achieving political equality for minority voters in the 41 years since the Voting Rights Act was enacted.[23] Congress also found, however, that racial discrimination and racially polarized voting continued to exist and that these problems were most severe in the jurisdictions covered by § 5. Based on its review of the evidence, Congress concluded that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment

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[22] *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 97th Cong. 2027 (1981).

[23] *See* Pub. L. No. 109-246, § 2(b)(1) ("Significant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965.").

and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." Pub. L. No. 109-246, § 2(b)(7). It further found that without continuation of § 5, minority voters "will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." *Id.* § 2(b)(9).

Appellant does not and cannot dispute that § 5 was a constitutional exercise of Congress's power in 1965. Instead, appellant simply questions Congress's assessment of the extent of voting discrimination in covered jurisdictions as of 2006. Moreover, appellant does not dispute the underlying facts relied on by Congress, but merely contends that Congress drew the wrong conclusions from the facts before it. Appellant views the record as showing that voting discrimination "persists in haphazard and uncoordinated instances in covered and uncovered jurisdictions alike" (App. Br. at 43) and asks the Court to adopt that view.

But appellant's argument misapprehends the relationship between Congress and the Court. This Court should not conduct a *de novo* review of the evidence considered by Congress. Nor should it substitute its own judgment about the extent of voting discrimination or the need for continued protections in covered jurisdictions for the considered judgment of the Legislative Branch. The Constitution gives Congress the authority to review and weigh evidence as part of the legislative process and to make factual findings and predictive judgments based upon that evidence. Even if the Court might draw different conclusions if it were weighing the same evidence itself, it should still respect the judgment of Congress and the legislative

process. Giving Congress's factual findings the deference to which they are entitled, the decision to extend § 5 for another 25 years was a reasonable and appropriate exercise of legislative authority.

A. Congress's Factual Findings and Predictive Judgments About the Extent of Voting Discrimination and the Continued Need for § 5 Are Entitled to Substantial Deference.

Turner Broadcasting System, Inc. v. *FCC*, 520 U.S. 180 (1997) illustrates the level of deference that is appropriate in this case. In *Turner*, the Court affirmed the constitutionality of the "must-carry" provisions of the Cable Television Consumer Protection and Competition Act against a First Amendment challenge. The Court explained:

> "In reviewing the constitutionality of a statute, courts must accord substantial deference to the predictive judgments of Congress. Our sole obligation is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence. . . . [S]ubstantiality is to be measured in this context by a standard more deferential than we accord to judgments of an administrative agency. We owe Congress' findings deference in part because the institution is far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions. . . . This is not the sum of the matter, however. We owe Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power. Even in the realm of First

> Amendment questions where Congress must base its conclusions upon substantial evidence, deference must be accorded to its findings as to the harm to be avoided and to the remedial measures adopted for that end, lest we infringe on traditional legislative authority to make predictive judgments when enacting nationwide regulatory policy." *Id.* at 195–96 (citations and internal quotation marks omitted).

The Court further emphasized that "[t]he Constitution gives to Congress the role of weighing conflicting evidence in the legislative process," *id.* at 199, and that the Court is not to "re-weigh the evidence *de novo*, or to replace Congress' factual predictions with [its] own." *Id.* at 211 (citation and internal quotation marks omitted).[24] This case involves precisely the same kind of predictive judgments about ongoing harms and the need for remedial measures in a highly complex area that the Court addressed in *Turner*. And here, as in *Turner*, the Court should afford substantial deference to Congress's judgment.

Deference is especially appropriate here given the extensive efforts that Congress undertook to collect evidence and solicit the views of potentially affected parties. Before the bill that would become the 2006 Act was introduced, the House Judiciary Committee's Subcommittee on the Constitution held ten oversight hearings, at which it heard testimony from

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[24] Indeed, the Court made similar points in *City of Boerne,* noting that "[j]udicial deference, in most cases, is based not on the state of the legislative record Congress compiles but 'on due regard for the decision of the body constitutionally appointed to decide.'" 521 U.S. at 531 (quoting *Oregon* v. *Mitchell*, 400 U.S. 112, 207 (1970) (Opinion of Harlan, J.)).

39 witnesses, including "State and local elected officials, scholars, attorneys, and other representatives from the voting and civil rights community," as well as receiving written testimony from the Department of Justice, governmental and non-governmental organizations and private citizens. H.R. Rep. No. 109-478, at 5. The Subcommittee then held two additional legislative hearings and received oral and written testimony from another seven witnesses. *Id.* The Senate Judiciary Committee and its Subcommittee on the Constitution, Civil Rights and Property Rights held another ten hearings on the bill, and heard testimony from some 40 witnesses. S. Rep. No. 109-295, at 2 (2006). The hearings included testimony from several well-known critics of § 5 (some of whom now appear as *amici* in this Court). The views that appellant expresses here—that § 5 is no longer necessary, or that changes should be made to the bailout provisions or coverage formula, or that a 25-year extension is too long—were all heard and considered in the legislative process.[25] But when Con-

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[25] *See, e.g.*, *Understanding the Benefits and Costs of Section 5 Preclearance: Hearing Before the Senate Comm. on the Judiciary*, 109th Cong. 7–9, 15–16, 204–210 (2006) (testimony and prepared statement of Abigail Thernstrom); *Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the Senate Comm. on the Judiciary*, 109th Cong. 9–11, 13–15, 225–38, 252–64 (2006) (testimony and prepared statements of Gerald A. Reynolds and John J. Park, Jr.); *Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After LULAC v. Perry: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the Senate Comm. on the Judiciary*, 109th Cong. 4–6, 10–11, 13–14, 135–74, 407–15

gress ultimately weighed the evidence, it reached a different conclusion, as it was entitled to do.

It is also significant that the decision to reauthorize § 5 received overwhelming bipartisan support in both houses of Congress—including broad support from the elected representatives of covered jurisdictions. The House of Representatives passed the 2006 Act by a vote of 390–33, while the Senate vote was unanimous, 98–0.[26] The Act was then signed into law by President George W. Bush—himself the former governor of a covered State. The Members of Congress are intimately familiar with voting patterns and electoral practices in the States and districts they represent. These elected representatives are uniquely qualified to make decisions about the extent of ongoing discrimination in voting and the need for § 5, and their judgment should be accorded the highest level of deference.

B. Giving Congress's Findings the Deference to Which They Are Entitled, the Decision To Extend § 5 Was Reasonable.

Congress made a number of factual findings in support of its decision to extend § 5. While appellant quibbles with Congress's interpretation of the evidence, Congress was entitled to draw its own reasonable conclusions from the evidence before it. Viewing Congress's findings in the proper deferential light, there is ample support for the extension of § 5.

(2006) (testimony and prepared statements of Roger Clegg, Michael Carvin, and Abigail Thernstrom).

[26] 152 CONG. REC. H5207 (daily ed. July 13, 2006) (House vote); 152 CONG. REC. S8012 (daily ed. July 20, 2006) (Senate vote).

1. Racially Polarized Voting Patterns

Congress found that "continued evidence of racially polarized voting in each of the jurisdictions covered by [§ 5] demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965." Pub. L. 109-246, § 2(b)(3). Among other things, the House report cited and relied on numerous court decisions finding legally significant racially polarized voting in several covered jurisdictions. H.R. Rep. No. 109-478, at 35. Appellant does not dispute the existence of racially polarized voting, but instead tries to downplay its significance by arguing that racially polarized voting is private action and therefore cannot be addressed by Congress. App. Br. at 48–49.

This argument misses the point. Racially polarized voting is not in itself unlawful, but it is highly significant in determining the potential for unlawful discrimination and the need for remedial measures. Discriminatory voting practices depend on the existence of racially polarized voting for their success. If minority voters do not consistently display different voting preferences from the majority, the majority will have little incentive to engage in discriminatory conduct. But whenever minority voters do display consistently different preferences from the majority, there will be a strong temptation for the majority to try to limit the minority's voting power and political influence. Thus, as the House Report found, "[t]he potential for discrimination in environments characterized by racially polarized voting is great." H.R. Rep. No. 109-478, at 35. The undisputed facts that racially polarized voting continues to exist and that it is especially severe in covered jurisdictions strongly support Congress's decision to extend § 5.

2. Attorney General Objections, Requests for More Information and Withdrawals of Submissions

As evidence of continued discrimination, Congress also cited "the hundreds of objections interposed [and] requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by [§ 5]." Pub. L. 109-246, § 2(b)(4)(A). Congress heard evidence that the Department of Justice had issued some 754 objections since 1982. S. Rep. No. 109-295, at 13–14; H.R. Rep. No. 109-478, at 22, 36. The House Report noted that more objections were lodged between 1982 and 2004 than between 1965 and 1982 and that these objections "did not encompass minor inadvertent changes." *Id.* at 21. It further found that:

> "[V]oting changes devised by covered jurisdictions resemble those techniques and methods used in 1965, 1970, 1975, and 1982 including: enacting discriminatory redistricting plans; switching offices from elected to appointed positions; relocating polling places; enacting discriminatory annexations and deannexations; setting numbered posts; and changing elections from single member districts to at-large voting and implementing majority vote requirements." *Id.* at 36.

The House Report cited numerous examples, including several from the post-2000 redistricting cycle. *Id.* at 36–40. And it found that these proposed changes were "calculated decisions to keep minority voters from fully participating in the political process," showing that "attempts to discriminate persist and

evolve, such that Section 5 is still needed to protect minority voters in the future." *Id.* at 21.[27]

Appellant argues that Congress should have focused on the declining rate of objections as a percentage of the submissions received, rather than the total number of objections. App. Br. at 52. But this is precisely the kind of policy judgment that Congress is entitled to make as part of the legislative process. Congress reasonably chose to focus on the total number of objections, not the percentage. Moreover, Congress did not base its conclusions solely on raw numbers—it also looked in detail at the type of voting changes that had drawn objections and the circumstances surrounding them. *See* H.R. Rep. No. 109-478, at 36–40.

Congress also found that in addition to formal objections, requests by the Justice Department for more information ("MIRs") had "affected more than 800 additional voting changes that were submitted for preclearance, compelling covered jurisdictions to either alter the proposal or withdraw it from consideration altogether." *Id.* at 40–41. Appellant argues that not all of these changes were necessarily discriminatory, and that a jurisdiction's decision to alter or withdraw its submission may indicate a good-faith effort to comply with the law. App. Br. at 53. But Congress could reasonably conclude that *some* of these changes likely were discriminatory, and that

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[27] *See also* H.R. Rep. No. 109-478, at 36 ("The Committee received testimony indicating that these changes were intentionally developed to keep minority voters and candidates from succeeding in the political process.").

they would have been implemented but for § 5.[28] In short, Congress reasonably found that the evidence of objections and MIR letters showed a pattern of ongoing discrimination warranting extension of § 5.

3. Section 5 Enforcement Actions

Congress also found that § 5 enforcement actions undertaken by the Department of Justice since 1982 evidenced continued discrimination and that these actions had "prevented election practices, such as annexation, at-large voting, and the use of multimember districts, from being enacted to dilute minority voting strength." Pub. L. 109-246, § 2(b)(4)(A). The House Report cites numerous examples. H.R. Rep. No. 109-478, at 41–44. Appellant gives short shrift to this evidence, arguing simply that the record of § 5 enforcement litigation shows that individual litigation can be an effective remedy for voting discrimination. App. Br. at 54–55. Congress could reasonably conclude, however, that absent the enforcement mechanism provided by § 5, many of these discriminatory voting mechanisms would have been implemented, and that the alternative of § 2 litigation would not provide an adequate safeguard. *See* discussion *infra* Part III.

4. Judicial Preclearance Actions

Congress found that "the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia" further

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[28] The House Report notes that "[t]he location of the withdrawn voting changes parallels the patterns of objections interposed by the Department of Justice, occurring primarily within the 'Black Belt' of the Southern States." H.R. Rep. No. 109-478, at 41.

evidenced continuing discrimination. Pub. L. 109-246, § 2(b)(4)(B). As the District Court noted, the evidence before Congress showed that "plaintiffs either withdrew their proposed changes or lost on the merits in twenty-five declaratory judgment actions filed since 1982." *Northwest Austin Mun. Util. Dist. No. One* v. *Mukasey*, 557 F. Supp. 2d 9, 50 (D.D.C. 2008). Appellant questions whether one of those cases was properly included in the total, since the discriminatory conduct occurred before 1982. App. Br. at 55. But even disregarding this case, Congress could reasonably conclude that twenty-four unsuccessful judicial preclearance suits demonstrates continued discrimination and an ongoing need for § 5.

5. Extent of § 2 Litigation in Covered Jurisdictions

Congress also cited "the continued filing of § 2 cases that originated in covered jurisdictions" as evidence of continued discrimination. Pub. L. 109-246, § 2(b)(4)(C). The House Report noted that more than half of successful § 2 cases in the preceding 25 years had been filed in covered jurisdictions, even though these jurisdictions accounted for less than 39% of the country's total population. H.R. Rep. No. 109-478, at 53. Appellant views the record of § 2 litigation as evidence that § 5 is unnecessary. App. Br. at 47–48. But again, Congress was not required to draw that conclusion—it could reasonably conclude from the number of successful § 2 cases brought in covered jurisdictions that discriminatory practices continue to be a more significant problem in covered than in non-covered jurisdictions.

6. Appointment of Federal Observers

Congress also found that the "tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions" demonstrated the "continued need for Federal oversight in jurisdictions covered by [§ 5]." Pub. L. 109-246, § 2(b)(5). As the House Report explains, observers are assigned to a polling location under § 8 of the Voting Rights Act, 42 U.S.C. § 1973f, "only when there is a reasonable belief that minority citizens are at risk of being disenfranchised." H.R. Rep. No. 109-478, at 44. It noted that this experience "demonstrates that the discriminatory conduct experienced by minority voters is not solely limited to tactics to dilute the voting strength of minorities but continues to include tactics to disenfranchise, such as harassment and intimidation inside polling locations." *Id.* In at least one instance, the personal accounts provided by these observers led to a federal prosecution of county officials for discriminatory conduct against African Americans in polling locations. *Id.* This evidence—which appellant does not address—further supports the reasonableness of Congress's conclusion.[29]

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[29] *Amicus curiae* Southeastern Legal Foundation argues that the dispatch of observers cannot support the decision to reauthorize § 5 because it is "not the result of actual, state-sponsored discrimination in conducting voting" and it is too great a leap to infer discrimination based on the Department of Justice's reasonable belief of a risk of disenfranchisement. SLF Amicus Br. at 29–30. Congress, however, was entitled to take into account the Justice Department's reasonable beliefs. Moreover, Congress considered not just the fact that observers were assigned but also the observations of those observers. *See* H.R. Rep. No. 109-478, at 44 (2006).

* * * * *

In sum, Congress had an ample factual record to support its conclusion that without continuation of § 5, minority voters "will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." Pub. L. 109-246, § 2(b)(9). Even if the evidence could be read to support a different conclusion, Congress was not required to adopt appellant's view of the evidence. The judgment that Congress did make was reasonable and based on a careful consideration of the record, and the Court should defer to that judgment.

III. Case-by-Case Litigation Under § 2 Is Not a Sufficient Safeguard Against Voting Discrimination.

Appellant's argument that § 5 is no longer necessary because § 2 provides a sufficient remedy against discriminatory voting procedures (App. Br. at 54–55) ignores the fundamental difference between the two sections. Section 2 litigation seeks to remedy discriminatory practices that are already in place. Section 5 is designed to *prevent* discriminatory practices from being implemented in the first place. Section 2, while a powerful and necessary tool, does not serve this preventive function.

Congress originally enacted § 5 based on substantial experience showing that individual litigation alone was insufficient to solve the problem of voting discrimination. As the Court explained in *Katzenbach*, prior to 1965 Congress had "repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination." 383 U.S. at 313. But these efforts "proved ineffective for a num-

ber of reasons." *Id.* at 314. The Court noted, for example, that

> "[v]oting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration." *Id.*

Congress was well aware of this history when it extended § 5 in 2006. As stated in the House Report:

> "The Committee knows from history that case-by-case enforcement alone is not enough to combat the efforts of certain States and jurisdictions to discriminate against minority citizens in the electoral process. Moreover, the Committee finds that Section 2 would be ineffective to protect the rights of minority voters, especially in light of the increased activity under Sections 5 and 8 over the last 25 years. It is against this backdrop that the Committee finds it necessary to extend the temporary provisions for an additional 25 years." H.R. Rep. No. 109-478, at 57.

Given the Nation's unsuccessful prior experience with a pure case-by-case litigation approach, Congress reasonably concluded that § 2, on its own, is not a sufficient safeguard against discriminatory conduct.

The problems with the case-by-case litigation approach that the Court discussed in *Katzenbach* are as significant today as they were in 1965. First, litigation under § 2 continues to be onerous and expensive. Congress heard evidence that § 2 litigation is "incredibly costly," and that successful plaintiffs are rarely likely to recoup all of their attorneys' fees.[30] Congress also heard evidence that the Federal Judicial Center has ranked voting rights cases as among the most complex and time-consuming cases for judges—just ahead of antitrust cases and behind patent litigation.[31]

The reason that these cases are so costly and complex is that, as the law has evolved, proof of a § 2 claim requires not only extensive factual investigation, but also highly technical expert analysis on such issues as the extent of racially polarized voting, minority cohesion, and whether actual or proposed districts are reasonably compact.[32] As a result, mi-

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[30] *See, e.g.*, *Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 109th Cong. 92 (2005) [hereinafter "*History, Scope, and Purpose*"] (testimony of Nina Perales).

[31] *See Understanding the Benefits and Costs of Section 5 Preclearance: Hearing Before the Senate Comm. on the Judiciary*, 109th Cong. 80 (2006) (statement of Armand Derfner); Federal Judicial Ctr., *2003-2004 District Court Case Weighting Study*: *Final Report to the Subcomm. on Judicial Statistics of the Comm. on Judicial Resources of the Judicial Conference of the United States* 5 (2005).

[32] *See, e.g.*, *Thornburg* v. *Gingles,* 478 U.S. 30, 52–53 & n.20 (1986) (discussing statistical evidence presented by experts using methods of ecological regression analysis and extreme case

nority voters generally do not have the resources to bring § 2 litigation in the first place, much less successfully prosecute such claims to their conclusion. By contrast, it is relatively easy for minority voters to participate in the § 5 administrative process. And where jurisdictions fail to comply with the preclearance requirement, such that judicial action is necessary, § 5 provides a much more simple and straightforward remedy because it does not require the kinds of complex inquiries that are necessary in § 2 cases. Rather, § 5 enforcement litigation turns simply on (a) whether a jurisdiction has changed a voting standard or procedure and (b) whether the change has been judicially or administratively precleared. "If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change." *Lopez* v. *Monterey County*, 519 U.S. 9, 20 (1996).

Second, because of its complexity, litigation under § 2 is slow. Congress heard evidence that it takes two to five years to litigate an average § 2 lawsuit, and that "[y]ou can't do it any faster than that."[33] It can easily take one or two full election cycles—if not more—before a case is finally resolved. Moreover, outside of the unusual case where a preliminary injunction is granted, the defendant jurisdiction can continue to implement an alleged discriminatory practice while the litigation is under way. As the testimony before Congress made clear, § 5 avoids this

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analysis); GROFMAN, *supra*, at 82–108 (discussing methodology for defining and measuring racially polarized voting).

[33] *See, e.g.*, *History, Scope, and Purpose*, *supra*, at 101 (testimony of Anita Earls).

problem because it prevents discriminatory practices from being implemented in the first place, and where jurisdictions disregard the law, an injunction can be obtained relatively quickly.[34]

Finally, as the *Katzenbach* court noted, one of the drawbacks of case-by-case litigation is that a State or political subdivision that is found to have engaged in discriminatory practices can then switch to a different tactic that will have a similar discriminatory effect, forcing plaintiffs to begin the litigation process over again. As Congress found, § 5 prevents this from happening because it acts as a "shield that prevents backsliding from the gains previously won." H.R. Rep. 109-478, at 53.

In sum, Congress reasonably concluded that § 2, by itself, would not provide a sufficient safeguard against the discrimination that continues to exist in the covered jurisdictions. Again, this Court should defer to that judgment.

CONCLUSION

In 1883, writing for a majority of this Court in the *Civil Rights Cases*, 109 U.S. 3 (1883), Justice Joseph P. Bradley powerfully expressed the view that the United States had reached a point at which African Americans no longer needed special legal protections to preserve their rights as citizens:

> "When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his eleva-

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[34] *See id.* (testimony of Nina Perales).

> tion when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected." *Id.* at 25.

History proved this view to be tragically wrong. Within a few years after this decision, African Americans in the South had lost virtually all of their most basic civil rights—including the right to vote. It took another eight decades before these rights finally began to be restored.

Appellant in this case advances a view similar to that of Justice Bradley, arguing that the wrongs of the past have been fully rectified and that there is no longer any need for special procedures to protect minorities from discrimination in voting. Congress, however, conducted a thorough review of the evidence and reached a very different conclusion. In light of this Nation's history and the extensive evidence establishing that discrimination and racially polarized voting continue to exist in covered jurisdictions, Congress's decision to extend § 5 for 25 years was wise and should not be disturbed by this Court.

The judgment of the District Court should be affirmed.

Respectfully submitted,

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March 25, 2009

APPENDIX A
List of LCCR Member Organizations

A. Philip Randolph Institute

AARP

ACORN

ADA Watch

Advancement Project

African Methodist Episcopal Church

Alaska Federation of Natives

Alaska Inter-Tribal Council

Alliance for Retired Americans

Alpha Kappa Alpha Sorority, Inc.

Alpha Phi Alpha Fraternity, Inc.

American-Arab Anti-Discrimination Committee

American Association for Affirmative Action

American Association of People with Disabilities

American Association of University Women

American Baptist Churches, U.S.A.-National Ministries

American Civil Liberties Union

American Council of the Blind

American Ethical Union

American Federation of Government Employees

American Federation of Labor-Congress of Industrial Organizations

American Federation of State, County & Municipal Employees, AFL-CIO

American Federation of Teachers, AFL-CIO

American Friends Service Committee

American Jewish Committee

American Jewish Congress

American Nurses Association

American Postal Workers Union, AFL-CIO

American Society for Public Administration

American Speech-Language-Hearing Association

Americans for Democratic Action

Anti-Defamation League

Appleseed

Asian American Justice Center

Asian Pacific American Labor Alliance

Associated Actors and Artistes of America, AFL-CIO

Association for Education and Rehabilitation of the Blind and Visually Impaired

B'nai B'rith International

Brennan Center for Justice at New York University School of Law

Building & Construction Trades Department, AFL-CIO

Catholic Charities, USA

Center for Community Change

Center for Responsible Lending

Center for Women Policy Studies

Children's Defense Fund

Church of the Brethren-World Ministries Commission

Church Women United

Citizens' Commission on Civil Rights

Coalition of Black Trade Unionists

Common Cause

Communications Workers of America

Community Action Partnership

Community Transportation Association of America

DC Vote

Delta Sigma Theta Sorority

Disability Rights Education and Defense Fund

Division of Homeland Ministries-Christian Church (Disciples of Christ)

Epilepsy Foundation of America

Episcopal Church-Public Affairs Office

Evangelical Lutheran Church in America

FairVote: The Center for Voting and Democracy

Families USA

Federally Employed Women

Feminist Majority

Friends Committee on National Legislation

Global Rights: Partners for Justice

GMP International Union

Hadassah, The Women's Zionist Organization of America

Hotel and Restaurant Employees and Bartenders International Union

Human Rights Campaign

Human Rights First

Improved Benevolent & Protective Order of Elks of the World

International Association of Machinists and Aerospace Workers

International Association of Official Human Rights Agencies

International Brotherhood of Teamsters

International Union, United Automobile Workers of America

Iota Phi Lambda Sorority, Inc.

Japanese American Citizens League

Jewish Community Centers Association

Jewish Council for Public Affairs

Jewish Labor Committee

Jewish Women International

Judge David L. Bazelon Center for Mental Health Law

Kappa Alpha Psi Fraternity

Labor Council for Latin American Advancement

Laborers' International Union of North America

Lambda Legal

LatinoJustice PRLDEF

Lawyers' Committee for Civil Rights Under Law

League of Women Voters of the United States

Legal Aid Society–Employment Law Center

Legal Momentum

Mashantucket Pequot Tribal Nation

Matthew Shepard Foundation

Mexican American Legal Defense and Education Fund

Na'Amat USA

NAACP Legal Defense and Educational Fund, Inc.

National Alliance of Postal & Federal Employees

National Association for Equal Opportunity in Higher Education

National Association for the Advancement of Colored People (NAACP)

National Association of Colored Women's Clubs, Inc.

National Association of Community Health Centers

National Association of Human Rights Workers

National Association of Latino Elected & Appointed Officials

National Association of Negro Business & Professional Women's Clubs, Inc.

National Association of Neighborhoods

National Association of Protection and Advocacy Systems

National Association of Social Workers

National Bar Association

National Black Caucus of State Legislators

National Black Justice Coalition

National CAPACD

National Catholic Conference for Interracial Justice

National Coalition for the Homeless

National Coalition on Black Civic Participation

National Coalition to Abolish the Death Penalty

National Committee on Pay Equity

National Community Reinvestment Coalition

National Conference of Black Mayors, Inc.

National Congress for Community Economic Development

National Congress for Puerto Rican Rights

National Congress of American Indians

National Council of Catholic Women

National Council of Churches of Christ in the U.S.

National Council of Jewish Women

National Council of La Raza

National Council of Negro Women

National Council on Independent Living

National Education Association

National Employment Lawyers Association

National Fair Housing Alliance

National Farmers Union

National Federation of Filipino American Associations

National Gay & Lesbian Task Force

National Health Law Program

National Immigration Law Center

National Institute For Employment Equity

National Korean American Service and Education Consortium, Inc. (NAKASEC)

National Lawyers Guild

National Legal Aid & Defender Association

National Low Income Housing Coalition

National Organization for Women

National Partnership for Women & Families

National Puerto Rican Coalition

National Sorority of Phi Delta Kappa, Inc.

National Urban League

National Women's Law Center

National Women's Political Caucus

Native American Rights Fund

Newspaper Guild

Office of Communications of the United Church of Christ, Inc.

Omega Psi Phi Fraternity, Inc.

Open Society Policy Center

OCA (formerly known as Organization of Chinese Americans)

Paralyzed Veterans of America

Parents, Families, Friends of Lesbians and Gays

People for the American Way

Phi Beta Sigma Fraternity, Inc.

Planned Parenthood Federation of America, Inc.

Poverty & Race Research Action Council (PRRAC)

Presbyterian Church (USA)

Pride at Work

Progressive National Baptist Convention

Project Equality, Inc.

Religious Action Center of Reform Judaism

Retail Wholesale & Department Store Union, AFL-CIO

Secular Coalition for America

Service Employees International Union

Servicemembers Legal Defense Network

Sigma Gamma Rho Sorority, Inc.

Sikh American Legal Defense and Education Fund

Southeast Asia Resource Action Center (SEARAC)

Southern Christian Leadership Conference

Southern Poverty Law Center

Teach For America

The Association of Junior Leagues International, Inc.

The Association of University Centers on Disabilities

The Justice Project

The National Conference for Community and Justice

The National PTA

Union for Reform Judaism

Unitarian Universalist Association

UNITE HERE!

United Association of Journeymen & Apprentices of the Plumbing& Pipe Fitting Industry of the U.S. & Canada-AFL-CIO

United Brotherhood of Carpenters and Joiners of America

United Church of Christ-Justice and Witness Ministries

United Farm Workers of America, AFL-CIO

United Food and Commercial Workers International Union

United Methodist Church-General Board of Church & Society

United Mine Workers of America

United States Conference of Catholic Bishops

United States Students Association

United Steelworkers of America

United Synagogue of Conservative Judaism

Women of Reform Judaism

Women's American ORT

Women's International League for Peace and Freedom

Workers Defense League

Workmen's Circle
YMCA of the USA, National Board
YWCA of the USA, National Board
Zeta Phi Beta Sorority, Inc.

APPENDIX B
Additional Signatories

In addition to LCCR and LCCREF, the following organizations are signatories to this Brief:

The Black Leadership Forum, Inc. ("BLF") is an alliance of over fifty national African American civil rights and service organizations in the United States. Member organizations are linked together to strategically advocate for the legislative and policy interests of Black people on the international, Congressional, state, county and municipal level. BLF was founded in 1977 under the leadership of Dr. Dorothy Height (Chair and President Emeritus of the National Council of Negro Women), Vernon Jordan (National Urban League), Eddie Williams (Joint Center for Political and Economic Studies), Bill Lucy (Coalition of Black Trade Unionists), Dr. Ramona Edelin (National Urban Coalition) and Dr. Yvonne Scruggs-Leftwich (first executive director). Today's BLF national leaders continue the legacy of leadership passed to them by past advocates of progressive public policy.

Dēmos: A Network for Ideas and Action is a non-profit, non-partisan organization that works to build a robust and inclusive democracy, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a revitalized public sector that works for the common good. Removing barriers to political participation and ensuring full representation of America's diverse citizenry are key to Dēmos' goals. Dēmos actively supported Congress' 2006 reauthorization of the protections of Section 5 of the Voting Rights Act and be-

lieves those protections remain indispensable to the goal of full and equal access to political participation.

Equal Justice Society ("EJS") is a national civil rights organization comprised of lawyers, scholars, advocates and citizens that seeks to protect civil rights and promote equal opportunity for all through law and public policy, public education and research. The primary mission of EJS is to combat the continuing scourge of racial discrimination and inequality in America. Consistent with that mission, EJS has filed and joined *amicus curiae* briefs before this Court to ensure that antidiscrimination law and jurispurdence continue to adequately address racial and societal inequities. In joining *amici*, EJS urges the Court to protect equal access to the political process by deferring to the reasonable judgment of the bipartisan Congress to continue safeguards against voting discrimination.

The National Black Caucus of State Legislators ("NBCSL") is a membership association representing more than 600 African American state legislators hailing from 42 states, the District of Columbia and the Virgin Islands. NBCSL members represent more than 50 million Americans of various racial backgrounds. NBCSL monitors federal and state activity and provides this information to its members through policy symposiums and conferences. NBCSL recognizes that § 5 of the Voting Rights Act has been crucial in enabling thousands of Americans of color to vote for the candidates of their choosing. It has helped provide inclusion in a process that for too long excluded minorities, in particular African American voters. The NBCSL supports and asks that the Supreme Court uphold § 5 of the Voting Rights Act.

The Rainbow PUSH Coalition advances civil and human rights and promotes enlightened civic participation. It has offices in New York, California and Georgia, as well as other states, and its 300,000 members and supporters live in every jurisdiction covered by Section 5 of the Voting Rights Act. Rainbow PUSH regularly conducts voter education activities in most covered jurisdictions.