VOTING RIGHTS IN SOUTH CAROLINA 1982-2006

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EXECUTIVE SUMMARY

Prior to passage of the Voting Rights Act, South Carolina, a state whose population is 30 percent African-American, had elected no black official in the Twentieth Century. South Carolina's history of discrimination resulted in the entire state being covered by the preclearance provisions of Section 5 of the Act.

Vigorous enforcement of Section 2 and Section 5 of the Voting Rights Act has expanded and then protected the ability of South Carolina African-Americans to participate fully in the voting process and to elect candidates of their choice. The transition of single-member districts for both houses of the General Assembly, county councils, municipal governing bodies, and school boards has greatly expanded black representation.

The number of black elected officials in South Carolina increased to 38 in 1970 and then to 540 in 2000. The growth of black representation has come in the face of strong resistance by the state and localities to black representation and to the Voting Rights Act and through vigorous enforcement of the Voting Rights Act. Along with vote dilution litigation under Section 2 of the Act, the Section 5 requirement that changes in electoral practices or procedures be precleared by the Attorney General or the District Court for the District of Columbia has produced and protected that expansion of black representation.

That expansion of black representation is closely linked to the creation and maintenance of single-member district systems. No African American has been elected to statewide office since passage of the Voting Rights Act. Governor Mark Sanford told a reporter in 2005 that he did not expect to see such an election "[i]n the foreseeable future." In state legislative and county council elections, black candidates have been successful almost exclusively in districts which are majority or near majority black. Not one of South Carolina's 8 black state Senators or 23 black House of Representatives members was elected in a district with less than 45 percent black voting age population. Only three of the current 99 African-American county council members have been elected in districts with less than 45 percent black voter registration.

Since 1972, the Department of Justice has objected 120 times to discriminatory changes in voting practices or procedures in South Carolina. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act.

Those discriminatory practices have covered a wide variety of changes which affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting plans, racially selective annexations, and changes in methods of election which reduced the ability of black voters to elect candidates of their choice. They have covered all levels of government from the South Carolina General Assembly to a municipal board of public works. No region of South Carolina has been untouched by these proposed discriminatory changes. Many South Carolina jurisdictions engaged in decades-long resistance to the Voting Rights Act and full representation for their African-American citizens.

Even in this young century, South Carolina's black citizens have relied for protection of their voting rights on objections to a rich variety of discriminatory changes across the state. Just since

2000 in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter and Union counties public officials have changed district lines or voting rules in ways which would diminish the ability of African-American voters to elect candidates of their choice.

The compelling need for majority or near-majority black districts is driven by the persistence in South Carolina of racially polarized voting. "Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections."[1]. The overwhelming reality for African-American voters is that "in order to give minority voters an equal opportunity to elect a minority candidate of choice …, a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement."[2]

Moreover, voter fraud, harassment, and intimidation of black voters have continued to recent years. Election observers have been assigned to 37 South Carolina elections, 23 times since 1982. Most of the communities to which observers have been sent have repeatedly requested assistance under the Act to protect the ability of African-American voters fully to participate in the electoral process. In Charleston County, the district court found "… significant evidence of intimidation and harassment …."[3]

Charleston County spent $2 million to defend its discriminatory election method. Section 5 administrative review of proposed electoral changes by the Attorney General importantly contributes to efficient resolution when changes are proposed while protecting the voting rights of minority citizens.

Although successful *Shaw/Miller* constitutional challenges have been brought to a number of districting plans in South Carolina, subsequent history has seen that adjustments were made and constitutional districts in which African-American citizens are able to elect candidates of their choice were drawn.

South Carolina has made remarkable progress in the forty years since passage of the Voting Rights Act and in the twenty-five years since the Act was last renewed. In a state marked by very high levels of racially polarized voting, that progress has come largely in bodies elected from single member districts. Enforcement of Section 2 has extended, and vigorous enforcement of Section 5 has protected, the expansion of black representation in South Carolina – in the face of official resistance stretching, in many jurisdictions, over decades. Section 5's protections against back-sliding are critical to maintaining the expansion of black representation which has seen this state go from zero to 540 elected black officials in the life of the Act. Retrogressive redistricting plans, changes in the method of elections and racially selective annexations even in the 21st Century demonstrate the continued need for Section 5 preclearance requirements.

[1] *Colleton County Council v. McConnell*, 201 F.Supp.2d, 618, 641 (D.S.C., 2002)
[2] *Id.* at 643.
[3] 316 F. Supp. 2d 268, 286 n.23 (D.S.C., 2003), aff'd *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004); *Charleston County v. United States*, 125 S.Ct. 606 (2004) (cert. denied).

INTRODUCTION TO THE VOTING RIGHTS ACT

Prior to passage of the Voting Rights Act, South Carolina had elected no black officials in the twentieth century.[4] No African-American has been elected to statewide office since passage of the Voting Rights Act. Governor Mark Sanford told a reporter in 2005 that he did not expect to see such an election "[i]n the foreseeable future."[5]

With a large African-American population, South Carolina has a significant history of attempts to deprive those citizens of opportunities fully to participate in its electoral systems. The exclusion of black voters from political processes was sufficiently widespread and severe that the entire state is a covered by preclearance provisions of Section 5 of the Act.

That history includes resistance to the Voting Rights Act and efforts under it to enforce equal opportunity for the state's African-American population. Upon passage of the Act, South Carolina immediately and unsuccessfully moved to challenge the constitutionality of Section 5 of the Act.[6] Many South Carolina jurisdictions engaged in decades long resistance to the Voting Rights Act and full representation for their African-American citizens.

South Carolina's population grew from 3,121,820 in 1980 to 4,012,012 in 2000. The African-American proportion of that population has declined modestly from 30.4 percent to 29.6 percent. African-American voting age population in 2000 was 27.1 percent of the total compared to 27.3 in 1980 and 26.8 percent in 1990.[7] The Census Bureau's American Community Survey places the black only proportion at 28.9 percent in 2004.

There is a small but rapidly growing Hispanic population in South Carolina. The 2004 American Community Survey found that Hispanic population had quadrupled since 1990, from 30,551 to 120,681, 3 percent of the state's population.[8] Knowledgeable observers place the number of Hispanic residents at around 400,000.[9]

African-American voters, who were 27.8 percent of registered voters in 1982, make up 26.9 percent of that registration in 2006. Hispanic voters (13,469) make up only 0.6 percent of the total registration (2,400,358) in 2006. That was a significant increase just from 2002 when there

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[4] Orville Vernon Burton, Terence R. Finnegan, Peyton McCrary and James W. Loewen, "South Carolina" in Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* (1994), 199.

[5] "A Quick Spin Around The State House," *The* (Columbia) *State* (May 11, 2005), B3.

[6] *South Carolina v. Katzenbach*, 383 U.S. 301 (1966)

[7] Bureau of the Census, 1980 Census of Population and Housing, General Population Characteristics: South Carolina, Table 19. Bureau of the Census, 1990 Census of Population and Housing, Public Law 94-171 data; Bureau of the Census, 2000 Census of Population and Housing, Public Law 94-171 data. The Bureau of the Census estimates the state's population increased to 4,255,083 in 2005. Figures used for 2000 are based on the Maptitude for Redistricting category NH_DOJ_Blk which includes persons identifying themselves as Black, black and white or white and black. Black only persons were 29.5 percent of the total. Bureau of the Census, "Table 1: Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2005," at http://www.census.gov/popest/states/tables/NST-EST2005-01.xls.

[8] See 2004 American Community Survey, South Carolina, Data Profile Highlights at http://factfinder.census.gov/.

[9] Jim DuPlessis, "Hispanics' Impact on Economy Unclear," *The* (Columbia) *State* (December 4, 2005), F1.

were only 7,598 registered Hispanic voters or 0.4 percent. In 2002, there were more Asian citizens (8,788) registered to vote than Hispanic. In 2006, Asian registrants lag behind Hispanic registrants, 11,070 to 13,469.[10]

Substantial change has occurred in South Carolina since 1965. An all-white General Assembly now includes eight black Senators and twenty-three black representatives.[11] Statewide, 99 of the 334 members of county councils are African-American. Another 164 African-Americans are elected public school trustees out of a total of 567 elected trustees.[12]

That progress has come because of vigorous enforcement of the Voting Rights Act through Section 2 vote dilution litigation and Section 5 objections and litigation. Since 1972, the United States Department of Justice has objected 120 times to discriminatory changes in voting practices or procedures in South Carolina. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act.

Those discriminatory practices have covered a wide variety of changes that affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting plans, racially selective annexations, and changes in methods of election which reduced to the ability of black voters to elect candidates of their choice. They have covered all levels of government from the South Carolina General Assembly to a municipal board of public works. No region of South Carolina has been untouched by these proposed discriminatory changes.

That expansion and protection of single-member districts through Voting Rights Act enforcement has been the critical factor in that progress because "in order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority- minority or very near majority-minority black voting age population in each district remains a minimum requirement."[13]

High levels of racially polarized voting drives the need for majority or near-majority African American districts. As recently as 2002, the court in *Colleton County Council v. McConnell* found: "Voting in South Carolina continues to be racially polarized to a very high degree in all regions of the state and in primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute."[14]

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[10] *Report of the South Carolina Elections Commission for the Period Ending June 30, 1983*, Vol. 1 (1983), 439; S.C. Elections Commission, Registration Tally July 1, 2002; S.C. Elections Commission, Registration Tally January 1, 2006.

[11] The race of elected members was determined from voter registration lists, county, and school district website photos and personal knowledge.

[12] Another 55 trustees are appointed by countywide school Boards of Education. Those appointed trustees are in majority black counties Marion and Clarendon and 46 percent black Dillon County.

[13] *Colleton County Council v. McConnell*, 201 F.Supp.2d, 618, 643 (D.S.C., 2002).

[14] *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 641 (D.S.C., 2002).

Even in this young century, South Carolina's black citizens have relied for protection of their voting rights on objections to a rich variety of discriminatory changes across the state. Just since 2000, public officials in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter, and Union counties have changed district lines or voting rules in ways that would diminish the ability of African-American voters to elect candidates of their choice.

I. State and Local Government in South Carolina

The Voting Rights Act was one of two significant developments framing the change in black representation in South Carolina. "One person, one vote" litigation in the 1960s triggered the end of South Carolina's traditional domination of local government by county legislative delegations led by baronial senators. In that process, single-member districts eventually came to both the South Carolina House and Senate. As formerly appointed county governing bodies and school boards became elective and Voting Rights Act enforcement led to single member districts, black citizens had new opportunities elect candidates of their choice to county councils and school boards

The 1895 Constitution of South Carolina created a framework of legislative dominance of the state at all levels of government. The General Assembly was apportioned along county lines with one senator and one or more representatives.[15] That county delegation, and especially the senator, ruled the county. As V.O. Key had written over a decade earlier, "County legislative delegations constitute the real governing bodies of the respective counties."[16] "The … legislative delegation performed the legislative, executive and taxing functions for the county."[17] Many local officials, including members of county commissions and county boards of education, were appointed by the Governor upon nomination of the delegation. County operations were funded through Supply Bills adopted by the General Assembly as local legislation upon which only the affected delegation voted.

In 1966, the federal court in *O'Shields v. McNair*[18], ruled unconstitutional on one-person, one-vote principles the apportionment scheme embodied in the 1895 Constitution. Prior to *O'Shields* every county was politically controlled by a senator who resided in the county. After *O'Shields*, some rural counties no longer had resident senators.

Following a constitutional amendment in 1973, a statewide Home Rule Act in 1975 transferred significant powers to county governments, pushing forward a piecemeal process of empowering local citizens to "enact ordinances, require licenses and permits of various sorts, and raise or lower property tax rates."[19] It was 1982 before the General Assembly transferred authority to redistrict single member district county councils to those councils statewide.[20] Attending that shift in power, each county was required to choose a form of government and method of election or accept the form and method of election specified for it by state law.[21] The move to Home

[15] *SC Constitution*, Article III, Sections 4 and 6.
[16] V.O. Key, Jr., *Southern Politics in State and Nation* (1949), 151.
[17] *Horry County v. United States*, 449 F.Supp. 990, 993 (D.D.C., 1978).
[18] 254 F.Supp. 708 (D.S.C., 1966).
[19] Walter Edgar, *South Carolina: A History* (1998), 551.
[20] Act 313 of 1982.
[21] Section 4-9-10, *S.C. Code of Laws (1976), as amended.*

Rule in the mid to late-1970s accounted for DOJ objections in eleven South Carolina counties.[22] In their study of the impact of the Voting Rights Act to 1990, Orville Vernon Burton and his colleagues found: "The Home Rule Act accounted for more than 40 percent (fifteen of thirty-five) of the changes from at-large to district election plans that have occurred in South Carolina county councils between 1974 and 1989…."[23]

That process of devolution of power from the delegation to local government is far from complete. Magistrates, the lowest level of court in South Carolina, are still appointed by the governor on nomination of the county's senators.[24] The General Assembly routinely passes legislation to, for example, to regulate local mowing on state highways, excuse students in particular school districts from days lost to snow or set school start and end dates in specific counties.

Although most local appointment powers have been devolved on county councils, legislative delegations continue to control county boards of registration and elections, precinct lines and method of election and district lines for many boards of school trustees. That continued involvement of state legislators in local affairs removes African-American citizens from participation in critical decisions as discriminatory changes are proposed.

[22] Those include Aiken, Bamberg (3 objections), Charleston, Chester (2 objections), Clarendon, Colleton, Edgefield Horry, Sumter, Lancaster, and York counties.
[23] *Quiet Revolution,* 205. The Home Rule Act did not address the method of election of either municipal governments or school district trustees.
[24] *SC Constitution,* Article V, Sections 26.

II. Minority Office Holders in South Carolina

> In an interview on WIS-TV in Columbia, Sanford was asked about blacks winning statewide office. "Can I interject?" Sanford asked, interrupting the show's host. "I think there never will be," Sanford said.
>
> "You said you don't think there ever will be?" asked Craig Melvin, who hosts "Awareness."
>
> "In the foreseeable future," Sanford said. It hasn't happened in the past 100 years, and "that is tragic," said the governor, who is a white Republican.
>
> "A Quick Spin Around The State House," *The* (Columbia) *State* (May 11, 2005), B3.

South Carolina greeted passage of the Voting Rights Act with no black elected officials in a state that was approximately 33 percent black.[25] Through vigorous enforcement of the Voting Rights Act, especially through the creation of single member districts with majority and near-majority black districts, the number of black elected officials had grown to 534 in 2001.[26]

A. Statewide Offices

No African American has been elected to statewide office in South Carolina since the end of Reconstruction. Since 1982, African-American candidates have offered for governor, attorney general, and secretary of state as Democrats.

In 1982, South Carolina's African-American citizens were represented largely by white elected officials. The Congressional delegation and the state Senate, elected from numbered posts in multi-member districts, were all white. The South Carolina House, elected from single-member districts in 1982, included 13 African Americans among its 124 members.

The first African-American state senator in the 20th century, I. DeQuincey Newman, was sworn in on October 25, 1983 after winning a special election. Four additional African Americans joined Newman in the Senate in 1985 after the Senate was reapportioned into 46 single member districts.

In 2006, African-Americans occupy one of six congressional seats, eight of forty-six state Senate seats and 23 of 124 state House seats.

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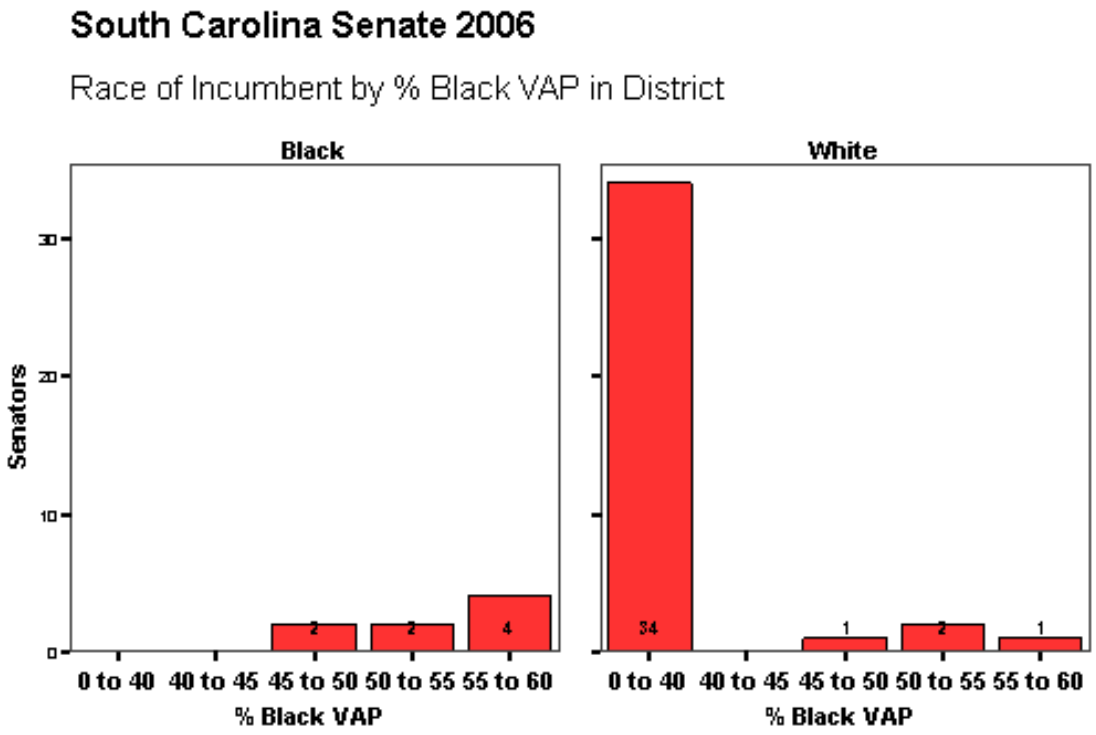
[25] Averaging 1960 and 1970 percent black and others from S.C. Budget & Control Board, Division of Research & Statistics, "South Carolina Population by Race 1790-1980," *South Carolina Statistical Abstract 1985* (1985), 311.
[26] David A. Bostitis, "Black Elected Officials: A Statistical Summary 2000,' Joint Center on Political and Economic Studies (2002), 18.

The overwhelming reality for African-American voters is that "in order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority- minority or very near majority-minority black voting age population in each district remains a minimum requirement."[27]

The only congressional seat occupied by an African-American is District Six which has a 54 percent black voting age population by 2000 Census population data. Prior to the 1992 creation of the majority black Sixth District, no African American had served in Congress from South Carolina in the twentieth century. The remaining districts range in black voting age population from 18 to 30 percent.

Figure 1



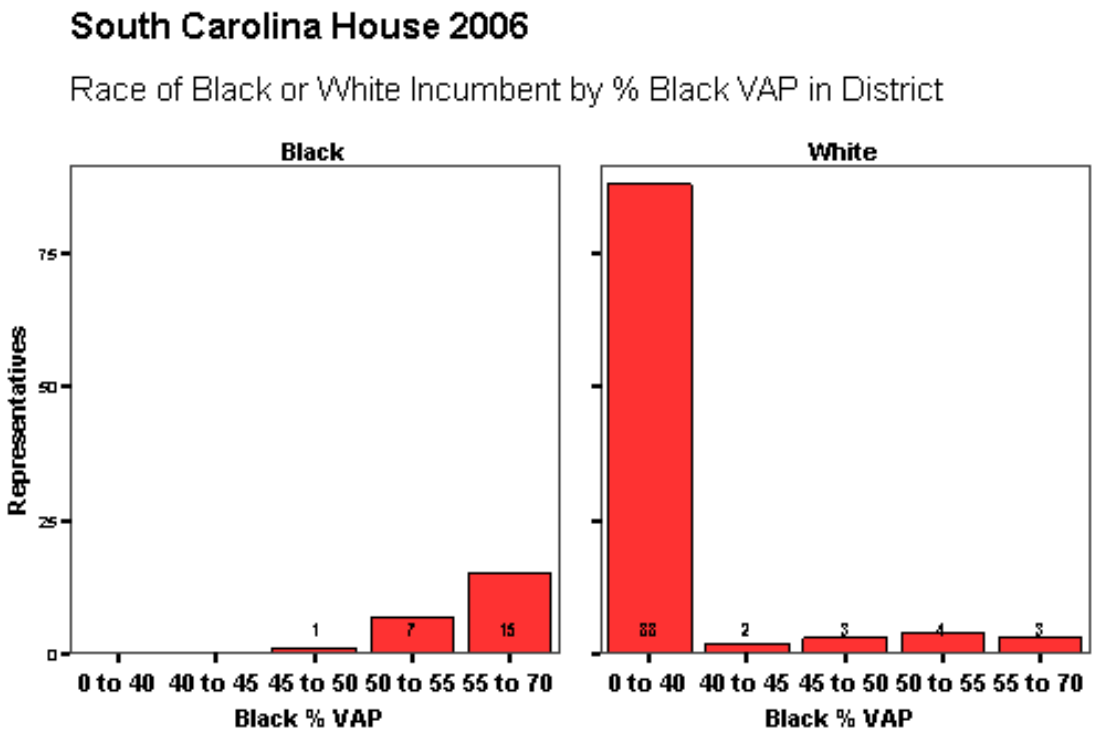
Eight of the 46 South Carolina Senate districts have an African-American incumbent. Only two of those districts (Districts 7 and District 29) have less than a majority black voting population. (See Figure 1.) District 7 has a majority nonwhite voter registration (51 percent) compared to its 47 percent black voting age population. District 29 has a 45 percent black voting age population but a 47 percent nonwhite registration.[28] Figure 1 clearly demonstrates the relationship between the race of the incumbent and the racial composition of the district.

[27] *Colleton County Council*, 201 F.Supp.2d at 643.

[28] Registration figures are taken from http://www.state.sc.us/scsec/regist/senate.html. The South Carolina Elections Commission's principal reports distinguish between "White" and "Nonwhite" voters. "Nonwhite" voters, to date,

The South Carolina House of Representatives has 124 members. Twenty-three of those Representatives are African-American, 100 are white and one is Asian, Indian.[29] (See Figure 2.) The African-American voting age population in each of those districts is at least 49 percent and nonwhite voter registration exceeds 50 percent in each of those districts.

Figure 2



Solicitors, the local prosecutors, are elected from multi-county districts. Only one of those districts, Judicial Circuit 3 in Clarendon, Lee, Sumter and Williamsburg counties, had a black majority population in 2000 (53 percent). All fourteen of the solicitors are white.[30]

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are substantially all black. Congressional and Senate population figures based on maps created by Maptitude for Redistricting from block equivalency files at http://www.scstatehouse.net/redist/senate/senred.htm. House population files are based on block equivalency files downloaded from http://www.scstatehouse.net/redist/house/houred.htm.

[29] Rep. Nikki Randawha Haley represents 92 percent white District 87 in Lexington County. In her first election, her opponent attempted to make her Sikh faith an issue in the campaign. Brad Warthen, "Voters Embraced American Dream in Choosing Nikki Haley," *The* (Columbia) *State* (June 27, 2004), D4; Tim Flach, "Indian American Group Hails Haley's Win," *The* (Columbia) *State* (June 24, 2004), B1.

[30] Ralph J. Wilson, an African-American, was elected to solicitor in the majority white 15th Judicial Circuit (Georgetown and Horry counties) in 1990 and 1994, but defeated in 1998. African-American Thomas R. Sims was appointed solicitor in the 1st Judicial circuit (Orangeburg, Calhoun, and Colleton counties). He was defeated for election in 1992.

B. Local Government.

The expansion of single member districts has preceded the expansion of black representation at the local level in South Carolina. Only two of South Carolina's 46 counties elect its council members at large, the black majority Hampton and Jasper counties. There are 315 county council members elected from single-member districts. As Table 1 and Figure 3, below, demonstrate, 30 percent of those members are African-American. Only eight of those 94 are elected from districts with less than majority black voter registration. Nineteen council members are elected from at large seats. Five of those are black, all elected in majority black counties.

Figure 3

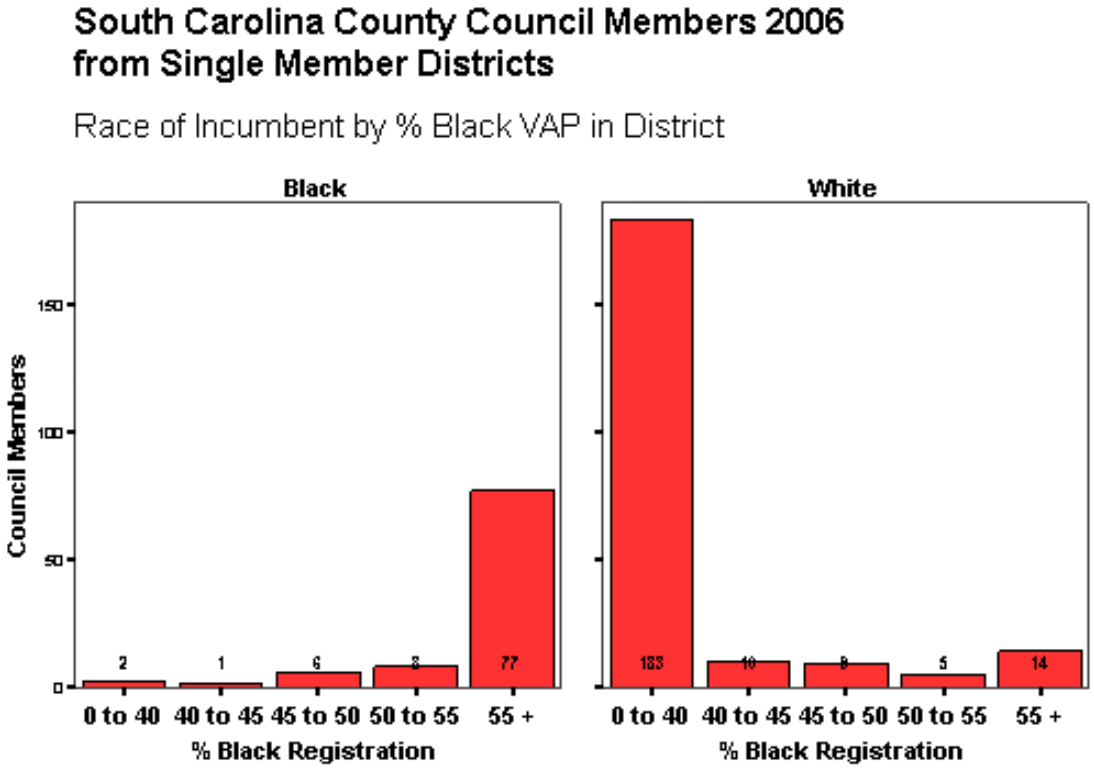


Table 1

Percent Black Voter Registration by Race of County Council Member
Single Member Districts

		% Black Registration					Total
		0 to 40	40 to 45	45 to 50	50 to 55	55 to 100	
Black	Count	2	1	6	8	77	94
	% within % Black Registration	1.1%	9.1%	40.0%	61.5%	84.6%	29.8%
White	Count	183	10	9	5	14	221
	% within % Black Registration	98.9%	90.9%	60.0%	38.5%	15.4%	70.2%
Total	Count	185	11	15	13	91	315

Table 2 shows that only South Carolina school trustees and sheriffs come close to matching the state's 30 percent black population proportion. Not one of South Carolina's solicitors, the state's elected prosecuting attorneys, is black. Figure 4 shows that for county-elected officials other than sheriff the same patterns hold true. Other than for sheriff, African-Americans can only rarely be elected in majority white counties.[31]

Table 2

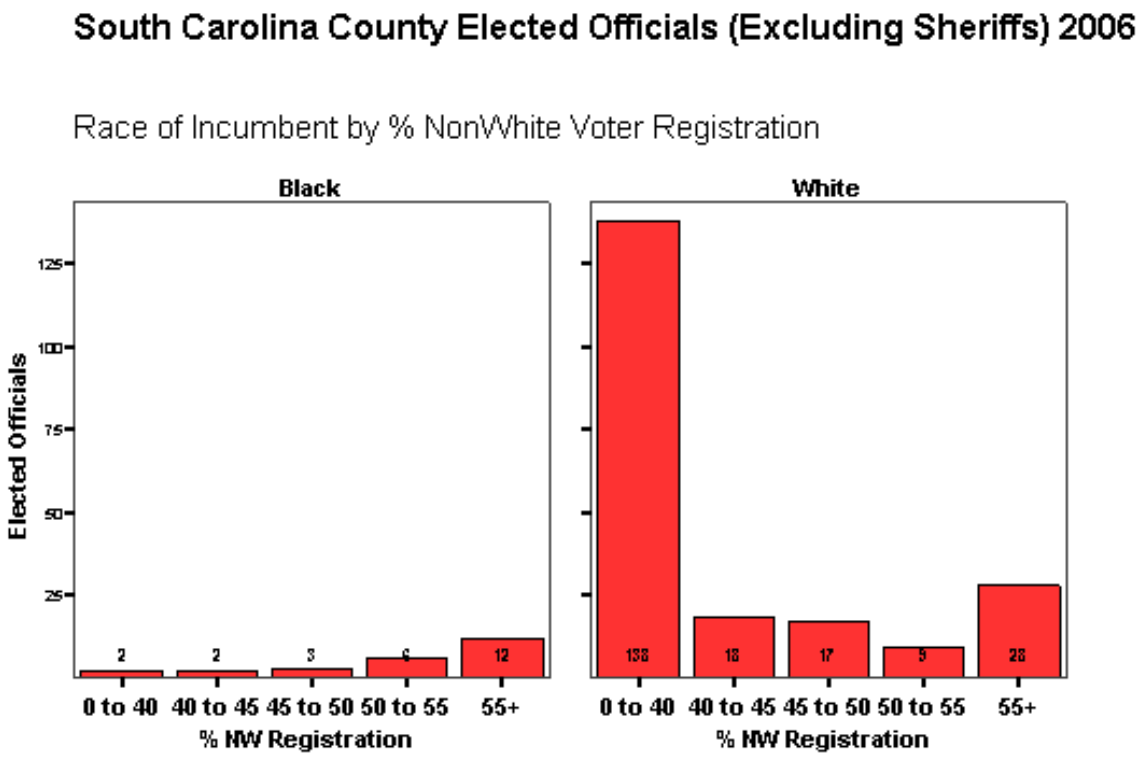
Elected Countywide Officials and School Trustees

Office	Total	African-American	Percent AA
Auditor	46	7	15
Clerk of Court	46	6	13
Coroner	46	5	11
Probate Judge	46	2	4
Register of Deeds or Mesne Conveyances	5	0	0
Sheriff	46	12	26
Treasurer	46	5	11
School Trustee	567	164	29

[31] The elected officials in counties with less than 45 percent black voter registration include four sheriffs (Abbeville, Colleton, Edgefield and McCormick), two Clerks of Court (Colleton and Georgetown), one Treasurer (Georgetown) and one Coroner (McCormick).

Voting in South Carolina remains highly racially polarized. For legislative bodies especially, election of African-American candidates of choice in districts that do not have African-American majorities or near majorities is a rare event.

Figure 4



We have not undertaken a study of minority municipal officeholders in South Carolina. The Joint Center for Political and Economic Studies found 227 black members of municipal governing bodies and 29 black mayors in South Carolina in 2000.[32]

Section 5 has been especially critical in helping to push jurisdictions in South Carolina to adopt single-member districts, to draw those districts fairly so that African-American citizens could choose candidates of their choice and to ensure that those advances were not taken back in subsequent redistricting. Absent that, we would be much closer to the all-white elected officialdom which confronted South Carolina when the Voting Rights Act first passed. Since 1982, significant advances have been made as school boards and county councils increasingly reflect the state's population.

[32] Bostitis, "Black Elected Officials," 19.

III. Section 5 of the Voting Rights Act

South Carolina has been a covered jurisdiction under Section 5 of the Voting Rights Act of 1965, 42 USC § 1973 (c), since its passage, because of its history of discriminatory voting practices. The Act has been extended in 1970, 1975, and 1982.

Under Section 5, any change with respect to voting in a covered jurisdiction may not be implemented or enforced unless and until the jurisdiction first obtains the requisite determination by the United States District Court for the District of Columbia or makes a submission to the United States Attorney General. This requires that the jurisdiction provide proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to demonstrate the absence of such discrimination, the district court must deny the requested declaratory judgment or in the case of administrative submissions, the Attorney General must object to the voting change and the change is legally unenforceable.

As the Supreme Court noted in rebuffing South Carolina's challenge to preclearance provision of Section 5:

> Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.[33]

Reno v. Bossier Parish School Board[34] and *Reno v. Bossier Parish School Board*[35] have limited the scope of Section 5 preclearance review to whether proposed changes are retrogressive, that is, whether they diminish the opportunity of minority voters to elect candidates of their choice. Relying on *Beer v. United States,*[36] (which held that an election plan has a prohibited "effect" only if it is retrogressive.), the U.S. Supreme Court held that Section 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose.[37]

The Department of Justice (DOJ) is responsible for defending declaratory judgment actions in the district court and DOJ may bring lawsuits to enjoin the enforcement of voting changes that have not received Section 5 preclearance. Private parties may also bring suits to enjoin voting changes, which have not been submitted to the Attorney General and received preclearance.

Voting changes in South Carolina jurisdictions have occasioned numerous objections and required several lawsuits by private citizens and the United States to enforce Section 5.

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[33] *Katzenbach*, 383 U.S. at 327-28
[34] 520 U.S. 471 (1997)
[35] 528 U.S. 320 (2000)
[36] 425 U.S. 130 (1976)
[37] Justice Souter, in dissent, pointed out that Bossier Parish officials had exercised their energies for decades in an effort to "limit or evade" their obligation to desegregate the parish schools.

IV. Section 5 Objections

The Department of Justice (DOJ) has, since 1971, objected to preclearance of discriminatory changes in voting practices or procedures in South Carolina 120 times. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act. Since 1982, the objected to discriminatory practices have covered a wide variety of changes that affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting, annexations, voter assistance, changing county boundaries, eliminating offices, reducing the number of seats on a public body, majority vote requirements, changing to at-large elections, using numbered posts or residency requirements, staggering terms, unfair scheduling of elections, changing from nonpartisan to partisan elections, and limiting the ability of African-American citizens to run for office.

Table 3

Department of Justice Objections[38]
1982 - 2004

Issue	No.
Redistricting	27
Annexation	9
Other	8
Staggered Terms	8
Method of Selection	7
Majority Vote Requirement	6
Schedule of Election	6
Change in No. of Seats	4
Eliminates County Bd of Ed or Superintendent	3
At Large with Residency Districts	1
Required resignation of public employees	1

Since 1982, those Department of Justice objections to discriminatory practices have covered all levels of government: the General Assembly (both Senate and House), counties,[39] county boards of education,[40] school districts[41], cities and municipalities[42] and a board of public works.[43] As the map on the next page shows, they have covered the state, as well.

Many of those jurisdictions engaged in decades-long resistance to the Voting Rights Act and full representation for their African-American citizens.

The principal focus of objections in South Carolina prior to 2000 was on the discriminatory intent of the jurisdictions rather than the retrogressive effect of the proposed changes.

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[38] The Department of Justice provides a complete listing of Section 5 objections at its website: http://www.usdoj.gov/crt/voting/sec_5/obj_activ.htm.

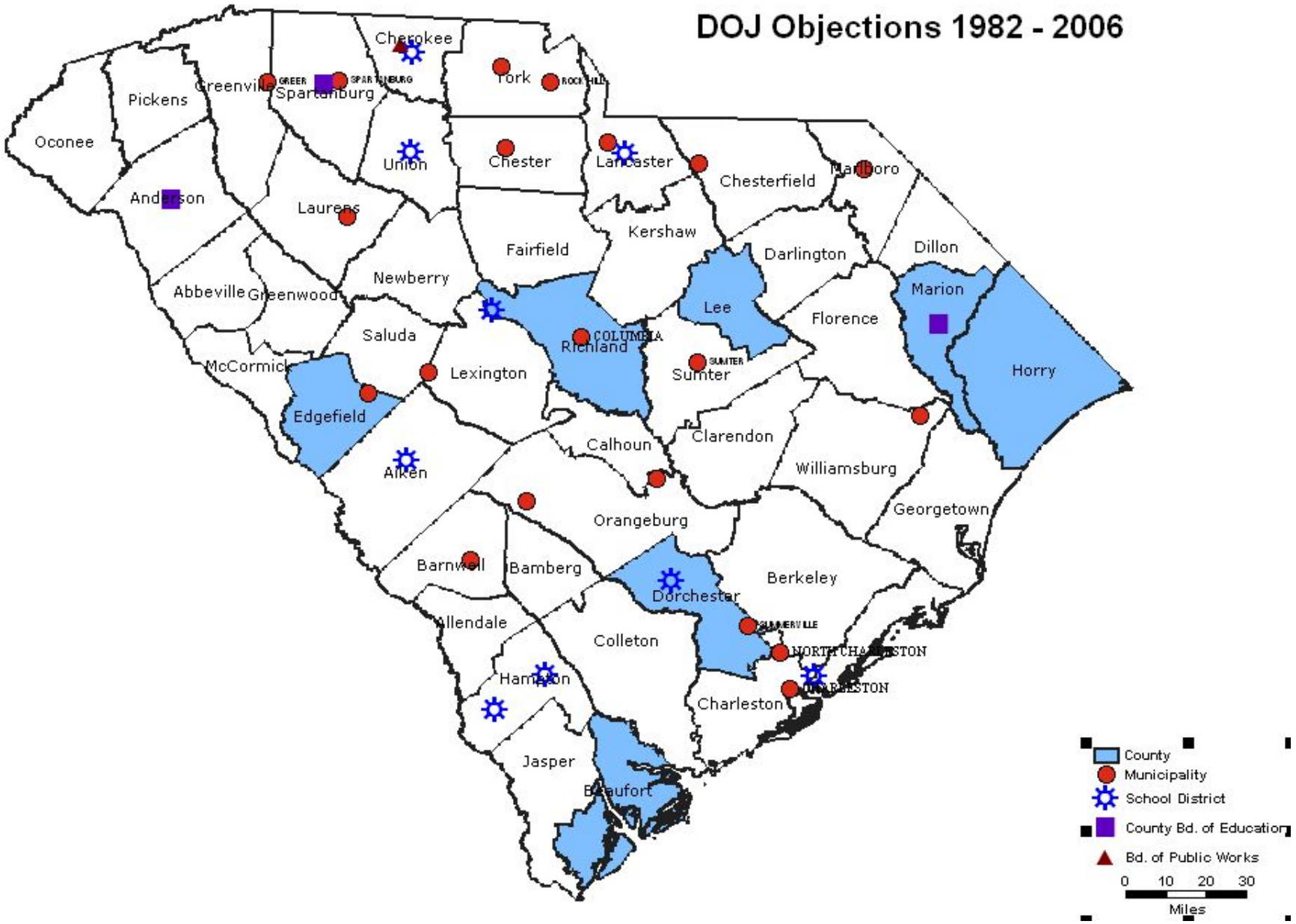
[39] Those include Beaufort, Dorchester, Edgefield, Horry, Lee, Marion, Orangeburg, Richland, Sumter and Williamsburg counties as well as statewide legislation affecting qualifications for probate judges.

[40] Those include Anderson, Hampton, Marion, and Spartanburg County Boards of Education.

[41] Those include Consolidated School District of Aiken County, Charleston County School District, Cherokee County School District 1, Dorchester District 4, Edgefield County School District, Hampton County School Districts 1 and 2, Lancaster County School District, Lee County School District, Newberry County School District, Richland-Lexington School District 5 and Union County School District.

[29] Those include Barnwell, Batesburg, BatesburgLeesville, Bennettsville, Charleston, Chester, Clinton, Columbia, Elloree, Greer, Hemingway, Jefferson, Johnston, Lancaster, North Charleston, Norway, Rock Hill, Spartanburg, Summerville, Sumter and York.

[43] Gaffney Board of Public Works.


DOJ Objections 1982 - 2006
Cherokee
York
Greenville
Spartanburg
Pickens
Oconee
Union
Chester
Lancaster
Chesterfield
Marlboro
Anderson
Laurens
Kershaw
Fairfield
Darlington
Dillon
Newberry
Abbeville
Greenwood
Lee
Marion
Florence
Saluda
Richland
Sumter
Lexington
McCormick
Horry
Edgefield
Clarendon
Calhoun
Aiken
Williamsburg
Georgetown
Orangeburg
Barnwell
Bamberg
Berkeley
Dorchester
Allendale
Colleton
Hampton
Charleston
Jasper
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County
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County Bd. of Education
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A. Objections in the 2000 Cycle

The opponents of the Voting Rights Act often suggest that the types of discriminatory practices that led to passage of the Act and Section 5, in particular, are part of an ancient history now happily buried. However, the objections which the Department of Justice has entered to attempted changes in South Carolina just since the release of the 2000 Census belies this and underlines the importance of the continued requirement that voting changes go to the Department of Justice for preclearance.

South Carolina jurisdictions have continued to attempt discriminatory changes to which the Attorney General, even with the narrowed review following the *Bossier Parish* decision in 2000, objected.

1. Charleston County School Board

Following the 2000 General Election, African Americans comprised a majority (five of nine) on the Charleston County School Board. School trustees in Charleston County are elected at-large from four residency districts. There is no majority vote requirement. The district court in *United States v. Charleston County*, a challenge to at-large partisan County Council elections, had found that "special circumstances unique to the school board" explained "… the contemporary and inordinate African American-candidate success that is out of balance with the characteristically poor results for African American candidates in all other jurisdictional elections."[44]

In finding against the county council, the court had ruled that partisan elections, with their attendant primary processes, created "a *de facto* majority vote requirement [which] makes it more difficult for the African-American community to employ a traditional strategy of bullet voting in order to improve their chances of electing candidates of their choosing."[45] The *Charleston County* court expressed "particular concern" over a 2002 effort to convert the school trustees to partisan elections as one of "two recent episodes of racial discrimination against African-American citizens attempting to participate in the local political process."[46]

In 2003, the South Carolina General Assembly (which is to say, the Charleston legislative delegation) passed Act 128 of 2003, which would have changed the method of elections for Trustees of the Charleston County School District from nonpartisan to partisan elections—essentially recreating the electoral system for county council that the district court had just found "denies African Americans, on account of their race and color, equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act."[47]

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[44] 316 F. Supp. 2d 268, 281 (D.S.C., 2003), affirmed *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004); *Charleston County v. United States*, 125 S.Ct. 606 (2004) (writ denied).
[45] *Id.* at 294.
[46] *Id.* at 286, fn. 23.
[47] *Charleston County*, 316 F. Supp. 2d. at 307. The vote in the Senate was again on racial lines. *Journal of the South Carolina Senate*, April 16, 2003. In the House of Representatives, one white member voted with his African-American delegation colleagues on the losing end of a 7-6 vote. *Journal of the South Carolina House of Representatives*, May 22, 2003.

On February 26, 2004, the Department of Justice objected to the legislation because "[t]he proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the school board and to participate fully in the political process. In addition, it was enacted despite the existence of a nonretrogressive alternative."[48]

The special circumstances that led to the election of black candidates have only been repeated once. The Board of Trustees now has one remaining African-American member, Hillery Douglas, who was reelected without opposition in 2004.[49]

2. Sumter County Council

Sumter County Council has a long history of attempts to limit the ability of African-American citizens to fully participate in the political process which continued through redistricting in 2001. Single-member districts for Sumter County Council only came after a long process of resistance beginning in 1967 with adoption of at-large elections for the newly created council.[50] No effort was made to seek preclearance of that change and elections were held under the unprecleared system from 1968 through 1974. Following adoption of the 1975 Home Rule Act, Sumter did not adopt a new form of government but accepted the Act's designation of a council-administrator form with at-large elections. The Attorney General objected to adoption of that form on December 3, 1976. Private parties and the United States sought and were granted an injunction in the South Carolina district court against implementation of the at-large election system.[51]

Following several attempts to convince the attorney general to reconsider and a referendum adopting at-large elections for Sumter County Council, the county convinced a three-judge federal panel, that its requests for reconsideration constituted a request for preclearance under the Section 5 and that the attorney general had failed to timely object to this request. *Blanding v. Dubose.*[52] On appeal, the Supreme Court rejected that argument and reversed the district court's judgment.

In 1984, Sumter County Council sought a declaratory judgment from the district court of the District of Columbia, pre-clearing at-large elections for Sumter County Council. The district court refused, finding that only one African American had been elected under the at-large system. "A fairly drawn single-member district plan for the Sumter County Council is more likely to allow black citizens to elect candidates of their choice in three of seven districts (or 42.8 percent of the representation on the Council)." *County Council of Sumter County, S.C. v. U.S.*[53].

The Court found that Sumter County had failed to prove "that the legislature did not pass Act 371 in 1967 for a racially discriminatory purpose at the insistence of the white majority in

[48] Objection letter, February 26, 2004.
[49] SC Elections Commission, *Election Report 2004*, 143-144.
[50] Act 371 of 1967.
[51] This history is set forth in *Quiet Revolution*, 208-209, and *Blanding v. DuBose*, 454 US 393 (1982).
[52] 509 F.Supp. 1334 (D.S.C., 1981).
[53] , 596 F.Supp. 35, 37 (DDC, 1984).

Sumter County…" or "that the at-large system was not maintained after 1967 for racially discriminatory purposes and with racially discriminatory effect."[54]

From 1984, elections for Sumter County have been held from single-member districts. In 2001, Sumter County was 47 percent black and 49 percent non-Hispanic white. African Americans made up three of the county's seven council members. District 7, which had been a barely white majority district when drawn in the 1990s and was represented by a white council member, had become increasingly African-American as a result of demographic changes. The benchmark plan for Sumter County council showed four heavily black majority districts, including District 7, which had a nearly 59 percent black voting age population. The district was not malapportioned and could have remained unchanged.

The county adopted and submitted to the Department of Justice for preclearance a plan that included only three districts in which African-American citizens would be able to elect candidates of choice. District 7 had been drawn to reduce its black voting age population from 59 percent to 49 percent black. The Justice Department objected to the plan on June 27, 2002, finding that because of a pattern of racially polarized voting in the district "under the proposed plan, the black candidate of choice would lose, or at best win by an extremely narrow margin." The plan was retrogressive.[55]

Over the next several months, the council made numerous attempts to agree on a new plan in a racially charged atmosphere. White members pushed for a variant of a 3-3-1 plan not significantly different from the plan rejected by the Department of Justice.

In an editorial, the Sumter *Daily Item*'s Robbie Evans wrote: "The very fact that voting lines must be determined by race is inherently an insult to every Sumter resident who queues up at a polling place each November. What it states, bluntly, is that 200 years after Abraham Lincoln, we, blacks and whites, still are unable to see past the color of a candidate's skin."[56]

At a public hearing, a white council member declared: "This is about black power." Another white council member moved to challenge Section 5 "all the way to the Supreme Court" because it was an imperative to defend the rights of Asian (0.9 percent of the population) and Hispanic (1.8 percent of the population) minorities who would get no district.[57]

Nearly a year later, the council still had not adopted a plan. At a November 11, 2003, meeting, a white member of the council, Carol Burr, demanded the removal of African-American citizens Carl Holmes and Eugene Baten, who were silently holding signs saying "Don't reduce the Black Vote" and "Respect the Voting Rights Act." Burr stormed from the meeting after the council chair, on advice of counsel, allowed the citizens to remain. Another white member left before Baten told the council: "All that I ask is that the plan you pass is legal." White member Charles Eden said: "I'm tired of hearing what he has to say. I've heard it a hundred times."[58]

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[54] *Sumter County* 596 F.Supp. at 38.
[55] Letter, Assistant General Ralph F. Boyd, Jr., to Sumter County Council Chair Charles T. Edens, June 27, 2002.
[56] Robbie Evans, "Council Reaches Distasteful Racial 'Compromise,' Sumter *Daily Item* (October 16, 2003), 6A.
[57] Author John Ruoff was present at the December 10, 2002, meeting.
[58] Braden Bunch, "Redistricting Compromise Implodes," Sumter *Daily Item* (November 12, 2003).

Two weeks later, on November 25, 2003, the Sumter County Council finally adopted a new redistricting plan with a 55 percent black voting age population in District 7. Under that plan, to which the Attorney General did not object, Eugene Baten was elected to represent District 7.[59]

3. Union County Board of School Trustees

Union County came to national attention in 1994 when a young white woman, Susan Smith, murdered her two children and attempted to deflect law enforcement attention by playing on racial stereotypes, claiming that her car, with the children in it, had been carjacked by "a black male in his late 20s to early 30s, wearing a plaid shirt, jeans and a toboggan-type hat."[60]

Following the 2000 Census, the county's black citizens faced two attacks on their ability to elect candidates of their choice. In 2002, the General Assembly passed Act 462 of 2002, which redistricted the Board of Trustees of the Union County School District. Union County School District is coextensive with the county. The county is a rural, upstate county with a 2002 Census population of only 29,881 of whom 31 percent are black according to the 2000 Census. The district's nine trustees were elected on staggered terms from single-member districts in nonpartisan elections. Two of those districts in 2002 had African-American majorities and were represented by African-American candidates of choice.

As the Department of Justice noted in objecting to the plan:

> Also revealing is the fact that, in contrast to the process which led to the 1989 benchmark plan, the proposed plan here was developed without any formal public hearings in the county, and without any opportunity for black members of the local board of trustees and the local black community to voice what we understand to be considerable concerns regarding the plan, resulting in an atmosphere of secrecy. [61]

Indeed, "[t]he School Board in Union County found out that this Bill had been introduced and adopted when the chairman of the board saw a little article in the newspaper that said that Representative Fleming was going to meet with the Town Council Members from Jonesville, which is a small town in Union County, to discuss with them the school board redistricting lines."[62]

District 1 had a 60 percent black voting age population and District 7 had a 68 percent black voting age population in the benchmark plan. The black proportion of the voting age population, due to voter participation levels in District 7, especially, could not be significantly reduced from the benchmarks without impairing the ability of African-American citizens to elect candidates of

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[59] Sumter County Council Members, http://www.sumtercountysc.org/council.htm.
[60] The story can be traced in the nearby Spartanburg Herald-Journal, *Nine Days in Union* at http://www.teleplex.net/shj/smith/ninedays/ninedays.html.
[61] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd to Sr. Asst. S.C. Atty. Gen'l. C. Havird Jones, September 3, 2002.
[62] Sen. Linda Short, *Journal of the South Carolina Senate*, February 7, 2002. The transcript of the debate on H. 4351 is in the web version (http://www.scstatehouse.net/sess114_2001-2002/sj02/20020207.htm) but not the printed version of the journal for that day.

their choice.[63] Act 462 had black voting age populations of 56 percent and 61 percent in Districts 1 and 7. An alternative plan prepared at the request of the Board of Trustees and offered as an amendment during the Senate debate "avoided significant reductions in black voting strength while adhering substantially to the State's redistricting goals as presented in [the state's] submission."[64] Despite "repeated requests," the state failed to provide "further information concerning black and white candidates."[65]

Act 164 of 2003 enacted a plan substantially the same as the alternative offered during the senate debate in 2002.[66] The Department of Justice did not object to it. The Union County School District Board of Trustees has two African-American members in 2006.[67]

While dealing with the effort to reduce black voting strength in majority black school districts, the Union black community was also confronted with a challenge to one of the two majority black county council districts. In the year 2000, Union County redistricted its council districts. That plan maintained two African-American majority districts, District 2 and 5. District 2 had in both the 1990 and 2000 redistricting split the town of Jonesville, a place with 982 people of whom 322 were black. Private white plaintiffs filed a challenge on April 6, 2002, to District 2 alleging that the split of Jonesville was unconstitutional because race predominated in the drawing of the district.[68]

On December 30, 2003, a Consent Order and Agreement was filed which settled the case. That Consent Order and Agreement found "that there is statistically significant racial bloc voting in Union County and specifically in Districts 2 and 5…. [T]his racial bloc voting leads to the white voting majority in Union County being able to defeat the African American candidate of choice."[69]

The plaintiffs, defendants and defendant-intervenors, the Union County Branch of the NAACP and black voters, agreed to a new map that made very small changes to District 2 by removing 128 people in Jonesville from District 2.

4. Cherokee County School District No. 1

In 2002, the South Carolina General Assembly adopted Act 416 of 2002 which, among other provisions, decreased the number of members of the Board of Trustees from nine to seven.

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[63] See Expert Report of John C. Ruoff, Ph.D., Regarding Racial Dimensions Of Elections And Voting In Union County, South Carolina Elections For Defendant Intervenors Keenan et al. (January 23, 2003) in *Rodgers v. Union County, C.A. No. 7:02-1390-MBS (D.S.C., filed April 26, 2002).* .

[64] *Id.* The Board of Trustees requested of Senator Linda Short: "The board would like this plan developed by the Office of Research and Statistics in consultation with Dr. John Ruoff of the NAACP. This plan should include all criteria required by the Justice Department and the Voting Rights Act."

[65] Boyd to Jones, 2.

[66] A private citizen brought litigation seeking to enjoin elections under the1990s plan as that plan was malapportioned. *Sanders v. Vanderford*, C.A. No. 7:02-4076-20 (D.S.C., 2002). That suit was dismissed after the new plan was passed and precleared. Order of Dismissal, *Sanders v. Vanderford* (October 6, 2003).

[67] Union County Board of School Trustees, http://www.union.k12.sc.us/District/School%20Board/Board.html.

[68] *Rodgers v. Union County, South Carolina*, C.A. No. 7:02-1390-MBS (D.S.C., filed April 26, 2002).

[69] *Union County* (D.S.C., Consent Order and Agreement, December 30, 2003).

The benchmark plan for Cherokee County School District No. 1 had been developed in 1993 after African-American citizens had sued the school district under Section 5 to enjoin an unprecleared plan.[70] Two of the nine districts had African-American majorities and African-American incumbents.

Under a seven member plan, black citizens in the 21 percent black district would likely only be able to elect one candidate of their choice. The district maintained in its submission that a "viable cross-over phenomenon" in the 36 percent black voting age population District 4 created an opportunity for black voters to elect a candidate of their choice. However, the Department of Justice concluded that even in the unlikely event that that phenomenon might benefit the black incumbent—as was urged by local officials—it was unclear that another candidate of choice of black voters would benefit from it. Any seven-member configuration would have this retrogressive effect.[71]

As noted in the attorney general's letter, the local NAACP branch had presented a nine member plan without retrogressive effect to Rep. Olin Phillips, chair of the legislative delegation, at a May 2002 meeting. The majority of the school board supported a nine member plan.

5. Richland-Lexington School District 5 (Richland and Lexington counties)

In 2004, the General Assembly adopted Act 326 of 2002, implementing changes to the method of election in Richland-Lexington School District 5.[72] Prior to 2004, trustees were elected to staggered, four-year terms. Five were elected from Lexington County and two from Richland County. Contests are at-large within each county. Act 326 moved one seat from Lexington to Richland County to account for population changes. In addition, it created numbered posts and a new majority vote requirement.

The district's voting age population was 14 percent black according to the 2000 Census. The minority population has been growing rapidly, particularly in Richland County. No black person had been elected to the Richland-Lexington School District 5 Board of Trustees since 1992. According to Department of Justice analyses, the winner in 1992, Sherman Anderson, would have been defeated under a majority vote requirement. In addition, with an additional third seat, Anderson, the African-American preferred incumbent, would have been elected as one of the top two vote-getters in Richland County in 1996—absent the new numbered post system and majority vote requirements.[73]

Race was not part of the discussion when Act 326 of 2002 was under consideration. Black citizens were simply ignored. However, with growing African-American population on the

[70] *South Carolina State Conference NAACP v. Cherokee County School District No. 1,* C.A. No. 7:92-cv-02948-GRA (D.S.C., 1992).
[71] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd, Jr., to Sr. Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 16, 2003.
[72] This legislation is entitled "Richland County School Districts Property Tax Relief Act" and covers, in addition to school board elections and property tax relief, membership on the local Airport Commission and the technical school commission.
[73] Letter, Asst. US Atty. Gen'l. R. Alexander Acosta to Sr. Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 25, 2004. The Attorney General did not object to the move of one member from Lexington to Richland County.

Richland County side of the district, the possibility of black voters electing candidates of choice increases. In Richland-Lexington 5, three minority candidates ran unsuccessfully for the two seats available in 2002. No minority candidates campaigned for the single seat up in 2004.[74] Absent the Section 5 objection, black voters in Richland-Lexington School District 5 would be even further from electing candidates of their choice in the face of racially polarized voting.

6. City of Greer (Greenville and Spartanburg Counties)

Greer, which sits astride the county line between Greenville and Spartanburg counties, had seen the location of a BMW assembly plant and other development since the 1990 Census. In that period, the city had grown from a population of 10,322, of whom 2,728 (26.4 percent) were non-Hispanic black and 80 (0.8 percent) Hispanic to 16,843, of whom 19.7 percent are black and 8.2 percent are Hispanic, according to the 2000 Census. As the mayor notes: "Greer continues to be one of the fastest growing cities in the state."[75] Although Greer had two African-American representatives prior to 2000, "it is no longer feasible to devise a redistricting plan, which complies with one-person, one-vote standards, and which contains two districts in which minority voters can elect candidates of choice."[76]

The city preferred a plan that protected white incumbents and split historic communities of interest. While arguing that the *Shaw v. Reno* line of cases precluded drawing the district preferred by black citizens, the city drew a minority district that was less compact. That district was not a district in which African-American citizens were likely to elect a candidate of their choice. The Department of Justice found Greer officials "to have been more responsive to the concerns of white individuals than to concerns expressed by minority citizens." Thus, when a white incumbent was drawn out of his district and a white neighborhood split by the initial plan drawn by the state's redistricting office,[77] the city immediately responded to white citizen concerns by changing the lines. DOJ found that "the city has failed to meet its burden of establishing an absence of a purpose to retrogress minority voting strength in the adoption of the plan."

Today, after being forced to draw a redistricting plan that did not retrogress, the Greer City Council has one African-American member.[78]

7. City of Charleston (Charleston County)

In the 1990s, the City of Charleston's Council had six black members and six white members along with a white mayor. The city's population of 80,414 in the 1990 Census was 42 percent

[74] See, Chuck Crumbo, "District 5 Board Plan on Hold," *The* (Columbia) *State* (May 16,2002), B3; Bill Robinson, "Minority Presence Strong in Board Races," *The* (Columbia) *State* (October 17, 2002), B1; S.C. Elections Commission, *Election Report 2002*, 324; S.C. Elections Commission, *Election Report 2004*, 304.
[75] Mayor and City Council, http://www.cityofgreer.org/Government/CityCouncil.aspx.
[76] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd, Jr., to John B. Duggan, November 2, 2001.
[77] Nearly all redistricting plans for county, municipal and school districts in South Carolina are prepared by the Office of Research and Statistics of the state's Budget and Control Board. That office's Director, Bobby Bowers, has played a critical role over the years in reducing the number of objection letters in South Carolina by having prayer with elected officials over plans which would not pass muster with the Department of Justice.
[78] City of Greer, Mayor and City council, http://www.cityofgreer.org/Government/CityCouncil.aspx.

black. By the 2000 Census, that population had grown to 96,650, of whom 34 percent were black. Much of that growth was the product of annexations that stretched the city both north and south. The 1990 Census city was 43.24 square miles, compared to a 2000 Census city of 106.42 square miles. Much of that physical growth was on Daniel Island, north of the peninsular city in Berkeley County. However, only 1,156 persons lived there in 2000. In the future, that will change as substantial development is both ongoing and planned on Daniel Island. City planning documents in 2000 projected 658 percent growth on Daniel Island from 1990 to 2015.[79]

The benchmark plan for the city of Charleston still included six majority black districts, although only five with voting age population majorities. A proposed redistricting plan would include an unavoidable reduction in majority African-American districts. However, the city redrew its districts in a way that combined Districts 2 and 4 in revised nominally majority black District 4. DOJ conceded that District 4 might, in the next election, be a district in which black voters could elect a candidate of choice. However, the largely white growth on Daniel Island would change that "in a matter of only a few years." DOJ observed that "Section 5 looks not only to the present effects of changes but to their future effects as well."[80]

By drawing the developing areas of Daniel Island into District 1 with downtown Charleston,[81] the city was able to create a District 4 that is likely to remain a district in which African-American are likely to elect a candidate of their choice for many years. Charleston City Council in 2006 has five black members.[82]

8. City of Clinton (Laurens County)

Clinton, in Laurens County, South Carolina, had a population of 8,091 persons, according to the 2000 Census, 38 percent of whom were black. Three of six wards were wards in which African-American citizens had an opportunity to elect candidates of their choice—Wards 1, 2, and 3. In a series of four annexations from 1993 through 2001, the city added population that it designated to Ward 1, the city's only majority African-American ward. The addition of Lydia Mills to Ward 1 dropped that ward's minority population from 59.3 percent to 50.3 percent.[83]

The Attorney General expressed concern that preclearing the Lydia Mills annexation would establish:

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[79] City of Charleston, *Charleston Century V City Plan* (2000), 63, 65.

[80] *Bossier Parish*, 528 U.S. at 340, citing *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 (1987). Letter, Acting Asst. US Atty. Gen'l. R. Alex Acosta to Francis I. Cantwell, October 12, 2001.

[81] There is no elegant way to draw city council districts joining Daniel Island and the Cainhoy Peninsula to the rest of the city. Daniel Island is separated from the remainder of the city by the Cooper River and has no roads directly connecting the two parts of the city. Contiguity between the two districts on Cainhoy Peninsula, Districts 4 and 1, with their Charleston peninsular parts are necessarily by water only.
http://www.ci.charleston.sc.us/shared/docs/0/overall_councilsb.pdf

[82] http://www.ci.charleston.sc.us/dept/content.aspx?nid=661

[83] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd to City Manager C. Samuel Bennett, II, December 9, 2002. The city disputed 2000 Census numbers for Lydia Mills, claiming that it was both larger and blacker than the census figures. DOJ's letter notes: "… regardless of which data are used, the result of the proposed designation of the annexations to Ward 1 results in lowering the black voting age population in the ward to less than 50 percent."

> a benchmark plan of only two viable districts for minority voters against which any future redistricting plan would be measured. Although the city asserts that the annexations will not affect its goal of maintaining three districts with majority black populations when it does decide to redistrict, the city, under a non-retrogression standard, is free to devise a plan that does nothing more than replicate the plan that would be in effect following the annexations: three districts with a majority black total population, but only two in which black voters can elect a candidate of choice.

The benchmark plan used in redistricting in 2004 had exactly that conformation.[84] In 2006, the Clinton City Council has two African-American members.[85]

9. Town of North (Orangeburg County)

The Town of North, in Orangeburg County, South Carolina, in two annexations in 2002 sought to add two persons to the town that had a 2000 Census population of 813 of whom 377 (46 percent) were black. Both persons in these annexations were white, perpetuating a practice that "white petitioners [for annexation] have no difficulty in annexing their property to town. In fact, they received help and assistance from town officials." Black citizens seeking annexation, however, received little or no help in annexing. Indeed, often city officials simply "fail to respond to their requests, whether formal or informal…." One of those proposed annexations in the early 1990s would have given the town a black majority. Apparently, the town simply ignored the request.

North not only ignored black petitioners, it failed to respond fully to the Department of Justice's requests for additional information and follow-up questions. Current and former town officials declined to speak to the department about these matters. The town made no effort to rebut departmental findings that North had made "racially selective annexations" and "failed to provide equal access to the annexation process" and that "race appears to be an overriding factor in how the town responds to annexation requests."[86]

These objections since 2000 demonstrate the continued need for Section 5 and its vigorous enforcement. Absence of Section 5 review of the General Assembly's efforts to impose a racially discriminatory election system for Charleston County, school trustees would have imposed on Charleston's black citizens the obligation to mount costly Section 2 litigation to challenge an electoral system that the district court had just found discriminatory. In the city of Charleston, African-American citizens would have forseeably and avoidably seen a district in which black citizens could elect candidates of their choice quickly change to one in which they could not. In Sumter County, the county council could have deprived black citizens of the ability to elect a candidate of their choice in District 7, protecting a white incumbent and continuing a thirty-year pattern of opposing full voting rights for Sumter's African-American citizens. In

[84] E-mail, Wayne Gilbert, SC Office of Research and Statistics, to John C. Ruoff, September 1, 2004, containing the updated benchmark plan including annexations. The annexed area of Lydia Mill is included in Ward 1 of the benchmark plan.

[85] http://clintonsouthcarolina.homestead.com/CityCouncil.html. Apparently the Department of Justice did not object to the redistricting submitted on January 28, 2005 (Submission 2005-0273).

[86] Letter, Acting Asst. US Atty. Gen'l. R. Alex Acosta to Mayor H. Bruce Buckheister, September 16, 2003.

Union County, a local state representative could have imposed on the school board a redistricting plan that made it much less likely African-American citizens would continue to be able to elect two candidates of their choice to the Board of Trustees. In Greer, in order to protect a white incumbent and cater to white citizens' demands, African-American citizens would have been deprived of the ability to elect even one candidate of their choice to the city council. In Richland County, imposition of majority vote requirements would have put off the day that a growing black population would be able to elect a candidate of its choice to the Richland-Lexington School District 5 Board of Trustees. In North, white city officials would have continued admitting white citizens, while excluding their black neighbors from annexing and participating in town elections.

In some of these instances, costly and time-consuming Section 2 actions could have been brought to repair these discriminatory actions. Those costs go to both plaintiffs and defendants. In the Charleston County case, for example, the county's costs alone to defend its discriminatory system were $2 million.[87]

In the meantime, those discriminatory systems would have been implemented. In Richland-Lexington School District 5, where a majority African-American district cannot yet be drawn, a Section 2 challenge employing the *Gingles* factors would have failed while possible success under the at-large system would have been denied.

And the number of discriminatory changes by legislative, school, municipal, and county officials, facing only the vague threat of lawsuits whose outcomes would have no impact for years, and without DOJ review or letters of objection would increase dramatically.

As the Supreme Court noted in *Katzenbach*:

> Voting 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.[88]

B. Statewide Redistricting

1. South Carolina Senate

The South Carolina Senate was all-white when the Voting Rights Act passed and remained so through the 1982 renewal. The first black senator in the 20th century, I. DeQuincey Newman, was elected in a special election late in 1983.

[87] *Charleston County*, C.A. No. 2:0l-0155-23 (D.S.C., Order, August 8, 2005), fn. 26.
[88] *Katzenbach*, 383 U.S. at 314.

The history of Section 5 is inextricably linked with redistricting for the South Carolina General Assembly. The first two objections by the Attorney General to changes in South Carolina came in 1972 and 1973 in reaction to redistricting of the all-white South Carolina Senate as that body rejected single-member districts in favor of white majority multi-member districts, numbered posts, and majority vote requirements.[89] In the end, when the Supreme Court ruled the 1973 objection untimely, those discriminatory features stood through the 1970s until 1984.

When the all-white Senate attempted redistricting in 1983, it sought a Section 5 declaratory judgment that Act 257 of 1983 complied with Section 5. That Act created 46 single-member districts for the Senate, splitting counties for the first time. While that declaratory judgment action was pending, the General Assembly sought to proceed as if Act 257 would be cleared by establishing a primary election schedule and opening filing. On March 20, 1984, the Department of Justice objected to that procedure. The D.C. District Court also declared those candidate filings null and void and enjoined the State from taking any further action pursuant to Act 257 until the Act received preclearance.[90]

While that action was pending, private litigants brought an action in the district court in South Carolina, asking that court to impose a plan for Senate elections in 1984. The Senate, through Act 513 of 1984, replaced an interim plan issued by the South Carolina district court in *Graham v. South Carolina*,[91] which had created 46 single-member districts.[92]

That Act 513 plan included 10 majority black districts of which 7 had black majority voting age populations.[93] Four black senators were immediately elected under the 1984 plan (Districts 7, 19, 39 and 42). A fifth joined them in 1985 (District 30) and a 6th in a special election in 1990 (45).

Following the 1990 Census, the General Assembly passed legislation redistricting the South Carolina Senate (S. 1003, R. 258 of 1992) and the South Carolina House of Representatives (H. 3834, R. 259 of 1992). Governor Carroll A. Campbell vetoed both bills observing:

> Upon reviewing the objection letters from the United States Department of Justice concerning certain reapportionment plans in New York, Virginia, Georgia, North

[89] The objections to Act 932 of 1971 were mooted when the South Carolina District Court rejected Fifteenth Amendment arguments but declared that plan unconstitutional on Fourteenth Amendment malapportionment grounds. *Twiggs v. West*, Civ. No. 71-1106 (SC, Apr. 7, 1972). The July 20, 1973, objection to Act 1205 of 1972 was ruled untimely in *Morris v. Gressette*, 432 U.S. 491 (1977). The South Carolina District Court had ruled Act 1205 constitutional. *Twiggs v. West* (May 23, 1972), *affirmed Powell v. West*, 413 U.S. 901 (1973). The attorney general deferred to that ruling until the District Court for the District of Columbia directed him to review Act 1205 under Section 5 notwithstanding the South Carolina District Court's ruling in *Twiggs v. West*. *Harper v. Kleindienst*, 362 F. Supp. 742, 746 (1973), *affirmed Harper v. Levi*, 171 U.S. App. D.C. 321, 520 F.2d 53 (1975).
[90] *South Carolina v. United States*, 585 F.Supp. 418 (D.D.C., 1984), *appeal dismissed*, 469 U.S. 875 (1984).
[91] Civil Action No. 3:84-1430-15 (D.S.C., June 13, 1984).
[92] *Able v. Wilkins, Smith v. Beasley*, 946 F.Supp. 1174, 1177-78 (D.S.C. 1996), discusses the history of redistricting of the South Carolina General Assembly. This discussion follows that history.
[93] "South Carolina Senatorial Districts, Senate Act 513, August 8, 1984," *South Carolina Statistical Abstract, 1985*, at 153.

> Carolina, Texas and Louisiana, I am convinced that the Justice Department would not preclear this plan as provided under Section 5 of the Voting Rights Act. [94]

After both bodies sustained Governor Campbell's vetoes, redistricting returned to the district court for trial and imposition of an interim plan. The *Burton* Court in 1992 issued a Senate plan that included 11 African-American majority population districts, 10 with black voting age population majorities.[95] Seven black senators were elected under that plan, although in a special election in 1995, a white candidate replaced African-American Senator Theo Mitchell in Senate District 7 in Greenville County.

The U.S. Supreme Court vacated *Burton* in 1993. Facing no elections in 1994, the Senate delayed reapportionment on remand until after the House of Representatives submitted a redistricting plan. The Department of Justice denied preclearance to the initial House plan, resulting in a significantly changed plan passed by a coalition of the House Republicans and the Legislative Black Caucus. In describing Senate thinking on redistricting in 1995, Speaker *pro Tempore* and Judiciary Committee Chair Glenn McConnell testified later: "The Senate decided to take a noncombative posture in dealing with the Department of Justice. We had found it better and cheaper to cooperate and to get clearance ... we were familiar with what happened to the House and we wanted preclearance."[96]

In 1995, the South Carolina Senate adopted a new districting plan (Act 49 of 1995), which created additional districts with African-American voting age population majorities in Districts 29 and 37. DeWitt Williams, an African-American house member, joined the Senate in 1996, bringing the total number of African-American senators to 7.

In 1996, in *Smith v. Beasley*, Districts 29, 34 and 37 of that plan were found unconstitutional in that race had predominated over traditional districting principles in their drawing. In 1997, the Senate adopted a new plan (Act 1 of 1997), which no longer included African-American majorities in Districts 29 and 37. In objecting to preclearance of the revised District 37, the Department of Justice noted "there were choices available to the state that would substantially address the *Smith* court's constitutional concerns and not significantly diminish black voting strength in neighboring senate districts."[97]

When the Senate failed to pass a new plan, the *Smith* court adopted the bulk of Act 1, but crafted new districts in Districts 37 and the adjoining Districts 34, 37, 38 and 44. In its order, the court strongly rejected the Department's reliance on a benchmark that used the "unconstitutional plan embodied in Act No. 49 (1995) 'modified to address the constitutional infirmities in that plan

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[94] Veto Letter, Governor Carroll A. Campbell, Jr., to President of the Senate Nick A. Theodore, January 29, 1992, published *Journal of the South Carolina Senate* (January 30, 1992) and Veto Letter, Governor Carroll A. Campbell, Jr., to Speaker of the House of Representative Robert J. Sheheen, January 29, 1992, published *Journal of the South Carolina House of Representatives* (January 30, 1992).

[95] *Burton v. Sheheen*, 793 F. Supp 1329 (D.S.C., 1992), *vacated sub nom. Statewide Reapportionment Comm. v. Theodore, 508 U.S. 968* (1993), and *Campbell v. Theodore*, 508 U.S. 968 (1993).

[96] *Smith*, 946 F.Supp. at 1201.

[97] Letter, Acting Asst. US Atty. Gen'l. Isabelle Katz Pinzler to President Pro Tempore South Carolina Senate John W. Drummond (April 1, 1997).

identified by the court.'"[98] The *Smith* court, instead, relied on the 1984 Senate plan, the "last plan that was legally adopted by the General Assembly that has not been set aside by the court or superseded by action of the General Assembly that has not been altered by the court."[99]

DOJ had objected to the Senate plan on Section 2 grounds, as well, prior to the Supreme Court's 1997 decision in *Bossier Parish* limiting Section 5 preclearance to retrogression review.

Special elections were held for the South Carolina Senate in 1997. Senator DeWitt Williams was defeated in the now 45.8 percent black voting age population district with 5,280 votes to his white opponent's 5,793 votes.[100]

After the 2000 Census, redistricting for the Senate also ended up before a three-judge panel when the General Assembly was unable to pass a plan after Governor Jim Hodges vetoed H. 3003 on "The Governor's stated reason for vetoing the legislatively passed redistricting plan centered on the claim that the House and Senate plans should have created more so-called minority "influence districts," defined by the Governor as districts with a black voting age population ("BVAP") of between 25 percent and 50 percent, and a claim that the Congressional Plan unnecessarily split several counties within the state."[101]

In reviewing plans proposed by the parties to statewide redistricting in 2002, the court took special note that the governor and the legislature "have proposed plans that are primarily driven by policy choices designed to effect their particular partisan goals And, in many cases, the choices appear to be reflective of little more than an individual legislator's desire to strengthen his or her ability to be re-elected to the seat in question."[102]

The court engaged in a searching analysis of racial polarization, black political cohesiveness, and white bloc voting, concluding:

> This evidence overwhelmingly demonstrates that the first two *Gingles* factors, necessary for the creation of majority-black legislative and congressional districts in areas where minorities are sufficiently large and geographically compact to constitute a majority in a single-member district, are present statewide. Minority voters are generally politically cohesive to a very high degree and, as a rule, the majority usually votes sufficiently as a bloc to defeat the minority's preferred candidate. *See Gingles*, 478 U.S. at 51, 106 S.Ct. 2752. Thus, we can and should consider race in each of our redistricting plans to ensure that they do not have the unintended effect of diluting the voting strength of a reasonably compact, majority-minority population. *Id.*, at 642.

The remedial plan drawn by the district court included 11 districts with majority African-American population and 10 with majority African-American voting age populations. Those

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[98] *Smith v. Beasley*, C.A. No. 3:95-3235-0 (D.S.C., May 28, 1997) at 4-5.
[99] *Id.* at 13.
[100] *South Carolina Election Commission Reports, 1997 & 1998, 376.*
[101] *Colleton County Council*, 201 F.Supp.2d at 624.
[102] *Id.*, at 628-629.

figures do not include the barely under 50 percent District 7 in Greenville County which has consistently elected African-American candidates of choice.

In 2003, the Senate redrew those lines to adjust the court's plan. Act 55 of 2003 included 12 districts with African-American population majorities and 10 with majority African-American voting age populations. District 7 was increased to 50 percent black population. In addition, District 29, which the Court had reduced to 43 percent black population, was redrawn to bring back in historic constituencies, increasing its African-American proportions to 48 percent black population and 45 percent black voting age population after African-American candidate Gerald Malloy was elected to represent Senate District 29 in a special election in November 2002 using the 1997 lines.[103]

2. House of Representatives

The House of Representatives was integrated a decade before the Senate. Even so, redistricting in the House was marked by Department of Justice objections to its reapportionment plans in 1974, 1981, and 1994.

The House of Representatives in the 1970s fought a delaying action. Although three African-Americans were elected to the House in 1970, the reapportionment following the 1970 Census saw the drawing of a plan which employed multimember districts and a full-slate requirement.[104] Black voters challenged the plan, which was ruled unconstitutional because of the full-slate requirement in *Stevenson v. West*.[105]

The South Carolina General Assembly replaced that plan with another multi-member district plan (Act 1204 of 1972), with numbered posts replacing the full slate law as an impediment to black voters choosing candidates of their choice. The Department of Justice objected to that change on February 14, 1974. Elections for 1972 proceeded under the multi-member plan without the full-slate provisions.

The Supreme Court in 1973 summarily reversed the decision of the *Stevenson* court approving multi-member districts. The General Assembly again redistricted in time for the 1974 elections with single-member districts. The number of African-American House members increased from four in 1974 to thirteen in 1975.[106]

In 1981, the General Assembly passed a new districting plan to which the Department of Justice objected. The Department objected to the fragmentation and dilution of black voting strength in Florence County, Richland County, Lee County, Allendale-Bamberg-Barnwell Counties, and Jasper-Beaufort Counties where "alternate proposals were presented which would have avoided

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[103] After issuing its order in *Colleton County*, the District Court appended an Order of Clarification which authorized the use of pre-*Colleton County* lines for special elections in November 2002. *Colleton County Council*, 201 F.Supp.2d at 669-671.

[104] This discussion of the 1970s follows *Quiet Revolution*, 204-205. Under a full-slate requirement, voters are required to cast a ballot for every office.

[105] C.A. No. 72-45 (D.S.C., 1972), *rev'd and remand, Stevenson v. West*, 413 U.S. 902 (1973).

[106] *South Carolina Legislative Manual*, 1974 and 1975.

the fragmentation and dilution of minority voting strength in each of the referenced areas."[107] The General Assembly addressed those areas in Act 312 of 1982. That plan had 26 districts with black population majorities.

In the 1990s, Section 5 review played a key role in expanding the number of House districts in which African-American voters were able to elect candidates of their choice. The General Assembly passed reapportionment legislation in 1992, but was unable to override the veto of Governor Carroll A. Campbell, Jr. In vetoing the House's plan, Campbell argued that the plan would not receive Department of Justice preclearance because it: "…fail[ed] to create additional minority districts"; "reduce[ed] minority populations in existing minority districts"; and "[f]ractur[ed] … minority populations to benefit white incumbents at the expense of the creation of electable minority districts." Campbell pointed to seven additional minority districts that could be drawn.[108]

Unable to pass a plan, the parties ended up before the *Burton* Court in 1992. That court issued an interim plan that included 27 African-American majority population districts; however only 22 had black voting age population majorities.[109] Elections held under the *Burton* plan in 1992 had produced 18 African-American House members. In 1993, the U.S. Supreme Court vacated *Burton*, pointing to the Solicitor General's brief on appeal. The *Smith* Court summarized that brief:

> The Solicitor General's brief in *Burton* argued that the district court had not given adequate consideration to the requirements of section 2 of the Voting Rights Act in imposing its redistricting plan. The Solicitor General argued that the district court erred in viewing the litigation as arising under section 5 of the Act, which covers preclearance, instead of section 2 of the Act. According to the Solicitor General, because the *Burton* plaintiffs alleged that the existing election districts violated both section 2 and the United States Constitution, the court was required to ensure that any plan it adopted complied in all respects with section 2. The Solicitor General also argued that the court refused to resolve the issue of racially polarized voting and did not respond adequately to the question of whether additional compact and contiguous districts with black majorities could and should have been created in disputed areas to avoid dilution in voting strength in violation of section 2. In addition, the Solicitor General contended there was no basis for the court's finding that any district in which blacks constitute more than 50 percent of the voting age population may be considered a "black opportunity district." Finally, the Solicitor General also contended that the *Burton* court appeared to have given undue deference to "state policy" in formulating its plans with primary emphasis on preserving county and precinct lines. *Smith.*[110]

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[107] Act 173 of 1981; Objection Letter, November 18, 1981. The Department withdrew its objection to the districts in the Allendale, Bamberg and Barnwell areas on February 25, 1982.
[108] Veto Letter, Governor Carroll A. Campbell, Jr., to Speaker of the House of Representative Robert J. Sheheen, January 29, 1992, published *Journal of the South Carolina House of Representatives* (January 30, 1992).
[109] John Ruoff, testifying on behalf of the Statewide Advisory Reapportionment Committee, had offered a plan to the Burton court which included 32 effective majority-minority House districts.
[110] 946 F.Supp. at 1181.

The *Burton* Court held off issuing a new plan, giving the General Assembly an opportunity to craft its own districts. The House of Representatives in 1994 substantially recreated the *Burton* plan in Act 284 of 1994. An amendment proposed in the House Judiciary Committee, the Legislative Black Caucus's Plan A would have increased the number of districts with African-American voting age majorities to 32, but that plan was rejected. Rather than veto the House plan, Governor Campbell let it become law without his signature in order to allow it to get to the Department of Justice for review. *Smith.*[111]

On May 2, 1994, Assistant Attorney General Deval L. Patrick wrote Speaker Robert J. Sheheen to communicate the Attorney General's objection to H. 4333. In that letter, Patrick noted that "legislative elections throughout the state are characterized by a pattern of racially polarized voting." Further, "[a]ll [18 black House members] were elected in districts where blacks constitute a majority of the voting age population (excluding military residents), who generally do not participate in local elections), and 14 of the 18 were elected in districts where blacks constitute over 55 percent of the voting age population." Patrick's letter pointed to nine "specific areas of the state where the state's concern for incumbency protection, and disregard for black electoral opportunity, yielded districting configurations that do not satisfy the Section 5 purpose and effect test."

Early in the morning on May 11, 1994, following a long day of procedural maneuvers, a coalition of Republicans and the Legislative Black Caucus forced a late-night agreement to recall H. 4349 from the Judiciary Committee.[112] On May 12, Amendment 2, co-sponsored by House Minority Leader Howell Clyborne and Legislative Black Caucus redistricting leader Don Beatty formed the base of what became Act 477 of 1994. That plan, mirroring the arguments of the Department of Justice, included nine new African-American majority districts. On May 31, 1994, one day before the *Burton* Court's deadline, the Department advised Speaker Sheheen that the Attorney General did not object to the redistricting plan.

Elections held under Act 477 in 1996 produced 25 African-American members of the South Carolina House of Representatives. However, a constitutional challenge to those nine new districts under newly developed *Shaw/Miller* theories had already been brought in *Able v. Wilkins*.[113] The opinion in that case, which had been combined with *Smith v. Beasley*,[114] contained a detailed and scathing review of the Justice Department's role in passage of those plans. The court concluded: "The evidence is overwhelming that race was the predominant factor in drawing House districts 12, 54, 82, 91, 103, and 121. Race predominated to such an extent as to obliterate any other factor."[115]

In 1997, the House redistricted (Act 1 of 1997) to cure the constitutional defects in the 1994 plan.[116] That plan still included 32 majority black population districts, including all six of the districts found unconstitutional by the Court. Twenty-nine of those districts included African-

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[111] 946 F.Supp. at 1181.
[112] *Journal of the South Carolina House of Representatives* (May 10, 1994).
[113] C.A. No. 3:96-0003-O (D.S.C., 1996).
[114] C.A. No. 3:95-3235-O (D.S.C., 1996).
[115] *Smith,* 946 F.Supp. at 1193.
[116] The plaintiffs in *Able v. Wilkins* challenged the redraws of Districts 12 and 121. In an April 28, 1997, Order, the court found those districts constitutional.

American voting age population majorities when adjusted for military populations. In special elections held in 1997, only the black incumbent in District 12, Anne Parks, lost in a very close contest in a district which had a 51 percent black population and a 48 percent black voting age population.[117] Representative Parks retook the seat in 1998 and represents District 12 in 2006. All of the districts successfully challenged in *Able v. Wilkins* are represented in 2006 by African-American legislators except District 54 which is still served by white Rep. Douglas Jennings.

Redistricting following the 2000 Census started on a similar path. The General Assembly was unable to pass legislation because of a gubernatorial veto,[118] a federal court redistricted the state[119] and the General Assembly adjusted the court plan in later legislation which largely provided greater incumbency protection in affected districts.[120] The *Colleton County* Court plan included 31 districts with majority black population and 28 with majority black voting age population.

When the Justice Department first objected to a redistricting plan in 1971, the South Carolina General Assembly had an all-white Senate elected from multi-member districts and a House of Representatives which had only just admitted its first three African-American elected in multi-member districts. The bulk of the objections entered by the Department of Justice to legislative reapportionment in South Carolina focused on vote dilution rather than retrogression. In 1971, it was nearly impossible to retrogress through reapportionment in South Carolina, although the House of Representatives' change to numbered posts when the full-slate law was found unconstitutional showed the lengths to which the General Assembly would go to impede black representation.

C. Jurisdictions with Repeated Objections

In addition to state legislative redistricting, several of these jurisdictions have attempted discriminatory changes more than once. Notably, objections from the Department of Justice and Section 2 litigation have gone hand-in-hand in many of these jurisdictions as officials, forced to single member districts, have attempted to make other changes to undermine or defeat those expansions of black representation. In others, a pattern of discriminatory practices has also led to Section 2 litigation.

1. Lancaster County School District

The General Assembly three times (Act 1622 of 1972; Act R 700 of 1976 and Act 601 of 1984) adopted staggered terms for the at-large county board of education and area school boards. In 1974, 1983, and 1984, the Department objected to this same device which "[a]s we indicated in our previous objections, the use of staggered terms in Lancaster County school board elections, where the at-large system is used and racial bloc voting seems to exist, limits the potential for

[117] Parks' loss, by 32 votes, was to Jennings McAbee who had represented the district since 1975 until being defeated by Parks in 1996. SC Elections Commission, *South Carolina Election Report 1997 & 1998*, 378-381.
[118] Veto Letter Gov. Jim Hodges to Speaker of the House of Representatives David H. Wilkins (August 30,2001) published *Journal of the South Carolina House of Representatives* (September 4, 2001). Hodges argued that the plan passed for the House (H. 3003, R. 165 of 2001) failed to create sufficient "influence" districts.
[119] *Colleton County Council*, 201 F.Supp.2d 618.
[120] Act 55 of 2003.

black voters to participate effectively in the electoral process by reducing the ability of those voters to use single-shot voting."[121] Finally, with Act 602 of 1984, staggered terms were taken off the books for Lancaster County school elections. Lancaster County now elects school board members from single member districts.

2. City of Lancaster (Lancaster County)

In 1976, the city of Lancaster adopted, among other changes, majority vote requirements for regular and contested elections. Those changes were submitted for preclearance on October 25, 1982. On December 27, 1982, William Bradford Reynolds, Assistant Attorney General, wrote the city's administrator objecting to majority vote requirements for contested elections on the same grounds that he had objected to majority vote requirements for regular elections on September 18, 1978.

In 1989, following settlement of Section 2 claims in *NAACP v. City of Lancaster*,[122] the city adopted a redistricting plan that changed a system of seven members, including the mayor, elected at large by plurality votes to a nine-member council, six elected from single member districts and three, including the mayor, elected at large by plurality vote in staggered terms. In objecting to the two additional members, DOJ noted that the additional districts appeared to have been added after it became clear that black citizens would have an opportunity to elect candidates of their choice in three of the six districts, creating a city council that mirrored the 41 percent African-American population. Further, DOJ observed that preserving seats for two white incumbents was a major consideration in the addition.

In 2006, three African-Americans serve on the seven member council.[123]

3. Richland County

In 1982, Richland County attempted to reduce its county council from eleven members to seven. The Department of Justice objected to this change because its analysis showed that black voters had then "an existing real opportunity for electing candidates of their choice to at least two of the eleven seats on the council. On the other hand, our analysis shows that, with one explainable exception, blacks have never won with a standing higher than fourth among the winning candidates."[124] A reduction in the number of positions on that council would reduce the likelihood of black political success to one in eleven. Richland County was 39 percent African-American in 1980.[125]

In 1986, the Richland County adopted an ordinance requiring an employee to resign his or her employment before running for political office. Black persons constituted approximately 31 percent of the employees of Richland County. DOJ objected to this change because it would "impact more heavily on the black potential candidates than on the white potential candidates…"

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[121] Letter Wm. Bradford Reynolds to C. Havird Jones, Jr., Esq., April 27, 1984 (84-3398).
[122] (D.S.C., 1989).
[123] http://www.lancastercitysc.com/Government_CityCouncil.aspx.
[124] Letter Wm. Bradford Reynolds to J. Lewis Cromer, Esq., January 12, 1983 (82-2662).
[125] *South Carolina Statistical Abstract 1985*, 329.

and "significantly affect black voters in Richland County because it limits the pool of potential candidates likely to be the candidates of choice of the black constituency."[126]

In 1988, Richland County Council adopted single member districts for county council in settlement of a Section 2 claim in *NAACP v. Richland County Council*.[127] In 2006, African-Americans occupy four of the eleven districts.[128]

4. Spartanburg County Board of Education

In 1991, the South Carolina Conference of Branches NAACP and private African-American plaintiffs brought a Section 2 action challenging at-large school board elections in Spartanburg County, South Carolina, for the countywide school board and for School Districts 5 and 7. That litigation was successfully settled with single member districts for the County Board of Education and School District 5 and a mixed system of single-member and multimember districts in District 7.[129]

In 1994, the Spartanburg County Board of Education began elections in single-member districts, three of which had African-American majorities. Prior to 1994, no black members served on the County Board of Education. The Spartanburg County School District had a 1990 Census population of 220,225, of whom 44,451 (20 percent) were black. The voting age population in the jurisdiction was 18 percent black according to the 1990 Census.[130]

Immediately, the Spartanburg Legislative Delegation moved to abolish the County Board of Education, passing Act No. 610 of 1994, devolving its duties on the separate school districts and to replace it with an Education Oversight Committee made up of the chairs of the seven school district boards of trustees. This was the second bill passed by the Legislative Delegation in 1994 to limit the power and authority of the newly single-member district board of education. Act 606 of 1994 required the board of education to exercise its authority to change school district boundaries only with the advice and consent of the legislative delegation.

On December 13, 1994, the Department of Justice objected to implementation of Act 610 of 1994, which effectively negated the plan precleared on August 15, 1994, under which "black voters will have an opportunity to elect two or three seats on the sixteen member body." The Justice Department concluded:

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[126] Letter Wm. Bradford Reynolds to C. Dennis Aughtry, Esq., September 23, 1988 (88-4728).
[127] (D.S.C., 1988).
[128] Richland County, County Council, http://www.richlandonline.com/departments/countycouncil/councilmembers.asp.
[129] *NAACP v. Spartanburg County Board of Education*, C.A. No. 7:91-03111 (D.S.C., 1991-1995). The challenge to the Board of Education was amended to include a malapportionment claim.
[130] Memo of John C. Ruoff, Ph.D., to William McBee Smith (Counsel to Spartanburg Board of Education) and Bruce Roberts, Nyisha Shakur and Michael Talley (Counsel to the NAACP and private plaintiffs), November 30, 1993, in possession of the author. The seven school districts that made up the jurisdiction of the Spartanburg County Board of Education are largely, but not completely coextensive with Spartanburg County. They include portions of Cherokee and Greenville Counties, but do not include a portion of Spartanburg County near Greer which is part of the Greenville County School District.

> The sequence of events surrounding the adoption of Act [610] also gives rise to an obvious inference of discriminatory purpose. Based on the information supplied by you and many others, we have not been persuaded that it is coincidental that the state abolished the county board only after a new method of election was in place that promised equal minority electoral opportunity, and replaced it with an appointed body on which minority voters will have little opportunity to influence appointments.[131]

Undeterred by the objection to dissolving the Spartenburg County Board of Education, the Legislative Delegation proceeded to strip it of its most significant power, fiscal control of the seven school districts. Act 189 of 1995 distributed the assets of the Spartenburg County Board of Education and provided fiscal autonomy, the ability to set their own budget and school tax rate, to the seven school districts.

The board of education was stripped of significant powers but "the county board retain[ed] substantial powers and duties (similar to those proposed for an appointed education oversight committee in 1994), although it will have a very limited budget with which to perform those duties." Thus, the Attorney General did not find that Act 189 was a voting change covered by the Voting Rights Act.

However, as the Department noted in objecting to Section 19.67 of Part 1B of Act 145 of 1995, the 1995-96 Fiscal Year Appropriations Act had allocated those funds directly to the seven school districts and prohibited any funds going to the County Board of Education. "It appears, therefore, that the change embodied in Section 19.67 affects voting because it results in the de facto elimination of the county board (at least for one year) within the meaning of the exception recognized by the Court in Presley. On this basis, we conclude that Section 19.67 is a voting change subject to review under Section 5."[132]

By 1999, however, the Spartanburg County Board of Education was abolished. Act 499 of 1998 established the Education Oversight Committee and devolved the functions of the Spartanburg County Board of Education on it. The Attorney General did not object to this act.

5. City of Barnwell

Barnwell, the county seat of Barnwell County, had a population that was 38 percent black, according to the 1980 Census. Despite repeated candidacies, no black person had been elected in the nine previous elections to the at large aldermanic body. In 1983, Barnwell moved to make election even more difficult by introducing staggered terms. Staggered terms in an at large system reduce the number of officials elected making it less likely that a candidate receiving fewer votes than the top vote getter will be elected. In addition, DOJ discovered an unprecleared majority vote requirement. When Barnwell submitted that change, DOJ affirmed its denial of preclearance of staggered terms and objected to the 1966 change to a majority vote

[131] Letter, Deval L. Patrick, Asst. US Atty. Gen'l. to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., December 13, 1994.
[132] Letter, Deval L. Patrick, Asst. US Atty. Gen'l. to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., November 20, 1995.

requirement.[133] The city of Barnwell simply ignored the Attorney Generals' objection and proceeded to hold elections under the unprecleared plans. DOJ went into the district court that enjoined unprecleared elections in 1986.[134]

In 1994, with the city's black population having increased from 38 percent to 43 percent, according to the 1990 Census, the city adopted a single-member districting plan for the six-council members, three of which had black majority voting age populations. For both the mayor and city council, the city attempted to reinstitute the same majority vote requirement to which DOJ had objected a decade before and elections that the district court had enjoined.

In making this change, "city officials did not seek the views of the minority community (*e.g.*, the city did not appoint minority persons to the study committee for the new method of election, which appears to have recommended the adoption of the majority vote requirement)." The city officials wanted to return things to their view of the status quo "prior to the Federal Court Order"—the unprecleared plan under which it had illegally operated from 1966 to 1986. The attorney general again objected to the majority vote requirement for mayor.[135]

Section 5 offers jurisdictions two paths on which to seek preclearance of voting changes: judicially by seeking a declaratory judgment from the District Court for the District of Columbia or administratively from the attorney general. Since 1972, only four times have South Carolina jurisdictions sought declaratory judgments under Section 5 from the District Court for the District of Columbia: Horry County (1977),[136] Colleton County (1981),[137] Sumter County,[138] and the South Carolina Senate.[139] Only Colleton County, which entered into a consent order creating single member districts, was granted preclearance through a declaratory judgment from the District Court for the District of Columbia.[140]

The vast majority of changes have been reviewed administratively, a process that greatly improves efficiency by saving both the jurisdiction and interested parties the significant expenditure of resources required to bring or defend a challenge to a voting practice. The $2 million spent by Charleston County to defend its discriminatory at-large scheme for elections to county council is only a token of the countless millions that South Carolina jurisdictions would have been required to spend defending the 120 objected-to changes reviewed here. In addition, although Section 5 preclearance by the attorney general does not bar litigation by other parties, that administrative clearance functions to reduce potential litigation on the thousands of changes which are precleared.

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[133] Letters, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Thomas M. Boulware, March 26, 1984; and Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., August 31, 1984.
[134] *United States v. City of Barnwell* (D.S.C., 1984).
[135] Letter, Acting Asst. US Atty. Gen'l. Loretta King to Thomas M. Boulware, August 15, 1994.
[136] *Horry County*, 449 F. Supp 990.
[137] *Colleton County v. United States*, C.A. No. 81-2664 (D.D.C., consent order April 28, 1982).
[138] *County Council of Sumter County*, 596 F.Supp. 35.
[139] *South Carolina*, 585 F.Supp. 418.
[140] *Quiet Revolution*, 228.

Section 5 administrative review of proposed electoral changes by the attorney general importantly contributes to efficient resolution when changes are proposed while protecting the voting rights of minority citizens.

D. Other Section 5 Enforcement Litigation

When a covered jurisdiction attempts to implement a change that has not been precleared, either the United States or a private party can go into the district court to seek to enjoin implementation. In South Carolina, the United States and private parties have been forced to go to court to enjoin unprecleared changes in South Carolina elections under Section 5.

Those changes have included the 1966 creation of at large county council districts in Edgefield for which no preclearance was sought for nearly two decades; and unprecleared annexations in the town of Hemingway, which brought in white populations while excluding black population. Principally, however, they involved jurisdictions going forward to hold elections, sometimes under circumstances which particularly disadvantaged black voters, while redistricting plans or changes to the method of election had yet to be precleared.

1. Edgefield County Council — *McCain v. Lybrand*

Edgefield County, home to long-time U.S. Senator J. Strom Thurmond, was the focus of protracted litigation in an attempt to open the electoral system to the county's African-American citizens.[141] In litigation begun in 1974, private plaintiffs challenged the county's at-large system of electing county council. They were initially successful in their constitutional claim of vote discrimination, as District Court Judge Robert Chapman found "bloc voting by the whites on a scale that this court has never before observed."[142] *McCain v. Lybrand*, C.A. No. 74-281 (D.S.C., slip op., April 17, 1980), 17-18. However, after the Supreme Court's decision in *City of Mobile v. Bolden* requiring plaintiffs to show a racially discriminatory purpose in adopting or maintaining a discriminatory election system, Judge Chapman vacated his own ruling.

Armand Derfner and Laughlin McDonald, representing the plaintiffs, began examining the origins of the county council's electoral system and amended their complaint to include a Section

[141]Edgefield County even offered resistance to the extension of the Voting Rights Act in 1982. Reverend Jesse Jackson and other black citizens were denied the right to assemble and hold a prayer vigil in support of the Voting Rights Act extension by the Edgefield County School Board on the grounds that it would embarrass Senator Thurmond who, at the time, opposed the extension of the Voting Rights Act. In *Jesse Jackson v. Edgefield County District School Board of Trustees*, C.A. No. 81-1316-3 (D.S.C. 1981), plaintiffs sued the board on June 25, 1981, for injunctive and declaratory relief to redress the deprivation of rights guaranteed to plaintiffs by the First, Thirteenth and fourteenth Amendments to the United States Constitution. Plaintiffs had requested the use of the public school grounds as part of a nationwide campaign to convince Congress to extend the Voting Rights Act. Plaintiffs contended that the School Board's decision to deny plaintiffs' use of grounds and facilities at Strom Thurmond High School deprived them of the rights of speech, assembly, petition, association, equal protection and due process in violation of the First, thirteenth and Fourteenth Amendments to the United States Constitution. On June 27, 1981, the day before the scheduled demonstration, the district court granted Plaintiffs' motion for a preliminary injunction and granted plaintiffs the right to assemble and hold a peaceful prayer vigil at Strom Thurmond High School.

[142]The history of litigation in Edgefield County is laid out in *Quiet Revolution*, 209-211, and in *McCain v. Lybrand*, 465 U.S. 236, 238-243 (1984).

5 violation. The 1966 law which created the Edgefield County council, abolishing the old supervisor and commission form of government, had never been precleared by the Department of Justice.[143] A three-judge district court panel ruled that the county's submission and the attorney general's not interposing an objection to a 1971 change (Act 521 of 1971), which increased the number of council members from three to five, blessed the 1966 change.[144]

The Supreme Court unanimously overturned the ruling of the District Court:

> To the extent there was any ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction in the circumstances of this case. The preclearance process is by design a stringent one; it is predicated on the congressional finding that there is a risk that covered jurisdictions may attempt to circumvent the protections afforded by the Act.[145]

On remand, the district court ordered implementation of a single-member district plan for Edgefield County Council under which African-Americans won three of five seats.

As Vernon Burton and his colleagues note in *A Quiet Revolution*, the decision in *McCain v. Lybrand* triggered a series of successful suits and negotiated agreements involving town councils, school boards, and county councils, which led to single member districts and election of African-American candidates including Edgefield County School Board, Johnston Town Council, Laurens County Council, Saluda County Council, Abbeville County Council, and Richland County Council.[146]

2. *NAACP v. Hampton County*

In 1982, the General Assembly wrestled with the future of the Hampton County Board of Education, which had oversight responsibilities over the two school districts in the majority African-American county. Initially Act 547 of 1982, adopted in February of 1982 and submitted to the attorney general for preclearance, changed the countywide board to an elected, rather than appointed body, elected at large. The first election was to be held at the General Election in November 1982, with candidate filing scheduled for August 16 through August 31, 1982.[147]

In April of 1982, before the Attorney General had acted on Act 547, the General Assembly passed Act 549 of 1982 which abolished the county board and made those trustees elective rather than appointive subject to a referendum in May 1982. On April 29, the attorney general notified the state that he would not object to Act 547.

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[143] Act 1104 of 1966. The Attorney General objected on June 11, 1984, to the implementation of Act 1104. Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 11, 1984.
[144] *McCain v. Lybrand* (D.S.C., May 10, 1982).
[145] *McCain v. Lybrand*, 465 U.S. 236, 257 (1984).
[146] *Quiet Revolution*., 210-11.
[147] The following procedural history is taken from *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 170-171 (1985).

On August 23, the attorney general initially objected to abolition of the Hampton County Board of Education, principally because of a misunderstanding about whether abolishing the county board would reduce the possibility of merging Hampton School Districts 1 and 2.[148] Anticipating a requested reconsideration by the attorney general, Hampton County officials proceeded to accept filings in the August filing period.

When the attorney general had not reconsidered his objection by the date of the General Election, elections were held for the Hampton County Board of Education under Act 547, but not for the district trustees under Act 549. He withdrew that objection on November 19, 1982, past the date of the elections proposed in both the precleared Act 547 and the unprecleared Act 549.[149]

Rather than reopening filing for the election now scheduled for March 15, 1983, county officials simply declared that the filing period was the August 1982 filing period when the Act had not yet been precleared. Potential candidates who were black had not filed to run in an unprecleared election.

The NAACP and other parties filed suit in the district court. A three judge panel denied a preliminary injunction and then denied both a permanent injunction and declaratory relief, finding that Section 5 did not apply since "the scheduling of the election and the filing period were simply 'ministerial acts necessary to accomplish the statute's purpose ….'"[150] "Relying on *Berry v. Doles*,[151] the district court held as an alternative ground that these changes were implicitly approved when the Attorney General withdrew his objection to Act No. 549."[152]

The Supreme Court disagreed, ruling that:

> Appellees' use of an August filing period in conjunction with a March election, and the setting of the March election date itself, were changes that should have been submitted to the Attorney General under 5. These changes cannot be said to have been approved along with Act No. 549. … [I]t is appropriate in these circumstances for the District Court to enter an order allowing appellees 30 days in which to submit these changes to the Attorney General for approval. If appellees fail to seek this approval, or if approval is not forthcoming, the results of the March 1983 election should be set aside. If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand.[153]

Upon submission, DOJ found that "the restriction on candidacies for the March 15, 1983, election adversely affected the opportunity of black voters to elect candidates of their choice."

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[148] Letter, Asst. U.S. Atty. Gen'l. Wm. Bradford Reynolds to Asst. S.C. Atty. Gen'l. C. Havird Jones, Jr., August 23, 1982.
[149] Letter, Asst. U.S. Atty. Gen'l. Wm. Bradford Reynolds to Asst. S.C. Atty. Gen'l. C. Havird Jones, Jr., November 19, 1982. The initial submission was delayed until June 16, 1982.
[150] *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 174 (1985)
[151] 438 U.S. 190 (1978).
[152] *Id*. at 181.
[153] *Id*. at 182-3.

The attorney general objected to the qualifying period for the special election, voiding the March 1983 elections.[154]

3. *NAACP v. Mayor and Council of Hemingway, S.C.* and *Franklin v. Lawrimore*

Between 1986 and 1991, Hemingway a small, nearly all-white (97 percent according to the 1990 Census), town in Williamsburg County annexed seven pieces of land. Those annexed areas were all white according to the town's preclearance submission. A black community immediately adjacent to Hemingway, Donnelly, had requested annexation in the 1970s to obtain water and sewer service and was denied in a referendum vote. A similarly situated white community, Pine Crest, sought annexation in the mid-1980s. The regional planning agency had studied the financial feasibility of annexation for both Donnelly and Pine Crest and found Donnelly feasible, but Pine Crest not feasible. The town annexed white Pine Crest, but denied black Donnelly.[155]

In 1992, Hemingway and the surrounding area sought to secede from majority black Williamsburg and annex itself to majority white Florence County. Donnelly was not included in the transfer area which included about 2,500 people of whom 21 percent were African-American. Because state law prohibited altering a county boundary if the change split a town between two counties, the Department of Justice considered the annexations and county transfer issues together.

In October of 1993, while awaiting action by the attorney general, two groups of plaintiffs represented by the same counsel filed lawsuits alleging Section 5 and Section 2 violations. In *NAACP v. Hemingway*, the parties entered into a consent order that recognized that Hemingway had filed to obtain preclearance for five annexation areas and enjoined the town from allowing persons in those annexed areas to vote in town elections unless they were precleared. *Franklin v. Lawrimore* was dismissed as moot.[156]

On July 22, 1994, DOJ denied preclearance for five of the seven annexations involving population and for the proposed boundary changes.[157]

In 2006, Hemingway remains in Williamsburg County and Donnelly remains outside the town. Rather than admit black citizens through annexation, Hemingway chose to exclude its previously annexed white citizens.

4. *United States v. Orangeburg County Council*

In 1984, the Orangeburg County Council redistricted itself. The county's population in 1980 of 82,276 was, according to the census, 56 percent African-American. The plan adopted by the

[154] Letter, Reynolds to Jones, June 28, 1985.
[155] Letter, Asst. US Atty. Gen'l. Deval L. Patrick to Gregory B. Askins, July 22, 1994.
[156] *South Carolina Conference of Branches of the NAACP v. Mayor and Council of Hemingway, S.C.*, C.A. No. 4:93-2733-21 (D.S.C., filed October 18, 1993) and *Franklin v. Lawrimore*, C.A. No. 4:93-2760-21 (D.S.C., filed October 19, 1993).
[157] Letter, Patrick to Askins.

Council "failed to reflect … the measurable increase in the county's minority voters." DOJ eventually objected to a redistricting plan in Orangeburg County.[158] However, Orangeburg attempted to proceed with elections under the unprecleared plan before the Department entered its objection. The district court enjoined elections under the unprecleared plan. *United States v. Orangeburg County Council* (D.S.C., 1984).

DOJ again objected to the redistricting plan adopted by Orangeburg County Council during the next decade. In objecting, DOJ found that Orangeburg County Council had unnecessarily removed black population from District 5 in order to reduce its black proportion to a targeted level. The county council did not give serious consideration to a series of alternatives offered by the black community. "In this regard, many of the reasons presented to us for rejecting these alternative plans appear to pretextual. Furthermore, it appears that the protection of incumbents, particularly white incumbents, and the desire to confine the black population percentage in District 5 to a predetermined and unnecessarily low level were dominant factors in the council's redistricting choices."[159]

5. *United States v. Lee County* and *NAACP v. Lee County Council*

Lee County, South Carolina, is a majority African-American county. In 1990, the census found that 62 percent of the county's population and 57 percent of its voting population were African-American. The benchmark plan in 1992 included two districts with black populations over 74 percent and five districts with black populations in the 52 to 63 percent range. However, in 1992, the county's black voters had only been able to elect black persons to two seats on county council and on the school board which used the same districts. Those were in the 74 percent or higher districts.

Controlled by four white council members, "[t]he self-described goal of the council was to draw a plan that retained Districts 3 and 5 as districts with sizeable black population majorities while drawing two other districts with no more than a 65 percent black share of the population." In order to limit black population in two districts to no more than 65 percent, "black population concentrations have been fragmented."

DOJ concluded that the county had given short shrift to an alternative plan offered by the African-American community and had rejected a proposal for a bi-racial committee to look at redistricting. That alternative proposal had shown that it was possible to draw more than two districts with greater than 70 percent African-American population, the minimum required to create a district in which black citizens could elect candidates of their choice in this county with repressed black voter participation.[160]

Lee County revised its redistricting plan and the revised plan was precleared in 1993. The county set an expedited special election schedule, even though the new plan included substantial

[158] Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Robert R. Borger, September 3, 1985.
[159] Letter, Asst. US Atty. Gen'l. John R. Dunne to Robert R. Borger, July 21, 1992.
[160] Letter, Acting Asst. US Atty. Gen'l. James P. Turner to County Council Chair Herman H. Felix, February 8, 1993.

changes from the previous plan. The county held a primary in 1994, even though the plan had not been precleared. There was substantial voter confusion in that unprecleared special primary.

> The circumstances presented by the instant submission suggest that the county's selection of the early schedule was motivated, at least in part, by a desire to diminish black voting potential. The implementation of the new redistricting plan effected significant changes in district assignments for many black voters. The increase in the black percentage in District 1 created a new opportunity for black voters to elect candidates of their choice. The county, however, failed to take adequate steps under these circumstances to publicize information regarding the new district boundaries and to notify black voters (and election day personnel) of their location in the respective districts in advance of the election. The consequence of these actions, which was reasonably foreseeable, was reduced black voter participation in the special primary election.[161]

The attorney general objected to the special election schedule for the county council and school board. That letter is dated the day before the special general election was scheduled, but after candidate qualification periods and the special primary election. The county requested reconsideration, but was rejected.[162]

Both the Department of Justice (on June 6, 1994) and the NAACP (on June 3, 1994) filed in the district court to enjoin the special general elections and to vacate the special primary. The court issued a temporary restraining order. A three-judge panel granted summary judgments motions by the plaintiffs vacating the April 19, 1994, special primary and enjoining further implementation of the special election procedure.[163]

6. *NAACP v. Greenwood County Board of Education 50*

In Greenwood County, the Greenwood County Board of Education 50 and the legislative delegation had come to an agreement with the African-American community to adopt single-member districts. The legislation making the change, Act 595 of 1994, only became law on May 4, 1994, with trustee elections scheduled for May 10. On May 5, the NAACP sought to enjoin those elections until they were precleared. The injunction was granted on May 10, 1997.[164]

V. Examiners, Observers, Voter Intimidation and Voter Fraud

The Attorney General has certified the need for election examiners in seven South Carolina counties pursuant to Section 6 of the Voting Rights Act since 1982: Bamberg County (10/10/84); Calhoun County (09/28/84); Chester County (06/08/90); Colleton County (10/10/84); Hampton County (10/10/84); Richland County (09/28/84); and Williamsburg County (09/28/84).[165]

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[161] Letter, Acting Asst. US Atty. Gen'l. James P. Turner to Jacob H. Jennings, June 6, 1994.
[162] Letter, Asst. US Atty. Gen'l. Deval L. Patrick to Helen T. McFadden, June 23, 1994.
[163] *N.A.A.C. P. v. Lee County Council*, C.A. No. 3:94-01575-17 (D.S.C., 1994); *United States v. Lee County*, C.A. No. 3:94-01582-17 (D.S.C., 1994).
[164] *NAACP v. Greenwood County Board of Education 50*, C.A. No. 8-94-01223-WBT (D.S.C., 1994).
[165] *Id.* Bamberg County (10/10/84); Calhoun County (09/28/84); Chester County (06/08/90); Colleton County (10/10/84); Hampton County (10/10/84); Richland County (09/28/84) and Williamsburg County (09/28/84).

Election observers have been assigned to 37 South Carolina elections, 23 times since 1982.[166] Most of the communities to which observers have been sent have repeatedly requested assistance under the Act to protect the ability of African-American voters fully to participate in the electoral process. Those include Bamberg County (1984, 1985), Calhoun County (1984, 1988), Chester (twice in 1990, twice in 1991, 1993 and 1996), Dorchester (1990, 1996 and 2001), Marion (1984 and 1996) and Williamsburg (1984, 1988, and twice in 1996).

However, other areas could have used observers. In McCormick County in 1994, following redrawing of South Carolina House District 12 as a majority African-American district, a heated election between long-time white incumbent Jennings McAbee and black candidate Willie N. Norman, Jr. was marked by voter fraud advantaging the white incumbent in the McCormick County portion of the district. McAbee, running as an independent, defeated Norman 3,155 votes to 2,878 votes. McAbee's 1,009 vote difference in his home county of McCormick assured the victory. A year later, the clerk of the McCormick County Board of Registration was indicted for, to use the words of South Carolina Attorney General Charles Condon, "voting early and often."[167] Georgetta M. Wiggleton pled guilty to voter fraud. "Ms. Wiggleton admitted that the false ballots were a 'significant factor' in the outcome of that race."[168]

During trial of Section 2 claims in Charleston County, the United States "put forward voluminous testimony concerning what it characterized as a consistent and more recent pattern of white persons acting to intimidate and harass voters at the polls during the 1980s and even as late as the 2000 General election. … [T]he Court agrees that there is significant evidence of intimidation and harassment …." The court found poll managers assigned to African-American precincts who "… caused confusion, intimidated African-American voters, and had the tendency to be condescending to those voters." Further, "poll managers interfered with certain African-American voters' right to receive assistance during the voting process." One particularly problematic white "poll manager's ongoing interference with African-American voters in Charleston County polling places prompted a Charleston County Circuit to issue a restraining order against the election Commission requiring its agents to cease interfering with the voting process." The court stated, "In the 1990 election, a member of the Charleston County Election Commission and others participated in a Ballot Security Group that sought to prevent African-American voters from seeking assistance in casting their ballots" and "Moreover, in the 1980 election, the *News and Courier* reported that some college students, claiming that they were federal poll watchers, intimidated some voters at the Fraser Elementary School, a predominantly African-American precinct in the City of Charleston's East Side. The students threatened to 'lock up' voters." As the court noted: "And while the Defendants suggest that such instances of harassment of and intimidation against African-American voters were attributable solely to partisan politics and not race, the uncontroverted testimony establishes that such conduct never occurred at predominantly white polling places, including those that tended to support Democratic candidates."[169]

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[166] U.S. Department of Justice, Geographic Public Listing: Elections in All States" (November 10, 2003), 40-42.
[167] Lee Bandy, "McCormick Registrar Indicted," *The* (Columbia) *State* (September 14, 1995), B3.
[168] Augusta Chronicle, "Across the Area: Ex-clerk Sentenced in Voter Fraud" (July 7, 2000), at http://chronicle.augusta.com/stories/072700/met_029-3419.000.shtml.
[169] *Charleston County*, 365 F.3d at 351-53; 316 F.Supp.2d at 286 n.23 (citations omitted).

As recently as the 2004 General Election, at Richland County's black Ward 8, which includes the historically black Benedict College, "GOP monitors challenged students who held S.C. voter registration cards, but did not have driver's licenses or state-issued identification cards." As African-American Columbia City Council member E.W. Cromartie noted: "It reinforced the fact you still have to fight to make sure democracy is the way it is supposed to be."[170]

VI. Racially Polarized Voting

If voting in South Carolina were not so racially polarized, neither Section 2 nor Section 5 of the Voting Rights Act would have much impact on the state. Black voters would be routinely able to elect candidates of their choice in majority white districts and at-large elections. High levels of racially polarized voting across South Carolina provides the predicate condition making Section 2 and Section 5 so critical to the growth of black representation and its maintenance in the face of continued resistance by public officials.

That voting in South Carolina is racially polarized is practically a given. When the district court in *McCain v. Lybrand* looked at expert reports on polarized voting in Edgefield county, Judge Robert Chapman found "bloc voting by the whites on a scale that this court has never before observed."[171]

In 1990, James W. Loewen analyzed 130 black/white elections from 1972 through 1984. Loewen found:

> A reasonable summary would be that voting was polarized throughout the period. Eighty percent of the variance in these election returns is associated with the racial composition of the precinct or county. Overall, whites cast about 90 percent of their votes for white candidates, while blacks cast about 85 percent for black candidates. Thus, the primary determinant of election results in these interracial contests was the racial composition of the turnout.[172]

In the *Burton* statewide redistricting case in 1992, the parties stipulated that "since 1984 there is evidence of racially polarized voting." James Loewen and Theodore Arrington offered expert testimony that voting in South Carolina was racially polarized and that polarization had increased since 1982.[173]

The district court in *Smith v. Beasley* and *Able v. Wilkins* found:

> In South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state and is present in all of the challenged House and Senate districts in this litigation. There is only one exception

[170] John C. Drake, Benedict Students Face GOP Challengers," *The* (Columbia) *State* (November 4, 2004), B5.
[171] *McCain* (D.S.C., slip op., April 17, 1980), 17-18.
[172] "Racial bloc Voting and Political Mobilization in South Carolina," *The Review of Black Political Economy*, 19 (Summer 1990), 23, 25.
[173] *Burton*, 793 F. Supp. at 1357-58 and fn. 49.

> according to Defendants' expert, Dr. Ruoff, who has studied the voting history of South Carolina for a number of years. He testified, "Whites almost always vote for whites and blacks almost always vote for blacks unless the candidate is a black Republican and then never.[174]

In the most recent statewide litigation, the district court found: "The history of racially polarized voting in South Carolina is long and well- documented …."[175] John Ruoff, testifying on behalf of African-American voters, presented a study of 401 elections in the previous decade.

> Specifically, [Ruoff] offered undisputed testimony that South Carolinians are still very divided in terms of where they live and that elections throughout South Carolina continue to be marked by very high levels of racial polarization in voting. Black voters are generally politically cohesive and white voters almost always vote in blocs to defeat the minority's candidate of choice. Racial polarization is highest in black-white elections--those involving a black candidate running against a white candidate. … The other experts retained by the parties in this case substantially concurred in this portion of Dr. Ruoff's opinion, which was likewise supported by the statistical and other evidence presented to the court by all of the parties.
>
> By way of summary, the evidence revealed that in black-white, single seat elections, the median level of black voters voting for black candidates was 98% in general elections and 86% in primary contests. Although white voters will cross over to vote for black candidates at a rate of 21% in general elections, they will cross over to vote for a black candidate in primary elections at a rate of only 8%. In addition, voter mobilization among blacks in general elections is lower than among white residents, but greater in black- majority districts.[176]

Even more recently, the *Charleston County* district court found:

> Dr. Theodore Arrington, expert for the United States, found that out of 31 contested, County-Council elections studied from 1984 to 2000, voting was racially polarized 29 times (94%). The findings of Defendants' own expert, Dr. Ronald Weber, also confirm that voting in Charleston County Council elections is severely and characteristically polarized along racial lines. *Charleston County*, 316 F.Supp. 2d at 277.

As the *Colleton County Council* court concluded: "Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute."[177]

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[174] *Smith*, 946 F.Supp. at 1202-3.
[175] *Colleton County Council*, 201 F.Supp.2d at 640.
[176] *Id.* at 641 (footnotes omitted).
[177] *Colleton County Council*, 201 F.Supp.2d at 641.

VII. Socio-Economic Disparities

Contributing to the problems that African-American voters have in electing candidates of their choice are significant socio-economic disparities between white and black citizens.

Relying on 1990 Census data, the Smith Court found "a socio-economic gap between the average white citizen and the average black citizen. There is a larger percentage of blacks than whites below the poverty level; the household income of blacks is generally less than that of whites; unemployment is greater among blacks; and the level of formal education among blacks is less. There are more whites than blacks residing in married-couple households, and more blacks live in single-female households. More blacks than whites are without private means of transportation, and more whites than blacks own their own homes. Infant mortality is greater among blacks."[178]

In 1999, median household incomes for black households was $25,032, compared to $42,158 for white households.[179] Twenty-six percent of black South Carolinians and only 8 percent of white South Carolinians lived below poverty in 1999.[180] Thirty-nine percent of black households rented compared to 23 percent of white households in 1999.[181] Black households were three times as likely (8.2 percent compared to 2.5 percent) as white households to lack a telephone, a critical tool in political communications, in 1999.[182] Twenty percent of black households and only five percent of white households lacked a vehicle.[183] Black South Carolinians in 2003 were twice as likely to be unemployed, 11.2 percent compared to 5.1 percent for white residents.[184]

Thirty percent of African-American family households in 1999 were female-headed with children. Only 11 percent of white households had that structure.[185] From 2000 to 2003, black children had significantly higher infant mortality rates than white children—14.8 percent to 5.8 percent.[186]

South Carolina's African-American citizens lag behind in education. Among the population 25 and older, 35 percent of black citizens lack a high school diploma or equivalency compared to 19 percent of white residents. Conversely, nearly a third of white South Carolinians have at least an Associate degree compared to 15 percent of black residents.[187]

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[178] *Smith*, 946 F.Supp. at 1203.
[179] U.S. Census 2000 Summary File 3, Table P152. Throughout this discussion, data for whites is for nonHispanic whites where the Census made that distinction.
[180] U.S. Census 2000 Summary File 3, Table P159.
[181] U.S. Census 2000 Summary File 3, Table H11.
[182] U.S. Census 2000 Summary File 3, Table HCT32.
[183] U.S. Census 2000 Summary File 3, Table HCT33.
[184] Office of Statistics and Research, S.C. Budget & Control board, *Statistical Abstract 2005*, Employment Table 20, "South Carolina Unemployment Rates by Age, Race and Sex (1999-2003)" at http://www.ors2.state.sc.us/abstract/chapter8/employment20.asp.
[185] U.S. Census 2000 Summary File 3, Table P 146.
[186] S.C. Dept. of Health & Environmental Control, SCAN, Infant Mortality at http://scangis.dhec.sc.gov/scan/mch/infm/input.aspx.
[187] U.S. Census 2000 Summary File 3, Table P148.

By any measure, the racial disparities in socio-economic conditions noted by the *Smith* Court continue in the 21st century.

VIII. Section 2 Litigation in South Carolina since 1982

Section 2 of the Voting Rights Act of 1965, prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4 (f)(2) of the Act. In 1982, Congress amended the Act to provide that a plaintiff could establish a violation of the section if the evidence established that, in the context of the "totality of the circumstances of the local electoral process," the standard, practice or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process.

The courts have considered the following factors in determining, if within the totality of the circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2:

1. the history of official voting-related discrimination in the state or political subdivision;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;
4. the exclusion of members of the minority group from candidate slating processes;
5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
6. the use of overt or subtle racial appeals in political campaigns; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.[188]

A plaintiff need not prove any particular number or even a majority of these factors to prevail in a vote dilution claim.

Recent cases such as *United States v. Charleston County*,[189] and *Colleton County Council v. McConnell*,[190] demonstrate the continued need for Section 2 of the Voting Rights Act. South Carolina's long history of racial discrimination and severely polarized voting makes the extension of Section 2 critical. Successful Section 2 litigation from the 1970's to the present day cannot be allowed to be forfeited. Significant changes wrought by minority voters cannot be abandoned.

[188] S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29.
[189] 365 F.3d 341 (4th Cir. 2004).
[190] 201 F. Supp. 2d 618 (D.S.C. 2002)

The victory of black plaintiffs in *McCain v. Lybrand* discussed above and the 1982 changes to the Voting Rights Act triggered significant legal activity to expand the rights of South Carolina's African-American citizens by challenges to discriminatory electoral systems across the state over the next decade. Attorneys from the American Civil Liberties Union and the NAACP brought numerous actions under Section 2, principally challenging at large electoral systems.

In *Jackson v. Edgefield County South Carolina School District*,[191] black voters of Edgefield County, South Carolina, brought suit alleging that the at-large electoral system used to elect members of the School Board of Trustees resulted in impermissible dilution of voting strength of black voters in violation of their constitutional rights and Section 2 of the Voting Rights Act. The district court held that the at-large method of election for membership on Edgefield County School Board of Trustees resulted in the denial or abridgement of voting rights of black citizens in violation of Section 2 of the Voting Rights Act. As the court concluded:

> [W]e find that there is credible and substantive evidence showing that a pervasive racial discrimination has left the county's black citizens economically, socially and politically disadvantaged and that a severe degree of racial bloc voting and the minimal degree of electoral success by minority candidates exacerbate the difficulties faced by black candidates seeking election to the position of the School Board Trustees under the existing at-large electoral structure and practice.[192]

Thereafter, a number of jurisdictions, when challenged pursuant to Section 2 of the Voting Rights Act, agreed to adopt single member district plans, which allowed minorities an opportunity to elect candidates of their choice. See Attachment 1, "Section 2 Litigation Leading to Single Member or Mixed Systems, South Carolina, 1982 – 2003". In those jurisdictions, the method of discrimination in voting has taken many forms—manipulation of boundaries to maintain white control; intimidation and harassment of minority and poor voters at the polls; and the presence of pervasive racial polarization among voters.

County councils in Abbeville, Barnwell, Darlington, Fairfield, Georgetown, Laurens, Richland and Saluda counties entered into consent decrees. Only in Kershaw and Charleston did the cases reach trial. In Kershaw County, the District Court found for the plaintiffs.[193] A single-member system with the chair elected at-large followed. This report has discussed at length the Court's findings in *Charleston County*.

School districts and Boards of Education in Abbeville, Chesterfield, Laurens, Spartanburg, Florence and York settled challenges to their at-large systems following *Jackson v. Edgefield County South Carolina School District*.

In municipalities across South Carolina, Aiken, Edgefield, Manning, Johnston, Winnsboro, Lancaster, Laurens, Cayce, Mullins, Bennettsville, Orangeburg, Holly Hill, Elloree, Spartanburg,

[191] 650 F. Supp. 1176 (D.S.C. 1986).
[192] *Id.* at 1204.
[193] *NAACP v. Kershaw County*, C.A. No. 3:90-01132-DWS (D.S.C., November 29, 1993).

Saluda, Union, and Kingstree agreed to single member or mixed systems that afforded African-American citizens the opportunity to elect candidates of their choice after litigation was filed.[194]

In Laurens, the commissioners of public works agreed to single member districts.

After the *Charleston County* case, only two at-large county councils remain—in majority black Hampton and Jasper counties. All others are single member district or single member district with the chair or supervisor elected at large.

According to the South Carolina School Boards Association: "Thirty-nine districts choose board members from single-member districts, 30 retain at-large representation and 16 districts use a combination."[195]

IX. Other *Shaw/Miller* Cases

The 1990s saw significant changes in voting rights jurisprudence. The Supreme Court, through a series of cases (*Shaw/Miller),* granted white citizens the right to challenge districts that had been crafted so that African-American citizens could elect candidates of choice. These decisions rested on the grounds that race had predominated over traditional districting principles in drawing those districts, and that even where compliance with the Voting Rights Act required race-conscious drawing, those districts had not been narrowly tailored to meet those compelling state needs.[196]

South Carolina has seen five challenges to districting plans brought under *Shaw/Miller* theories. The *Smith v. Beasley* (South Carolina Senate) and *Able v. Wilkins* (South Carolina House of Representatives) challenges to legislative redistricting and the *Rodgers v. Union County* challenge to a county council district are discussed above.

A. United States Congressional District Six

Following the *Smith v. Beasley* and *Able v. Wilkins* findings with respect to House and Senate districts, private plaintiffs brought a Shaw/Miller challenge in late 1996 to the Sixth Congressional District as *Leonard v. Beasley*.[197] The district, which encompassed large portions of the Pee Dee region, the majority black I-95 Corridor, and black areas of Charleston and Columbia, was first drawn as a majority black district by the *Burton* Court in 1992. The district

[194] The only case in this period involving a Section 2 challenge to the method of election in which a court found that the plaintiffs failed to establish that African American citizens had less opportunity than others in the electorate to participate in the political process and to elect candidates of their choice was *NAACP v. City of Columbia* 850 F.Supp. 404 (1993); aff'd 33 F. 3rd 52 (4th Cir., 1994). That was a challenge to a mixed-system in the state's capitol.
[195] South Carolina School Boards Association, *Board Member Selection* (August 2005) at http://scsba.org/acrobat/050901_bdmemberselection2005.pdf.
[196] *Shaw v. Reno*, 509 U.S. 630 (1993); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995).
[197] *Leonard v. Beasley*, C.A. No.3:96-03640 (D.S.C., filed December 6, 1996).

had 62 percent black population and 58 percent black voting age population. When redrawing district lines in 1994, the General Assembly essentially replicated the *Burton* Court district.[198]

Leonard v. Beasley settled in 1997. The defendants agreed for settlement purposes that the plaintiffs "had a strong factual and legal claim … that the creation of the Sixth Congressional District subordinated traditional districting principles to racial considerations." Conversely., the plaintiffs agreed that "the State has a compelling state interest in adopting an congressional plan that does not have the purpose, effect or result of providing minority citizens with less opportunity than other members of the electorate to elect representatives of their choice." The parties also agreed that a narrowly tailored, majority black voting age population district could be drawn in South Carolina. The parties agreed that the General Assembly should attempt to redistrict congressional districts and, failing that, the plaintiffs could reinstitute the action.[199]

The Sixth Congressional District remained unchanged and unchallenged until after the 2000 Census when the *Colleton County* court found "that § 2 and § 5 of the Voting Rights Act require the maintenance of the Sixth District as a majority-minority district."[200] The court, after "correction of some of the questionable aspects of the existing plan …" crafted a "constitutionally proper draw that has a 53.75% BVAP in the district."[201]

B. Horry County Council

In 1991, Horry County Council redistricted its 11 single member districts, which also apply to the Horry County School Board of Trustees. In that process it created a new majority African-American district (District 9) and strengthened an existing district (District 7). Under the new plan, District 7 had a 60 percent African-American population, and District 9 a 65 percent African-American population.

On January 31, 1997, white plaintiffs from Horry County filed suit on *Shaw/Miller* grounds challenging Districts 7 and 9. On May 8, 1997, the parties entered a consent order in which the defendant County Council "conceded liability in that it used impermissible factors in redistricting Horry County." On May 23, 1997, the NAACP and private African-American citizens sought to intervene in that proceeding. The district court denied that motion on October 30, 1997, while declaring the districts unconstitutional. The white-majority defendant County Council offered no defense of the plans, blaming the districts on "a desire to appease the NAACP and to meet the Department of Justice's preclearance requirements."[202]

When Districts 7 and 9 were redrawn, District 9 was drawn to a 50 percent black population and 44 percent black voting age population, while District 7 was drawn to a 47 percent black population and 43 percent black voting age population. Although nominally having a majority

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[198] Act 321 of 1994. The changes were to accommodate individual politicians who wanted into or out of the Sixth District. Cindi Ross Scoppe, "Charleston Lawmaker's Home Moved into District He Hopes to Represent," *The* (Columbia) *State* (March 9, 1994), 6B.
[199] *Leonard,(*D.S.C., Settlement Agreement, August 6, 1997) at 3-6.
[200] *Colleton County*, 201 F. Supp. 2d at 665.
[201] *Id.* at 665-666.
[202] *Prince v. Horry County*, C.A. No. 4-97-0273-12 (D.S.C., slip op. October 31, 1997), *appeal terminated w/o judicial action, Prince v. NAACP, Incorporated* , Docket No. 97-2661 (4th Cir., August 3, 1998).

black population, District 9 was an area of significant white growth. By 1998, its voter registration was only 35 percent black in the proposed district.[203] The benchmark plan for District 7 had "a 54 percent black population majority, and a 50 percent voting age population majority."

The county's demographers had drawn a compact district with a black majority population and 49 percent black voter registration which the council had rejected. "Because these alternate redistricting configurations illustrate the ability to create a reasonably compact district that reduces black voting strength to a lesser extent than the proposed plan," the Department of Justice objected to the initial proposal to redraw Horry County Council lines.[204] A redrawn plan was approved in July of 1998.[205]

In 2006, one African-American, James Frazier, serves on the Horry County Council. He represents District 7, the district that had been the subject of the attorney general's objection. District had only 42 percent black voter registration in 2004.[206] Black council member Frazier has had no white opposition since 1998.[207] Three of the twelve members of the Board of Education, which uses the same lines, are African-American in 2006.[208]

Although successful *Shaw/Miller* constitutional challenges have been brought to a number of districting plans in South Carolina, subsequent history has seen that adjustments were made and constitutional districts in which African-American citizens are able to elect candidates of their choice were drawn.

CONCLUSION

The Joint Center for Political and Economic Studies has been tracking black elected officials for many years. Their 2000 report shows that the number of black elected officials in South Carolina increasing from 38 in 1970 to 540 in 2000.[209] Most of that progress has been the product of vigorous enforcement of the Voting Rights Act in the face of significant resistance.

Although some would argue that those advances make the Act now unnecessary, precious little of that progress was granted willingly. Across South Carolina, black citizens have had to fight for the opportunity to elect candidates of their choice. And public officials have shown only too ready a willingness to undermine those advances. We have reviewed efforts in this young century in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter, and Union to change district lines or voting rules to diminish the ability of African-American voters to elect candidates of their choice.

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[203] The tremendous white growth in the District 9 area may well have led to natural retrogression, the loss of a black majority district because of population changes, in 2000 in any case.
[204] Letter, Acting Asst. US Atty. Gen'l. Bill Lann Lee to John C. Henry, May 20, 1998.
[205] Craig S. Lovelace, "New districts OK's," *The* (Myrtle Beach) *Sun News* (July 2, 1998), 1A.
[206] S.C. Elections Commission, County Council Tally, October 1, 2004.
[207] S.C. Election Commission, *Election Reports*, 1998, 2000 and 2004.
[208] http://www3.hcs.k12.sc.us/AboutUs/SchoolBoard/index.html.
[209] Bostitis, "Black Elected Officials, 28.

As South Carolina jurisdictions have adopted single member districts, many of the other election practices that reduced the ability of black voters to elect candidates of choice, such as staggered terms and majority vote requirements, have ceased to have those discriminatory effects. Indeed, increasingly, the points of contention have been over district lines that split African American communities or pack black voters into districts so that their ability to elect candidates of choice in other districts is reduced.

Annexations continue to create concern in black communities. In the city of Aiken, governed by a mixed system of single-member and at-large elections for city council, two solidly majority-African American districts became bare majority black districts with redistricting after the 2000 Census because of significant annexations of the white communities south of the city. A 2003 referendum to change the 4-2-1 system to a 5-1-1 was rejected by the white majority electorate despite the endorsement of the mayor.[210]

In reviewing plans proposed by the parties to statewide redistricting in 2002, the court took special note that the governor and the legislature "have proposed plans that are primarily driven by policy choices designed to effect their particular partisan goals And, in many cases, the choices appear to be reflective of little more than an individual legislator's desire to strengthen his or her ability to be re-elected to the seat in question."[211]

Throughout the Section 5 objections, we see that discriminatory actions were taken to protect white incumbents. Leaving South Carolina's black citizens at the mercy of incumbency-protection for majority white legislative bodies will only lead to a reduction in the ability of South Carolina's black citizens to effectively participate in political processes and elect candidates of their choice. Section 5 preclearance review is critical to protecting those gains.

South Carolina has made remarkable progress in the forty years since the passage of the Voting Rights Act and in the twenty-five years since the Act was last renewed. In a state marked by very high levels of racial polarization and continuing socio-economic disparities between her white and black citizens, that progress, however, has come almost exclusively in bodies elected from single member districts. Those districting schemes have been largely the product of vigorous enforcement of the Voting Rights Act, through both Section 2 and Section 5, in the face of official resistance stretching, in many jurisdictions, over decades. Section 5's protections against back-sliding are critical to maintaining the expansion of black representation that has seen this state go from zero to 540 elected black officials in the life of the Act.

[210] Philip Lord, "Residents Vote to Keep Current Election System," *Aiken Standard* (April 2, 2003); Mayor Fred B. Cavanaugh, Jr., "Citizens to decide Aiken's district-voting plan," *Aiken Standard* (March 14, 2003).
[211] *Colleton County Council*, 201 F.Supp.2d at 628-629, 659.

South Carolina Report
Attachment 1

Section 2 Litigation Leading to Single Member or Mixed Systems
South Carolina 1982 - 2003

Case Name/Matter	Year Resolved	State	County	Subjurisdiction
		County Councils		
Robinson v. Savitz	1989	South Carolina	Abbeville	Abbeville County
Houston v. Barnwell County	1988	South Carolina	Barnwell	Barnwell
United States v. Charleston County	2003	South Carolina	Charleston	Charleston County
United States v. Darlington County	1986	South Carolina	Darlington	Darlington
Walker v. Fairfield County	1990	South Carolina	Fairfield	Fairfield County
Watkins v. Scoville	1984	South Carolina	Georgetown	Georgetown
NAACP v. Kershaw County	1993	South Carolina	Kershaw	Kershaw County
Beasley v. Laurens County	1988	South Carolina	Laurens	Laurens County
NAACP v. Richland County	1988	South Carolina	Richland	Richland
Lewis v. Saluda County	1985	South Carolina	Saluda	Saluda County
		School Boards of Education/Trustees		
NAACP v. Abbeville Sch. Dist. No. 60	1994	South Carolina	Abbeville	Abbeville County Sch. Dist. #60
NAACP v. Chesterfield County BOE	1993	South Carolina	Chesterfield	Chesterfield County BOE
Jackson v. Edgefield Co, SC School District	1986	South Carolina	Edgefield	Edgefield County SD
Smith v. Laurens County	1987	South Carolina	Laurens	Laurens County SD No. 55
Smith v. Laurens County	1987	South Carolina	Laurens	Laurens County SD No. 56
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB No. 5
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB No. 7
NAAACP v. Truitt	1997	South Carolina	Florence	Florence County SD #1
Love v. York County School District #1	2000	South Carolina	York	York County Sch. Dist.
		Municipal Governing Bodies		
United States v. City of Aiken	1988	South Carolina	Aiken	City of Aiken
NAACP v. City of Gaffney	1990	South Carolina	Cherokee	City of Gaffney
NAACP v. City of Manning	1992	South Carolina	Clarendon	City of Manning
Thomas v. Mayor and Town Council of Edgefield	1987	South Carolina	Edgefield	Town of Edgefield
Jackson v. Johnston	1987	South Carolina	Edgefield	City of Johnston

Broome v. Winnsboro	1989	South Carolina	Fairfield	City of Winnsboro
NAACP v. City of Lancaster (D.S.C., 1989)	1989	South Carolina	Lancaster	City of Lancaster
Glover v. Laurens	1988	South Carolina	Laurens	City of Laurens
NAACP v. City of Cayce	1992	South Carolina	Lexington	City of Cayce
Reaves v. City Council of Mullins	1990	South Carolina	Marion	City of Mullins
United States v. City of Bennettsville	1990	South Carolina	Marlboro	City of Bennettsville
Owens v. City Council of Orangeburg	1988	South Carolina	Orangeburg	City of Orangeburg
NAACP v. Town of Holly Hill	1992	South Carolina	Orangeburg	Town of Holly Hill
NAACP v. Town of Elloree	1993	South Carolina	Orangeburg	Town of Elloree
NAACP and United States v. City of Spartanburg	1988	South Carolina	Spartanburg	City of Spartanburg
NAACP v. Town of Saluda	1989	South Carolina	Saluda	Town of Saluda
NAACP v. City of Union	1990	South Carolina	Union	City of Union
NAACP v. Town of Kingstree	1991	South Carolina	Williamsburg	Town of Kingstree
	Board of Public Works			
NAACP v. Board of Comm'rs. of Public Works	1991	South Carolina	Laurens	Laurens Co. Bd. Of Public Works

South Carolina Report
Attachment 2

South Carolina Successful Section 5 Enforcement Actions

Case Number/Matter	Year of Inception	Year Resolved	County	Subjurisdiction	How Resolved	Resolution
McCain v. Lybrand	1974	1984	Edgefield	Edgefield County		
Blanding v. Dubose	1978-1982		Sumter	Sumter Co. Council	Order	Unprecleared change enjoined
NAACP v. Hampton County		1984	Hampton	Hampton County School District	Order	Unprecleared change enjoined
United States v. Orangeburg County Council	1984	1985	Orangeburg	Orangeburg	Order	Unprecleared redistricting plan enjoined
United States v. City of Barnwell	1984	1986	Barnwell	Barnwell	Order	Enjoined unprecleared changes -- staggered, maj. Vote
United States v. Lee County	1994	1994	Lee	Lee	Order	Unprecleared election vacated
Rutherford v. South Carolina Republican Party	2000	2000		South Carolina Republican Party	Settlement	Settlement re polling places for 2000 primary
SRAC v. Campbell	1991	1994		South Carolina	Order	Redistricting plan must be precleared
NAACP v. Cherokee County School District	1992	1992	Cherokee	Cherokee County School District	TRO	Case settled after unprecleared dist. Plan enjoined
NAACP v. Town of Hemingway	1993	1994		Town of Hemingway	Settlement	Annexations submitted under Section 5
NAACP v. Greenwood County BOE No. 50	1994	1994	Greenwood	Greenwood County BOE No. 50	TRO	Election using unprecleared plan enjoined