

**Consulting Report for the Brennan Center for Justice
And the Leadership Conference Education Fund**

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Purpose of the Report

I was asked by attorneys at the Brennan Center for Justice and the Leadership Conference Education Fund to undertake an empirical analysis of the impact of the geographic coverage formula of a bill passed by the United States House of Representatives in 2019, then designated HR 4. Among other provisions of HR 4, the geographic coverage formula would identify jurisdictions in the United States with sufficient violations of the Voting Rights Act, the Fourteenth Amendment, or the Fifteenth Amendment to reach the bill's well-defined threshold to require federal preclearance of future voting changes. That bill is now entitled the John Lewis Voting Rights Advancement Act (VRAA). The VRAA would revise the coverage formula invalidated by the Supreme Court in its 2013 decision in *Shelby County v. Holder*.¹ Preclearance refers to the process of receiving prior federal approval from the Department of Justice or the U.S. District Court for the District of Columbia before implementing any change affecting voting. The research I was asked to perform required the use of research methods I have employed – in my scholarly publications, my work as a social scientist in the Civil Rights Division of the Department of Justice, and in expert witness testimony – over the last four decades. For example, it calls among other things for methodology I applied in my sworn Declaration filed by the United States in *Shelby County v. Holder* in 2010.²

¹ 133 S.Ct. 2612 (2013).

² Declaration of Dr. Peyton McCrary, *Shelby County, Alabama*, C.A. No. 1:10-cv-00651-JDB (D.D.C.), November 15, 2010.

The Geographic Coverage Formula in HR 4

The new formula for determining the jurisdictions that would be subject to preclearance under the VRAA would be triggered by the record of voting rights enforcement over the 25 years preceding enactment of its provisions into law. My analysis focuses on the last 25 years, currently from 1996 through 2020, although the conclusions would change if the review period changed. Under HR 4 entire states would be subject to preclearance if the number of voting rights violations in that state met the specific threshold for statewide coverage specified in the bill. Even if the entire state were not subject to preclearance, any individual political subdivision within a state could be covered if the record of voting rights violations in that subdivision fits the definition of violations under the VRAA.

My understanding of the current version of the bill's coverage formula is that an entire state would be subject to preclearance if either of two patterns of violations applied: a) if 15 or more voting rights violations occurred within the state during the previous 25 years; or b) if 10 or more violations occurred in the state, at least one of which was committed by the state itself, rather than by local subdivisions within the state. I also understand that even if an entire state were not subject to preclearance, any political subdivision would be covered if three or more violations occurred within the subdivision during the previous 25 years. Under HR 4, violations are defined as: a) final judgments of a voting rights violation by the federal courts, including denial of preclearance pursuant to Section 5 of the Voting Rights Act; b) objections to voting changes by the Attorney General; and c) a consent decree or other settlement causing a change favorable to minority voting rights. Of course, changes to the formula enacted later than House passage of HR 4 in 2019 could lead to different conclusions than those I have reached in this analysis.

Qualifications

I am an historian by training and taught history at the university level from 1969 until 1990. In my view – a view shared by numerous historians – the discipline of history is among the social sciences. We use hypothesis testing, quantitative analysis, and interdisciplinary methods.³ During the 1980s I served as an expert witness in numerous voting rights cases in the South. I was employed as a social science analyst by the Voting Section, Civil Rights Division, of the U.S. Department of Justice, from 1990 until my retirement in December 2016. My responsibilities in the Civil Rights Division included the planning, direction, coordination, and performance of historical research and empirical analysis for voting rights litigation, including the identification of appropriate expert witnesses to appear for the government at trial. In some instances, I was asked to provide written or courtroom testimony on behalf of the United States. Since retiring from government service, I have served as an expert in several voting rights cases brought by private plaintiffs.

I received B.A. and M.A. degrees in History from the University of Virginia in 1965 and 1966, respectively, and obtained my Ph.D. in History from Princeton University in 1972. My primary training was in the history of the United States, with a specialization in the history of the

³ In my Ph.D. program at Princeton, among the courses that I took were: Interdisciplinary Approaches to History, and Quantitative Methods. My first scholarly publication was "Class and Party in the Secession Crisis: Voting Behavior in the Deep South, 1856-1861," co-authored with Clark Miller and Dale Baum, *Journal of Interdisciplinary History*, VIII (Winter 1978), 429-57, in which we used ecological regression analysis and multiple regression analysis. I also published "Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom," *Social Science History*, 14 (Winter 1990), 507-31, an interdisciplinary journal founded by numerous historians and political scientists.

South during the 19th and 20th centuries. For 20 years I taught courses in my specialization at the University of Minnesota, Vanderbilt University, and the University of South Alabama. In 1998-99 I took leave from the Department of Justice to serve as the Eugene Lang Professor of Social Change in the Department of Political Science at Swarthmore College. For the last fourteen years, both during government service and since retiring from the Department of Justice, I have co-taught a course on voting rights law as an adjunct professor at the George Washington University Law School.

I have published a prize-winning book, *Abraham Lincoln and Reconstruction: The Louisiana Experiment* (Princeton, N.J., Princeton University Press, 1978), six law review articles, seven articles in refereed journals, and seven chapters in refereed books. Over the last three and a half decades my published work has focused on the history of discriminatory election laws in the South, evidence concerning discriminatory intent or racially polarized voting presented in the context of voting rights litigation, and the impact of the Voting Rights Act in the South. One of these studies – which examined the operation of the preclearance requirements set forth in Section 5 of the Act – was made part of the record before Congress regarding the adoption of the 2006 Voting Rights Reauthorization Act.⁴ I continued to publish scholarly work in my areas of expertise while employed by the Department of Justice and expect to continue my scholarly writing now that I have retired from government service. A detailed record of my

⁴ “The End of Preclearance as We Knew It: How the Supreme Court Transformed Section 5 of the Voting Rights Act,” co-authored with Christopher Seaman and Richard Valelly, *Michigan Journal of Race & Law*, 11 (Spring 2006), 275-323. [An unpublished version was printed in *Voting Rights Act: Section 5 Preclearance and Standards: Hearings Before the Subcomm. On the Constitution, H. Comm. On the Judiciary, 109th Cong., 96-181 (2005) (Serial No. 109-69).*]

professional qualifications is set forth in the attached curriculum vitae (Attachment 1), which I prepared and know to be accurate.

Although I write about the history of voting rights law in my scholarly publications and teach in a law school, I am not an attorney. However, the findings reflected in court opinions often provide valuable evidence for investigations by social scientists. I routinely utilize the factual evidence provided by court decisions in my scholarly writing, as well as many types of documents that were part of the record in voting rights cases, including expert reports by other social scientists. As I observed in a recent journal article: “The factual evidence presented in court proceedings – in voting rights cases key evidence often comes in through expert witness testimony by political scientists or historians – is an invaluable resource for historical and social science research.”⁵

The Methodology I Have Employed in This Investigation

Identifying final judgments in reported cases – and Section 5 objections interposed by the Attorney General – was my first task.⁶ The website of the Civil Rights Division’s Voting Section – where I worked for 26 years – gave ready access to the large number of final judgments and settlement documents in cases involving the United States (under Section 2, Section 4(e), Section 5, Section 11(b), and Section 203). Westlaw facilitated identification of other reported decisions brought on behalf of private plaintiffs that qualified as violations under

⁵ Peyton McCrary, “The Interaction of Policy and Law: How the Courts Came to Treat Annexations under the Voting Rights Act,” *Journal of Policy History*, 26 (No. 4, 2014), 429-58 (quoted sentence at p. 431).

⁶ A particularly useful study I have relied on since its initial publication, in addition to my prior research, is Ellen Katz, et.al., “Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982,” 39 *U. Mich. J.L. Reform* 643 (2006).

HR 4. The Voting Section's website also included links to all the Attorney General's Section 5 objections from the 1960s through the *Shelby County* decision in 2013.

Identifying consent decrees and other settlements in voting rights cases that qualified as violations under HR 4 – in addition to those in cases filed by the United State – was perhaps the most time-consuming part of the investigation. LexisNexis Court Link, a database with a comprehensive collection of dockets from voting rights litigation, was the starting point in my identification and analysis of consent decrees and other settlements approved by the courts. This is the same database I had used to identify settlement documents in my 2010 declaration in *Shelby County v. Holder* (cited in Note 2 above). Many Court Link dockets include links to electronic copies of consent decrees, consent orders, and other settlement documents. Where no links were available through Court Link, I had to pursue further research to locate the needed evidence of HR 4 violations (for which the internet proved invaluable).⁷ Numerous publicly available reports and scholarly publications also helped document court-ordered settlements of voting rights lawsuits.

As a social scientist identifying violations as defined under HR 4, I used a series of decision rules. Some of my decision rules in this study are simple: where a federal court makes a judicial finding that the challenged practice violates Section 2 of the Voting Rights Act, the Fourteenth Amendment, or the Fifteenth Amendment. Similarly, a denial of preclearance under Section 5 of the Act, whether by a three-judge court in the District of Columbia or by the Attorney General constitutes a violation. I likewise counted a decision by a three-judge court in a Section 5 enforcement action that a voting change adopted by a state or subdivision covered by

⁷ Brennan Center staff have also been helpful in locating documentary evidence of settlements, but the assessment of whether any document demonstrated evidence of an HR 4 violation was entirely my own.

the preclearance requirements of the Act has not been submitted for preclearance – compelling the state or subdivision to submit the change for federal review – as a violation under HR 4.⁸

Consent decrees or other litigation settlements approved by a federal court are also considered violations under the VRAA. In the case of violations of Section 203, Section 4(e), and Section 208 – provisions of the Act protecting the right of language minority citizens to language assistance in the electoral process – there is virtually no case law: this led me to rely primarily on consent decrees in which jurisdictions covered by Section 203 agree that they are not in compliance with the requirements of the Act. Many of these consent decrees are extended several times by the court that approved the initial settlement, because the jurisdiction agrees that it is still not in compliance with the Act. I have considered all such consent decrees as violations as defined by the VRAA.

Many of the consent decrees identified in my report arose in lawsuits brought under Section 2 of the Act. To provide evidence of a violation under HR 4, a settlement must have been approved by a federal court – whether entitled a Consent Decree, a Consent Order and Judgment, or other terms – and the settlement must have produced a favorable outcome for the minority plaintiffs. Some consent decrees are available on Westlaw. I located many others

⁸ As a technical matter, the issues in a Section 5 enforcement action are *only* whether the voting change is covered by Section 5 of the Act, whether the change is covered by Section 5, whether the change has been clearly submitted for preclearance by the jurisdiction, and whether the submitted change has been precleared. See *Ward v. State of Alabama*, 31 F. Supp. 2d 968, 31 F. Supp. 2d 988 (M.D. Ala. 1998); *Boxx v. Bennett*, 50 F. Supp. 2d (M.D. Ala. 1999). A concurring opinion in *Boxx v. Bennett* by District Judge Myron Thompson, however, explains that there is often evidence of a “potential for discrimination” in such Section 5 enforcement actions. Judge Thompson cites the evidence from a state court decision, *Eubanks v. Hale*, No. CV 98-7033 (Jefferson County Cir. Ct. Jan. 4, 1999), where the state judge found that “supporters of the losing candidate for sheriff of Jefferson County had specifically targeted black voters and precincts in a questionable investigation of fraud and malfeasance.” 30 F. Supp. 2d 1219, at 1232.

through the use of Court Link, the LexisNexis database, or through citations in published articles or reports found through internet research. Yet no search using these tools can assure identification of all qualifying cases and I have no doubt that my search has failed to identify some court-approved settlements that would qualify as violations.

Findings

Let me begin by focusing on the eight states that – according to my analysis—are most likely to be subject to preclearance of voting changes. Recall that under my working understanding of the coverage formula, **an entire state** would be subject to preclearance if either of *two* patterns of violations applied: a) if **15 or more voting rights violations** occurred within the state during the previous 25 years; or b) if **10 or more violations** occurred in the state, **at least one of which was committed by the state itself**, rather than by local political subdivisions within the state. I consider as a violation: a) a final judgment that a jurisdiction has violated the 14th or 15th Amendments, violated a provision of the Voting Rights Act, or been denied preclearance by a three-judge federal district court in the District of Columbia; b) an objection to voting changes by the Attorney General; or c) a consent decree or other settlement in a lawsuit where the defendants agreed to change the challenged election practice at issue in a manner that was favorable to minority plaintiffs. Exhibit 1 summarizes the number and type of violations that in states my analysis shows *would* require federal preclearance if the current version of the coverage formula were enacted into law. Those states are Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

Barring wholesale changes to the coverage formula as I applied it, I have concluded that Alabama, Georgia, Louisiana, Mississippi, and Texas are likely to be covered. Florida, North Carolina, and South Carolina appear to be subject to preclearance under the current formula but

were close enough to the violation threshold that they could drop out of coverage, depending on how Congress revises the bill. There are also several states that I do not think will be covered under the existing formula, but they could be – depending on future revisions of the bill or the discovery of a small number of additional violations.⁹ I currently have identified only 8 violations in Virginia, but two were violations by the state. If the definition of a violation is altered through a revision of the bill, Virginia might become a covered state. New York and California are each between 10 and 15 violations, but no violations were committed by the State. Both states could become subject to preclearance, should the period of review under the bill be altered, for example.

As I understand the current formula, even if an entire state would not be subject to preclearance under the current version of HR 4, any political subdivision of that state with three or more violations in the preceding 25 years *would* be covered. The relevant political subdivision under this provision is the governmental unit responsible for voter registration – in most instances a county.¹⁰ Five political subdivisions in non-covered states which have three or more violations – which would therefore need to preclear voting changes – are itemized in Exhibit 3. The five counties are: Los Angeles County, California; Cook County, Illinois; Westchester County, New York; Cuyahoga County, Ohio; and Northampton County, Virginia.

⁹ Exhibit 2 provides a breakdown of violations in states that I concluded would not be covered.

¹⁰ In Louisiana the equivalent of a county is called a parish. In the state of Virginia independent cities – in addition to counties – conduct voter registration. Virginia’s independent cities are geographically separate from counties. All other municipalities are, as in the rest of the country, located *within* a county.

Exhibit 1: States Covered Under the Preclearance Formula in HR 4 If Enacted into Law

Alabama: 14 violations – 3 violations by the state

Court Decisions: (4)

Ward v. State of Alabama, 31 F. Supp. 2d 968 (M.D. Ala. 1998) **State of Alabama.**

Boxx v. Bennett, 50 F. Supp. 2d (M.D. Ala. 1999), **State of Alabama.**

Allen v. City of Evergreen, Alabama, 2014 WL 12607819 (S.D. Ala.).

Ala. Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017), **State of Alabama.**

Section 5 Objections: (3)

02-06-1998: Tallapoosa County (Redistricting Plan), 97-1021.

08-16-2000: Shelby County (City of Alabaster), Annexations, 2000-2230.

08-25-2009: Shelby County (City of Calera), Annexations and redistricting plan, 2008-1621.

Consent Decrees/Settlements: (7)

Dillard v. City of Greensboro, Ala., 956 F. Supp. 1576 (M.D. Ala. 1997) (consent decree).

Jenkins v. City of Ozark, Alabama, No. 1:97cv1450 (M.D. Ala.), Consent Judgment and Decree, December 10, 1997 (Section 5 enforcement action).

Baker v. Rainbow City, Alabama, No. CV-97-3014 (N.D. Ala.), Consent Judgment and Decree, January 12, 1998.

Wilson v. City of Attalla, Alabama, No. CV-97-AR-3195 (M.D. Ala.), Consent Judgment and Decree, February 25, 1998.

Dillard v. Chilton County Commission, 495 F.3d 1324 (11th Cir. 2007) (consent decree).

Jones v. Jefferson Bd. Of Education, 2019 WL 7500528 (N.D. Ala. 2019) (court-approved settlement).

Ala. State Conf. NAACP v. Pleasant Grove, Ala., 2019 WL 5172371 (N.D. Ala.) (consent decree).

Florida: 10 violations - 3 violations by the state

Court Decisions: (3)

Stovall v. City of Cocoa, Fla., 117 F.3d 1238 (11th Cir. 1997).

U.S. v. Osceola County, Fla., 475 F. Supp. 2d 1254 (M.D. Fla. 2006).

Florida v. United States, 885 F. Supp. 2d 299 (D.D.C. 2012). **State of Florida.**

Section 5 Objections/Settlements: (2)

08-14-1998: **State of Florida.** (Changes in absentee voting certificate & absentee ballot), 98-1919.

07-01-2002: **State of Florida.** (2002 redistricting plan for state house), 2002-2637.

Consent Decrees/Settlements: (5)

U.S. v. Orange County, FL, No. 6:02-cv-787 (M.D. Fla.) (consent decree).

U.S. v. Osceola County, FL, No. 6:02-cv-738 (M.D. Fla. 2002) (consent decree).

U.S. v. School Board of Osceola County, FL, No. 6:08-cv-582 (M.D. Fla. 2008) (consent decree).

U.S. v. Town of Lake Park, FL, C.A. No. 09-80507 (S.D. Fla. 2009) (consent decree).

Perez-Santiago v. Volusia County, No. 6:08-cv-1868 (M.D. Fla.) (court-ordered settlement).

Georgia: 25 violations - 4 violations by the state

Court Decisions: (4)

Cofield v. City of LaGrange, Ga., 969 F. Supp. 749 (N.D. Ga. 1997).

Common Cause v. Billups, 406 F. Supp. 2d 1326 (N.D. Ga., 2005).

Wright v. City of Albany, 306 F. Supp. 2d 1228 (M.D. Ga., 2003).

Wright v. Sumter County Bd. Of Elections, 301 F. Supp. 3d 1297 (M.D. Ga. 2018).

Section 5 Objections: (13)

03-15-1996: **State of Georgia** (1995 redistricting plans, state house & senate), 95-3656.

01-11-2000: Webster County (Redistricting plan, county school district), 98-1663.

03-17-2000: Wilkes County (MOE Tignall city council members), 99-2122.

10-01-2001: Turner County (MOE change, Ashburn), 94-4606.

08-09-2002: Putnam County (2001 redistricting plans, county commission & school board), 2002-2987, 2002-2988.

09-23-2002: Dougherty County (2001 Albany city council redistricting plan), 2001-1955.

10-15-2002: Marion County (2002 school district redistricting plan), 2002-2643.

09-12-2006: Randolph County (Change in voter registration & candidate eligibility), 2006-3856.

05-29-2009: **State of Georgia** (Voter verification program), 2008-5243.

11-30-2009: Lowndes County (2009 redistricting plan), 2009-1965.

04-13-2012: Greene County (2011 redistricting of commission & school board), 2011-4687.

08-27-2012: Long County (2012 redistricting of commission & school board), 2011-4687.

12-21-2012: **State of Georgia** (Change of election date), 2012-3262.

Consent Decrees/Settlements: (8)

McIntosh County NAACP v. McIntosh County, Ga., No. 2:77CV70 (S.D. Ga. 1977) (consent decree).

Stafford v. Mayor & Council of Folkston, Ga., No. 5:96CV00111 (S.D. Ga.) (consent decree).

Simpson v. Douglasville, No. 1:96-cv-01174 (N.D. Ga.) (consent decree).

McBride and U.S. v. Marion County, No. 4:99cv151 (M.D. Ga.) (consent decree).

U.S. v. Long County, GA (S.D. Ga. 2006), No. CV206-040 (S.D. Ga.) (consent decree).

Georgia State Conf. NAACP v. Fayette County, Ga., 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (consent decree).

Georgia State Conf. NAACP v. Kemp, N. 2:16CV219 (N.D. Ga.) (settlement agreement). **State of Georgia.**

Georgia State Conf. NAACP v. Hancock County, Ga., No. 5:15-CV-00414 (M.D. Ga. 2018) (consent decree).

Louisiana: 16 – 1 violation by the state

Court Decisions: (2)

St. Bernard Citizens for a Better Govt. v. St. Bernard Parish School Board, 2002 WL 2022589 (E.D. La. 2002).

Guillory v. Avoyelles Parish School Board, 2011 WL 499196 (W.D. La. Feb. 7, 2011).

Section 5 Objections: (13)

10-06-1997: St. Martin Parish (1997 redistricting, St. Martinsville council elections), 97-0879.

04-27-1999: Washington Parish (redistricting plan), 98-1475.

07-02-2002: Webster Parish (2001 Minden city council redistricting plan), 2002-1011.

10-04-2002: Pointe Coupee Parish (2002 redistricting, school district), 2002-2717.

12-31-2002: DeSoto Parish (2002 redistricting plan, school district), 2002-2926.

05-13-2003: Richland Parish (2002 redistricting plan, school district), 2002-3400.

10-06-2003: Tangipahoa Parish (2003 redistricting plan), 2002-3135.

12-12-2003: Iberville Parish (2003 redistricting plan, city of Plaquemine), 2003-1711.

06-04-2004: Evangeline Parish (2003 redistricting plan, city of Ville Platte), 2003-4549.

04-25-2005: Richland Parish (2003 redistricting, city of Delhi), 2003-3795.

08-10-2009: **State of Louisiana** (designating length of time when parish precinct boundaries are frozen during the preparation of the U.S. decennial census), 2008-3512.

Consent Decrees/Settlements: (1)

U.S. v. Morgan City, LA, No. CV00-1541 (W.D. La. 2000) (consent decree).

Mississippi: 18 – 2 violations by the state

Court Decisions: (7)

Teague v. Attala County, MS, 92 F.3d 283 15th Cir. 1996).

Clark v. Calhoun County, MS, 88 F.3d 1393 (5th Cir. 1996).

Gunn v. Chickasaw County, 1997 WL 1:02CV33426761 (N.D. Miss. 1997).

Citizens for Good Govt. v. Quitman, Ms., 148 F.3d 472 (5th Cir. 1998).

Houston v. Lafayette County, Ms., 20 F. Supp. 2d 996 (N.D. Miss. 1998).

U.S. v. Ike Brown, 494 F. Supp. 2d 440 (S.D. Miss. 2007).

Jamison v. Tupelo, 471 F. Supp. 2d 706 (N.D. Miss. 2007).

Section 5 Objections: (8)

09-22-1997: **State of Mississippi** (NVRA implementation plan), 95-0418.

06-28-1999: Pike County (McComb, changing polling place to American Legion), 97-3795.

12-11-2001: Montgomery County (Cancellation of election, Kilmichael), 2001-2130.

03-24-2010: **State of Mississippi** (majority vote requirement for county school boards, etc.), 2009-2022.

10-04-2011: Amite County (2011 redistricting plan for supervisor & election commission), 2011-1660.

04-30-2012: Adams County (2011 Natchez redistricting plan), 2011-5368.

12-03-2012: Hinds County (Redistricting plan, city of Clinton), 2012-3120.

Consent Decrees/Settlements: (3)

Coffee v. Calhoun City, MS., No. 300-cv-00103 (N.D. Miss.) (consent decree).

Thornton v. City of Greenville, No. 4:93CV276 (N.D. Miss.) (settlement agreement).

Tryman v. City of Starkville, No. 1:02-cv-111 (N.D. Miss.) (consent decree).

North Carolina: 11 – 4 violations by the state

Court Decisions: (3)

North Carolina Conf. NAACP v. McCrory, 831 F. 3d 204 (4th Cir. 2016), **State of North Carolina.**

Cooper v. Harris, 137 S. Ct. 1455 (2017), **State of North Carolina.**

Covington v. North Carolina, 138 S. Ct. 2548 (2018), **State of North Carolina..**

Section 5 Objections: (6)

02-13-1996: **State of North Carolina** prohibits state legislative & congressional districts from crossing precinct lines, absent Section 5 objections, 95-2922.

07-23-2002: Harnett County (2001 redistricting plan for school district), 2001-3769.

07-23-2002: Harnett County (2001 redistricting plan for commissioners), 2001-3768.

06-25-2007: Cumberland County (Change in MOE for Fayetteville city council), 2007-2233.

08-17-2009: Lenoir County (Change to non-partisan election, City of Kinston), 2009-0216.

04-30-2012: Pitt County (Change in MOE, county school district), 2011-2474.

Consent Decrees/Settlements (2)

Wilkins v. Washington County Commissioners, No. 2:93-cv-00012 (E.D.N.C. 1996) (consent decree).

Hall v. Jones County Bd. Of Commissioners, No. 4:17-cv-00018 (ED.N.C. 2017) (consent decree).

South Carolina: 15 – 1 violation by the state

Court Decisions: (1)

U.S. v. Charleston County, SC, 365 F.3d 341 (4th Cir. 2004).

Section 5 Objections: (13)

03-05-1996: Cherokee County (Change in method of electing Gaffney Bd. Of Public Works), 95-2790.

04-01-1997: **State of South Carolina** (1997 senate redistricting plan), 97-0529.

05-20-1998: Horry County (1997 county council redistricting plan), 97-3787.

10-12-2001: Charleston & Berkeley Counties (2012 Charleston council redistricting), 2001-1578.

11-02-2001: Greenville & Spartanburg Counties (2001 redistricting for town of Greer), 2001-1777.

06-27-2002: Sumter County (2001 redistricting plan), 2001-3865.

09-03-2002: Union County (2002 redistricting plan for county school board), 2002-2379.

12-09-2002: Laurens County (Annexations & district assignment, Clinton), 2002-1512, 2002-2706.

06-16-2003: Cherokee County (Reduction in size of school board), 2002-3457.

09-16-2003: Orangeburg County (Annexations by town of North), 2002-5306.

02-26-2004: Charleston County (From nonpartisan to partisan school board elections), 2003-2066.

06-25-2004: Richland & Lexington Counties (MOE change for School District No. 5), 2002-3766.

08-16-2010: Fairfield County (MOE & number of members, county school board), 2010-0970.

Consent Decrees/Settlements: (1)

U.S. v. Georgetown County School District, SC, No. 2:08-889 (D.S.C.) (consent decree).

Texas: 34 – 3 violations by the state

Court Decisions: (5)

LULAC v. Perry, 548 U.S. 399 (2006).

Benavidez v. City of Irving, TX, 638 F. Supp. 2d 709 (N.D. Tex. 2009).

Fabela v. City of Farmers' Branch, 2012 WL 3135545 (N.D. Texas).

Benavidez v. Irving ISD, 2014 WL 4055366 (N.D. Texas).

Patino v. City of Pasadena, TX, 230 F. Supp. 3d 667 (S.D. Tex. 2017).

Section 5 Objections: (18) – 3 violations by the state

01-16-1996: **State of Texas** (Authorizing employees to determine voter eligibility based on Citizenship information in files), 95-2017.

03-17-1997: Harris County (Annexations, town of Webster), 95-2017.

12-04-1998: Galveston County (Adding numbered posts to at-large seats, Galveston), 98-2149.

07-16-1999: Dawson County (De-annexation, city of Lamesa), 99-0270.

06-05-2000: Austin County (Adding numbered posts, Sealy ISD), 99-3828.

09-24-2001: Haskell Consolidated ISD (Cumulative voting with staggered terms), 2000-4426.

11-16-2001: **State of Texas** (2001 redistricting, state house), 2001-2430.

06-21-2002: Waller County (Redistricting plans, commissioners court, constable districts), 2001-2430.

08-12-2002: Brazoria County (MOE, Freeport city council), 2002-1725.

05-05-2006: North Harris Montgomery Community College District (reduction in polling place & early voting locations), 2006-2240.

03-24-2009: Gonzales County (Bi-lingual election procedures), 2008-3588.

03-12-2010: Gonzales County (Bi-lingual election procedures), 2009-3078.

06-28-2010: Runnels County (Bilingual election procedures), 2009-3672.

02-07-2012: Nueces County (Redistricting, county commissioners court), 2011-3992.

03-05-2012: Galveston County (Redistricting, county commissioners court), 2011-4317.

03-12-2012: **State of Texas** (Voter registration & photo id procedures, SB 14), 2011-2775.

12-21-2012: Jefferson County (Beaumont ISD, reduction in single member districts), 2012-4278.

04-08-2013: Jefferson County (Beaumont ISD, change in term of office, qualification procedures), 2013-0895.

Consent Decrees/Settlements: (11)

U.S. v. Ector County, TX, No. M005CV131 (W.D. Tex. 2005) (consent decree).

U.S. v. Brazos County, TX, No. H-06-2165 (S.D. Tex.2006) (consent decree).

U.S. v. Hale County, TX, No. 5:06-CV-43 (N.D. Tex. 2006) (consent decree).

U.S. v. City of Earth, TX, 5:07-CV-144 (N.D. Tex. 2007) (consent decree).

U.S. v. Galveston County, TX, No. 3:07-CV-377 (S.D. Tex. 2007) (consent decree).

U.S. v. Littlefield ISD, TX, No. 5:07-cv-145 (N.D. Tex. 2007) (consent decree).

U.S. v. Post ISD, TX, No. 5:07-CV-146-C (N.D. Tex. 2007) (consent decree).

U.S. v. Seagraves ISD, TX, No. 5:07-CV-147 (N.D. Tex. 2007) (consent decree).

U.S. v. Smyer ISD, TX, No. 5:07-CV-148-C (N.D. Tex. 2007) (consent decree).

U.S. v. Waller County, TX, No. 4:08-cv-3022 (S.D. Texas 2008) (consent decree).

U.S. v. Fort Bend County, TX, No. 4:09-cv-1058 (S.D. Tex. 2009) (consent decree).

Exhibit 2: States Not Covered Under the Current Preclearance Formula in HR 4

Alaska: 2 violations

Consent Decrees/Settlements: (2)

Nick v. Bethel, No. 3:07-cv-00098 (D. Alaska) (consent decree).

Toyukak v. Treadwell, No. 3:13-CV-00137 (D. Alaska) (court-approved settlement).

Arkansas: 2 violations

Court Decisions: (0)

Consent Decrees/Settlements: (2)

Cox v. Donaldson, No. 5:02CV319 (E.D. Ark. 2003) (consent decree)

Townsend v. Watson, No. 1:89-cv-1111 (W.D. Ark.) (consent decree).

Arizona: 4 violations

Section 5 Objections: (2)

05-20-2002: **State of Arizona** (2001 legislative redistricting plan), 2002-0276.

02-04-2003: Coconino County (MOE, Coconino Association for Vocations, Industry, and Technology), 2002-3844.

Consent Decrees/Settlements: (2)

U.S. v. Cochise County, AZ, No. CV 06-304 (D. Ariz.) (consent decree).

Navajo Nation v. Brewer, No. CV 06-1575 (D. Ariz.) (court-approved settlement).

California: 12 violations

Court Decisions: (1)

Luna v. County of Kern, CA, 291 F. Supp. 3d 1088 (E.D. Cal. 2018).

Section 5 Objections: (1)

03-29-2002: Monterey County (MOE, Chualar Union Elementary School District), 2000-2967.

Consent Decrees/Settlements: (10)

U.S. v. San Benito County, CA, No. 5:04-cv-2056 (N.D. Cal. 2004) (consent decree).

U.S. v. Ventura County, CA, No. CV04-6443 (C.D. Cal. 2004) (consent decree).

U.S. v. City of Azusa, CA, No. CV05-5147 (C.D. Cal. 2005) (consent decree).

U.S. v. City of Paramount, CA, No. 05-05132 (C.D. Cal. 2005) (consent decree).

U.S. v. City of Rosemead, CA, No. CV05-5131 (C.D. Cal. 2005) (consent decree).

U.S. v. City of Walnut, CA, No: CV 07-2437 (C.D. Cal. 2007) (consent decree).

U.S. v. Riverside County, CA, CV 10-1059 (C.D. Cal. 2010) (consent decree).

U.S. v. Alameda County, CA, No. 311-cv-3262 (N.D. Cal. 2011) (court-approved settlement agreement).

U.S. v. San Diego County, CA, No. 04cv1273 (S.D. Cal. 2004) (consent decree).

U.S. v. Upper San Gabriel Valley Municipal Water District, No. CV 00-07903 (C.D. Cal.) (consent decree).

Colorado: 2 violations

Court Decisions: (2)

Sanchez v. State of Colorado, 97 F.3d 1303 (10th Cir. 1996).

Cuthair v. Montezuma-Cortez School District, 7 F. Supp. 2d 1152 (D. Colorado 1998).

Hawaii: 1

Court Decisions: (1)

Arakaki v. Hawaii, 314 F. 3d 1091 (9th Cir. 2002).

Illinois: 4**Court Decisions: (3)**

U.S. v. Town of Cicero, Illinois, 2000 WL 34342276 (N.D. Ill. 1996).

Barnett v. City of Chicago, 17 F. Supp. 2d 753 (N.D. Ill. 1998).

Harper v. Chicago Heights, IL, 223 F.3d 593 (7th Cir. 2000).

Consent Decrees/Settlements: (1)

U.S. v. Kane County, IL, No. 07-v-5451 (N.D. Ill.) (memorandum of agreement).

Massachusetts: 5**Court Decisions: (1)**

Black Political Task Force v. Galvin, 300 F. Supp. 2d 291 (D. Mass. 2004).

Consent Decrees/Settlements: (4)

U.S. v. City of Boston, No. 1:05-cv-11598 (D. Mass. 2005) (consent decree).

U.S. v. City of Springfield, MA, No. 06-30123 (D. Mass. 2006) (consent decree).

Huot v. City of Lowell, Mass., No. 1:17-cv-10895 (D. Mass. 2019) (consent decree).

City of Lawrence, No. 98cv12256 (D. Mass. 1998) (settlement agreement).

Michigan: 3**Section 5 Objections: (1)**

12-26-2007: Saginaw County (Buena Vista Township, closure of voter registration branch office), 2007-3837.

Consent Decrees/Settlements: (2)

U.S. v. City of Hamtramck, MI, No. 00-73541 (E.D. Mich. 2000) (consent decree).

U.S. v. City of Eastpointe, MI, No. 4:17-CV-10079 (2019) (consent decree).

Missouri: 1

Court Decisions: (1)

Missouri State Conf. NAACP v. Ferguson-Florissant School District, 201 F. Supp. 3d 1006 (E.D. Mo. 2016).

Montana: 5

Court Decisions: (1)

U.S. v. Blaine County, MT, 363 F.3d 897 (9th Cir. 2004).

Consent Decrees/Settlements: (4)

Matt v. Ronan School District, No. 99-94 (D. Mont.) (settlement agreement).s.

U.S. v. Roosevelt County, MT, No. 00-50 (D. Mont.) (consent decree).

Alden v. Rosebud County Board of Commissioners, No. 99-148 (D. Mont.) (consent decree).

Blackfeet Nation v. Stapleton, No. 4:20-cv-95 (D. Mont.) (consent decree).

Nebraska: 2

Court Decisions: (1)

Stable v. Thurston County, NE, 129 F. 3d 1015 (8th Cir. 1997).

Consent Decrees/Settlements: (1)

U.S. v. Colfax County, NE, No. 8:12-CV-84 (D. Neb. 2012) (consent decree).

Nevada: 1

Court Decisions:

Sanchez v. Cevaske, 214 F. Supp. 3d 961 (D. Nevada 2016).

New Jersey: 2

Consent Decrees/Settlements: (2)

U.S. v. Salem County and Borough of Penns Grove, N.J., No. 1:08-cv-03276 (D.N.J. 2008) (court-approved settlement).

U.S. v. Passaic City and Passaic County, N.J., No. 99-2544 (D.N.J. 1999) (consent decree).

New Mexico: 3

Consent Decrees/Settlements: (3)

U.S. v. Bernalillo County, N.M., No. CV-98-156 (D.N.M.) (consent decree).

U.S. v. Cibola County, N.M. No. CIV 93 1134 (D.N.M.) (court-approved settlement).

U.S. v. Sandoval County, N.M., No. 88-CV-1457 (D.N.M.) (consent decree).

New York: 12

Court Decisions: (5)

Goosby v. Town of Hempstead, NY, 180 F.3d 476 (2nd Cir. 1999).

New Rochelle Voter Defense v. New Rochelle, NY, 308 F. Supp. 2d 152 (S.D.N.Y. 2003).

U.S. v. Village of Port Chester, NY, 704 F. Supp. 2d 411 (S.D.N.Y. 2010).

Pope v. County of Albany, N.Y., 94 F. Supp. 3d 302 (N.D.N.Y. 2013).

Molina v. Orange County, NY, 2013 WL 3009716 (S.D.N.Y. 2013).

Objections: (2)

11-15-1996: Temporary replacement of all nine elected board members of Community School District 12 by three appointed trustees and their permanent replacement by five appointed trustees: 96-3759.

02-04-1999: Change in method of election from single transferable vote to limited voting with four votes per voter for community school boards in Bronx, Kings, and New York Counties: 98-3193.

Consent Decrees/Settlements: (5)

U.S. v Suffolk County, NY, No. CV 04-2698 (E.D. N.Y. 2004) (consent decree).

Arbor Hill Concerned Citizens v. Albany County, NY, 281 F. Supp. 2d 456 (N.D.N.Y. 2004) (consent decree).

U.S. v. Westchester County, NY, No. 05 CIV. 0650 (S.D. N.Y. 2005) (consent decree).

U.S. v. Orange County, NY, 12 Civ 3071 (S.D.N.Y. 2012) (consent decree).

Flores v. Town of Islip, NY, No. 2:18-cv-3549 (E.D.N.Y. 2020) (consent decree).

North Dakota: 2

Court Decisions: (1)

Spirit Lake Tribe v. Benson County, N.D., 2010 WL 4226614 (D.N.D. 2010).

Consent Decrees/Settlements: (1)

U.S. v. Benson County, N.D., No. A2-00-30 (D.N.D. 2000) (consent decree).

Ohio: 4

Court Decisions: (1)

U.S. v. City of Euclid, Ohio, 580 F. Supp. 2d 584 (N.D. Ohio 2008).

Consent Decrees/Settlements: (3)

U.S. v. Euclid City School Board, 632 F. Supp. 2d 740 (N.D. Ohio 2009) (court-approved settlement).

U.S. v. Cuyahoga County, OH, No.1:10-cv-1940 (N.D. Ohio) (court-approved settlement agreement).

U.S. v. Lorain County, OH, No. 1:11-cv-02122 (N.D. Ohio 2011) (memorandum of agreement).

Pennsylvania: 2

Court Decisions: (1)

U.S. v. Berks County, PA, 277 F. Supp. 2d 570 (E.D. Pa. 2003).

Consent Decrees/Settlements: (1)

U.S. v. City of Philadelphia, PA, No.2:06cv4592 (E.D. Pa.) (settlement agreement).

South Dakota: 2

Court Decisions: (1)

Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004).

Section 5 Objections: (1)

02-11-2008: Charles Mix County (Increase in size & redistricting of county commission), 2007-6012.

Tennessee: 2

Court Decisions: (1)

Rural West Tenn. v. Sundquist, 29 F. Supp. 2d 448 (W.D. Tenn. 1998).

Consent Decrees/Settlements: (1)

U.S. v. Crockett County, TN, No. 1-01-1129 (W.D. Tenn. 2001).

Virginia: 8 – 2 by State

Personhuballah v. Alcorn, 155 F. Supp. 3d 552 (E.D. Va. 2016), **State of Virginia.**

Bethune-Hill v. Va. State Bd. Of Elections, 326 F. Supp. 3d 128 (E.D. Va. 2018), **State of Virginia.**

Section 5 Objections: (6)

10-27-1999: Dinwiddie County (Polling place change), 99-2229.

09-28-2001: Northampton County (MOE & redistricting, board of supervisors), 2001-1495.

04-29-2002: Pittsylvania County (Redistricting, county supervisors & school board), 2001-2026, 2501.

07-09-2002: Cumberland County (Redistricting plan, county supervisors), 2001-2374.

05-19-2003: Northampton County (2002 redistricting plan, county supervisors), 2002-5693.

10-21-2003: Northampton County (2003 redistricting plan, county supervisors), 2003-3010.

Consent Decrees/Settlements: (0)

Washington: 3

Court Decisions: (1)

Montes v. City of Yakima, 40 F. Supp. 3d 1377 (E.D. Wash. 2014).

Consent Decrees/Settlements:

U.S. v. Yakima County, WA, No. CV-04-3072 (E.D. Wash. 2004) (settlement agreement).

Glatt v. City of Pasco, WA, No. 4:16-CV-5108 (E.D. Wash.2017) (consent decree).

Wisconsin:1

Court Decisions:

Baldus v. Wisc. Govt. Accountability Bd., 849 F. Supp. 2d 840 (E.D. Wisc. 2012).

Wyoming: 1

Court Decisions:

Large v. Fremont County, Wy., 709 F. Supp. 2d 1176 (D. Wyo. 2010).

Exhibit 3: Political Subdivisions Covered Under the Preclearance Formula in HR 4

California:

Los Angeles County: 5 violations

U.S. v. City of Azusa, No. CV05-5147 (C.D. Cal. 2005).

U.S. v. City of Paramount, No. 05-05132 (C.D. Cal. 2005)

U.S. v. City of Rosemead, No. CV05-5131 (C.D. Cal. 2005)

U.S. v. City of Walnut, No. CV 07-2437 (C.D. Cal. 2007),

U.S. v. Upper San Gabriel Valley Municipal Water District, No. CV 00-07903 (C.D. Cal.),
Stipulation and Order, June 13, 2003

Illinois:

Cook County: 3 violations

Barnett v. City of Chicago, 17 F. Supp. 2d 753 (N.D. Ill. 1998), Section 2 redistricting decision

Harper v. Chicago Heights, 223 F.3d 593 (7th Cir. 2000), Section 2 violation.

U.S. v. Town of Cicero, 2000 WL 34342276 (N.D. Ill. 1996)

New York:

Westchester County: 3 violations

New Rochelle Voter Defense v. New Rochelle, 308 F. Supp. 2d 152 (S.D.N.Y. 2003), Section 2 violation

U.S. v. Village of Port Chester, 704 F. Supp. 2d 411 (S.D.N.Y. 2010), Section 2 violation

U.S. v. Westchester County, No. 05 CIV. 0650 (S.D.N.Y.), Section 203 consent decree, 2005

Ohio:

Cuyahoga County: 3 violations

U.S. v. Cuyahoga County, No. 1:10-cv-1940 (N.D. Ohio), Section 4(e) violation, Agreement, Judgment, and Order, September 3, 2010

U.S. v. Euclid, 580 F. Supp. 2d 584 (N.D. Ohio 2008), at-large election plan violated Section 2.

U.S. v. Euclid City School Board, 632 F. Supp. 2d 740 (N.D. Ohio 2009), at-large election plan violated Section 2 (cumulative voting adopted as a remedy).

Virginia:

Northampton County: 3 violations

09-28-2001: Northampton County

05-19-2003: Northampton County

10-21-2002: Northampton County

Conclusion

I hope my analysis of the proposed coverage formula is helpful in assessing the likely impact on preclearance coverage under the geographic formula in the VRAA. My report has focused on empirical analysis of court decisions, Section 5 objections, and consent decrees favorable to minority voters – as defined in HR 4 when it passed the House in 2019. For a moment, however, I want to emphasize the importance of the challenge Congress currently faces. When the Section 5 preclearance process was still functional – before June 2013 – it was a powerful tool for protecting minority voting rights. The bill under consideration as I write can play a key role in confronting current efforts to limit voter registration and voting by minority citizens, as well as diluting minority voting strength. Based on my 41 years of experience in voting rights litigation, I believe firmly that strengthening enforcement of the Voting Rights Act is a critical need for our democracy.