No. 12-96

IN THE

Supreme Court of the United States

SHELBY COUNTY, ALABAMA,
Petitioner,

v.

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

On Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

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

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INTEREST OF *AMICI CURIAE*

The Leadership Conference on Civil and Human Rights ("The Leadership Conference") is a coalition of over 200 organizations committed to the protection of civil and human rights in the United States.[1] It is the nation's oldest, largest, and most diverse civil and human rights coalition. The Leadership Conference was founded in 1950 by three legendary leaders of the civil rights movement—A. Philip Randolph, of the Brotherhood of Sleeping Car Porters; Roy Wilkins, of the NAACP; and Arnold Aronson, of the National Jewish Community Relations Advisory Council. Its member organizations represent people of all races and ethnicities.[2] One of the missions of The Leadership Conference is to promote effective civil rights legislation and policy. The Leadership Conference was in the vanguard of the movement to secure passage of the Civil Rights Acts of 1957, 1960 and 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968. It also played a leading role in gathering evidence to submit to Congress and coordinating the efforts of the civil rights community in connection with the 2006 amendments to the Voting Rights Act that are at issue in this case.

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

[2] See Appendix A for a list of The Leadership Conference's member organizations.

The Leadership Conference Education Fund ("The Education Fund") is the research, education, and communications arm of The Leadership Conference. It focuses on documenting discrimination in American society, monitoring efforts to enforce civil rights legislation, and fostering better public understanding of issues of prejudice. The Education Fund has published studies and reports on many subjects, including voting rights.

The Leadership Conference and The Education Fund believe that a vital national interest is at stake in this case. That national interest is the right of all citizens to vote free from discrimination and to choose leaders that represent their interests and, by doing so, to promote the influence of the United States throughout the world as a viable and vibrant democracy.

Several other organizations also join as signatories to this brief. These organizations are identified and their interests set forth in Appendix B.

SUMMARY OF ARGUMENT

Congress's decision in 2006 to reauthorize § 5 of the Voting Rights Act for 25 years and to maintain the existing coverage formula was a reasonable and appropriate exercise of its enforcement authority under the Fourteenth and Fifteenth Amendments. The jurisdictions covered by § 5 are places where discriminatory voting practices have historically been severe. While many of these jurisdictions have made substantial progress toward eliminating discriminatory voting practices, the legislative record amassed by Congress—as well as more recent history—shows that these gains are fragile and that discriminatory practices still persist. This Court should not take the

extraordinary step of second-guessing Congress's determination that § 5 is still needed, given the fundamental nature of the right to vote, the careful deliberation that Congress gave to the matter, and the extensive factual findings on which Congress's judgment rests.

We make three key points below.

1. If § 5 were to be invalidated, there is a real and substantial risk that the progress made in the covered jurisdictions since 1965 would be rolled back. American history offers a valuable lesson here. Following the Civil War, Congress enacted legislation designed to protect African Americans' right to vote, and federal authorities aggressively enforced these laws. These efforts led to substantial gains in African-American voter registration and political participation throughout the South. But those gains were quickly wiped out once Reconstruction ended. Decisions of this Court invalidating or narrowly construing federal laws designed to protect African-American voting rights played a major role in this reversal. With no effective federal statutory protection for minority voting rights, states and local jurisdictions implemented a wide variety of discriminatory laws and practices that effectively nullified the Fifteenth Amendment's guarantees for generations.

Recent court decisions show that there is a risk that similar retrenchment would occur in the covered jurisdictions if § 5 were not in place. Relying on § 5, federal courts have blocked enforcement of new laws in Texas, Florida, and South Carolina that had the potential to disproportionately prevent minority voters from casting ballots. These included a strict new voter identification law in Texas and new restrictions

on early voting in Florida. A court also blocked South Carolina's new voter ID law from taking effect in the 2012 election because of likely discriminatory impact on African-American voters. While the court allowed the law to be enforced in future elections, it did so in reliance on a finding that the State had adopted ameliorative provisions that would reduce discriminatory impact in future elections, with two judge noting that § 5 had played an instrumental role in persuading the State to adopt these provisions and construe them broadly. A court also refused to preclear Texas's new Congressional, State Senate, and State House redistricting plans, specifically concluding that both the Congressional plan and the Senate plan were enacted with a discriminatory intent. Thus § 5 played a critical role in protecting minority voting rights in the most recent election cycle. If § 5 were not in place, covered jurisdictions would find it much easier to implement discriminatory voting practices, and there is a significant risk that the gains of the last five decades would be eroded, just as the gains of the Reconstruction era were lost once the statutory scheme to protect those rights was no longer in force.

2. Congress's determinations that § 5 is still needed to preserve and continue the progress of the last four decades and that the existing coverage formula remains appropriate are amply supported by the legislative record and are entitled to the highest degree of deference from this Court. Petitioner Shelby County challenges the conclusions that Congress drew from the record and urges the Court to reweigh the evidence and draw its own conclusions. But that is not the proper role of this Court. As this Court has held and the Court of Appeals properly recognized, "[t]he Constitution gives to Congress the role of

weighing conflicting evidence in the legislative process." *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 199 (1997). The Court does not reweigh the evidence *de novo*, but instead looks simply to whether Congress has drawn reasonable inferences based on substantial evidence. Here, Congress amassed a substantial legislative record and reasonably concluded from that evidence that the protections of § 5 are still necessary and that the existing coverage formula remains appropriate. Those findings are entitled to deference. The Court should reject Shelby County's invitation to substitute its own judgment for the considered judgment of Congress.

3. To the extent that the coverage formula is overinclusive or underinclusive, Congress intended that adjustments would be made on a case-by-case basis through the bailout and bail-in mechanisms. Congress anticipated that jurisdictions with "clean" records would avail themselves of bailout, and in fact, the number of bailouts has increased dramatically since 2006. Obtaining a bailout is not a difficult or expensive procedure, and since 1982, when the bailout procedure was liberalized, no application for a bailout has been rejected. There is every reason to expect that the number of bailouts will continue to climb, which will naturally reduce the reach of § 5 in the manner that Congress intended.

In sum, striking down the 2006 reauthorization and invalidating § 5 wholesale, as Shelby County now urges, could have far-reaching consequences for minority voters. Without the continued protection of § 5, there is a significant risk of "backsliding" by covered jurisdictions and a likelihood that millions of minority voters will face new barriers to the exercise of their most fundamental political right. The Court

should not allow this to happen. It should respect the judgment of Congress as to the both the continued need for the protections of § 5 and the appropriateness of the existing coverage formula.

ARGUMENT

I. There Is Real and Substantial Risk That the Progress Made in Combatting Voting Discrimination Since 1965 Will Be Eroded If § 5 Is Invalidated.

As this Court has observed, "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).[3] With that adage in mind, it is instructive to consider the history of Congress's first efforts to protect minority voting rights in the post-Civil War period, the role this Court played by invalidating those laws, and the consequences that ensued.

That history shows that even very substantial gains in minority political participation can be rolled back. This Court's decisions in the 1870s to invalidate federal voting rights legislation paved the way for Southern states to enact laws that effectively barred African Americans from exercising their right to vote for many generations. If this Court were to invalidate § 5, there is a very real and substantial risk that this history would repeat itself. The Court should not allow that to happen.

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[3] *Cf.* 1 GEORGE SANTAYANA, THE LIFE OF REASON; OR, THE PHASES OF HUMAN PROGRESS 284 (1905) ("Those who cannot remember the past are condemned to repeat it.").

A. History Shows That Gains In Minority Political Participation Can Be Reversed When Remedial Laws Are Invalidated.

As this Court noted in *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009), the United States has made extraordinary progress in combatting voting discrimination since 1965, improvements which are "due in significant part to the Voting Rights Act itself" and which "stand as a monument to its success." *Id.* at 202. These gains include dramatic improvements in minority voter registration and turnout, as well as the fact that minority candidates have been elected to office at "unprecedented levels." *Id.*

But there were also extraordinary advances in minority voter registration and political participation in the South in the decade following the Civil War. These gains resulted from aggressive federal efforts to secure and protect African Americans' right to vote. By 1868, more than 700,000 African Americans had been registered to vote under the supervision of federal troops.[4] As a result, 75% to 95% of eligible African-American men were registered to vote in the South during the early years of Reconstruction.[5]

The Fifteenth Amendment was ratified in 1870. Shortly afterward, Congress enacted the Enforcement Act of 1870, 16 Stat. 140, which prohibited discrimination in voter registration and prescribed criminal penalties for obstructing voting rights. The

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

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

Act was amended in 1871 to permit federal courts to appoint election supervisors to oversee federal elections and voting registration. Act of Feb. 28, 1871, ch. 99, 16 Stat. 433.

The combination of large numbers of African-American voters and the adoption of new legal mechanisms to protect their rights had a remarkable impact on minority political participation. Substantial numbers of African Americans were elected to political office at all levels of government in the early 1870s. By the end of Reconstruction, 18 African Americans had served in Southern states in such statewide offices as lieutenant governor, treasurer, superintendent of education or secretary of state, and by 1875 there were eight African Americans serving in Congress, representing six different states.[6] More than 600 African Americans also served in state legislatures—the large majority of them former slaves.[7] African Americans made up nearly half of the lower-house delegates in Mississippi and Louisiana and were a majority in South Carolina, which also had an African-American justice on its Supreme Court.[8] In the words of Professor Eric Foner, a leading historian of the Reconstruction period, this represented "a stunning departure in American politics."[9] And "[a]n equally remarkable

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[6] ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877, at 353, 538 (1988).

[7] *Id.* at 355.

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

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

transformation occurred at the local level, where the decisions of public officials directly affected daily life and the distribution of power."[10] According to Professor Foner, "[i]n virtually every county with a sizable black population, blacks served in at least some local office during Reconstruction."[11]

But these gains proved short-lived. Reconstruction ended in 1877, following a compromise between Democrats and Republicans that resolved the disputed presidential election of 1876. Southern jurisdictions then began implementing a wide variety of measures to nullify African-American voting rights. Many of the early measures involved racial gerrymandering techniques designed to dilute African-American voting strength and prevent the election of African Americans' preferred candidates.[12] In the 1890s, state efforts to disenfranchise African-American voters became more brazen. Beginning with Mississippi in 1890, several Southern states

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[10] *Id.*

[11] *Id.* at 356.

[12] *See id.* at 590:

> "Throughout the South, . . . districts were gerrymandered to reduce Republican voting strength. Mississippi Redeemers concentrated the bulk of the black population in a 'shoestring' Congressional district running the length of the Mississippi River, leaving five others with white majorities. Alabama parceled out portions of its black belt into six separate districts to dilute the black vote. Cities from Richmond to Montgomery redrew ward lines to ensure Democratic control. Wilmington's black wards, containing four fifths of the city's population, elected only one third of its aldermen."

rewrote their constitutions and enacted laws adopting literacy tests, poll taxes, "good character" requirements, white primaries and other similar measures intended to exclude African Americans from the electorate.[13] As a result, the gains in minority political participation during Reconstruction were quickly erased.[14]

This Court's decisions in *United States v. Reese*, 92 U.S. 214 (1876), and *United States v. Cruikshank*, 92 U.S. 542 (1876), played a significant role in this reversal. In *Reese*, voting inspectors in Kentucky were indicted under the Enforcement Act for refusing to accept the vote of an African-American citizen. *See* 92 U.S. at 238–39 (Hunt, J., dissenting). The Court affirmed the dismissal of the indictment, holding that key provisions of the Enforcement Act were unconstitutional. *Id.* at 218–20.

In *Cruikshank*, decided the same day as *Reese*, the Court reversed the convictions of three Louisiana men under the Enforcement Act for conspiracy to de-

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

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

ny African Americans a variety of civil rights, including the right to vote. This case arose out of a disputed election that escalated into an armed conflict—the notorious "Colfax Massacre" of 1873—in which whites seeking to expel African-American and Republican officeholders stormed a courthouse in Grant Parish, Louisiana, killing more than 100 African Americans who had gathered to defend the courthouse.[15] In reversing the convictions, the Court concluded that many of the rights referred to in the indictment—including the right of peaceable assembly, the right to bear arms, and the rights of life and personal liberty—were not granted or protected by the federal Constitution. 92 U.S. at 551–54. With respect to the convictions for hindering African Americans in the exercise of their voting rights, the Court concluded that the indictment had not alleged a racial motive: "We may suspect that race was the cause of the hostility; but it is not so averred." *Id.* at 556.

Historians have long agreed that these decisions gutted the federal statutory scheme for the protection of African-American voting rights. In 1923, Supreme Court historian Charles Warren observed:

> "The practical effect of these decisions was to leave the Federal statutes almost wholly ineffective to protect the negro, in view of the construction of the Amendments adopted by the Court,

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

> the lack of adequate legislation in the Southern States, and the extremely limited number of rights which the Court deemed inherent in a citizen of the United States, *as such*, under the Constitution."[16]

Professor Foner describes *Cruikshank* as "devastating," noting that it "rendered national prosecution of crimes committed against blacks virtually impossible, and gave a green light to acts of terror where local officials either could not or would not enforce the law."[17] Professor William Gillette likewise notes that *Reese* "made future enforcement [of voting rights] vastly more difficult, and in some cases clearly impossible."[18] And another history notes that the two decisions "limited the likelihood of intervention to prevent systematic abuses," and that "[i]n combination with the withdrawal of troops . . . this bar to oversight empowered mass intimidations and manipulations at the polls."[19] In short, the Court's failure to protect African-American voting rights played a significant role in the retrenchment that followed the end of Reconstruction.

The advances in minority political participation in the United States over the last four decades are undoubtedly more solid than the gains that were made in the post-Civil War era. But the history of the post-

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[16] 2 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 604 (1922).

[17] FONER, *supra*, at 530–31.

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

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

Reconstruction period serves as a warning that the clock of progress can be turned back if the political and judicial branches of government fail to exercise sufficient vigilance to protect minority voting rights. The comments of another prominent historian, Professor C. Vann Woodward, at the hearings on the 1982 reauthorization of the Voting Rights Act are pertinent in this regard. Asked why the history of Reconstruction is relevant, Professor Woodward replied:

> "[I]t makes evident and clear that revolutions and advances in popular rights and democratic rights can be reversed; that history can move backward; that enormous gains can be lost and jeopardized, eroded, or diluted, and abridged in spite of the enormous cost that those advances have made.
>
> "The first reconstruction cost us our greatest bloodshed and tragedy. It would seem that if anything has been paid for at a higher price, it was these advances. And yet, they were eroded and lost, and only a century later they were restored.
>
> "My history teaches me that if it can happen once, it can happen again."[20]

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

B. Recent Court Decisions Show That Without the Protection of § 5 Many Covered Jurisdictions Would Adopt Practices That Abridge Minority Voting Rights.

Professor Woodward's warning that history can repeat itself is as valid today as it was in 1982. Section 5 continues to play a critical role both in encouraging states to safeguard the interests of minority voters and in preventing discriminatory laws from ever taking effect. If § 5 were not in place, there is a substantial risk that many covered jurisdictions would implement discriminatory practices that would erode the gains that minority voters have made since 1965.

Recent court decisions in preclearance cases show that covered jurisdictions continue to engage in both "first generation" type discriminatory tactics—imposing direct barriers on registration and the right to vote—and "second generation" tactics—limiting the ability of minority voters to elect their preferred candidates.[21] In the former category, Texas enacted a new law in 2011 requiring voters to show photo identification in order to cast a ballot. While several states have enacted photo ID laws in recent years, and the Court has upheld the constitutionality of an Indiana photo ID law, *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Texas law

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[21] The term "second generation" is a misnomer. As the Court of Appeals noted, these tactics are "in fact decades-old forms of gamesmanship." Pet. App. 28a. As noted above (*supra* n.12), these types of dilutive mechanisms were among the first discriminatory practices to be adopted after Reconstruction. Such tactics are just as pernicious as direct barriers because they prevent minority voters from having an equal and fair opportunity to participate in the political process.

was extraordinarily onerous. The three-judge court reviewing the Texas statute noted that it was "far stricter" than either the Indiana law at issue in *Crawford* or a Georgia law that was precleared by the Justice Department. *Texas v. Holder*, No. 12-cv-128, 2012 U.S. Dist LEXIS 127119, at *47 (D.D.C. Aug. 30, 2012). First, while the Georgia and Indiana laws generally permitted voters to use expired IDs, the Texas law would have prohibited voters from using any ID that had expired more than 60 days previously. *Id.* at *47. Second, while the Texas law would have ostensibly allowed voters to obtain a free photo ID at a local office of the Texas Department of Public Safety ("DPS"), the burdens involved in obtaining a free ID would have been much heavier than in Indiana or Georgia. To obtain a photo ID, a voter would have been required to present one of a limited number of government issued documents, the cheapest of which (a certified birth certificate) cost $22—significantly more than the comparable cost in Indiana. *Id.* at *47–48. Moreover, 81 of Texas's 254 counties had no DPS office, and 34 additional counties had offices that were open two days a week or less. *Id.* at *15–16, *48–49. In some towns with large Hispanic or African-American populations, the nearest DPS office is 100 to 125 miles away. *Id.* at *81–82. And unlike the Indiana law, the Texas law did not enable indigent persons without valid photo ID to cast provisional ballots. *Id.* at *97.

Examining these features, the court concluded that Texas had "enacted a voter ID law that—at least to our knowledge—is the most stringent in the country." *Id.* at *96. It held that the law would weigh heavily on Texas's poorest residents, and that because the undisputed evidence showed that racial

minorities were disproportionately likely to live in poverty, the law would likely have a discriminatory effect. *Id.* at *43. The court explained:

> "Based on the record evidence before us, it is virtually certain that these burdens will disproportionately affect racial minorities. Simply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote in the next election. This is retrogression." *Id. at* *86.

Because the court resolved the case based on the Texas law's discriminatory effect, it did not reach the discriminatory purpose prong of § 5. *Id.* at *95. But it noted that the legislature had "[i]gnor[ed] warnings that [the bill], as written would disenfranchise minorities" and tabled or defeated amendments that would have ameliorated these problems. *Id.* at *96–97.

Florida (which has five covered counties) provides another example of an effort to limit access to the ballot. In 2011, Florida enacted a law that would have decreased the number of early voting days (from 12 to 8) and offered election officials the discretion to reduce the number of daily hours available for early voting (from 12 to 6). *Florida v. United States*, No. 11-1428, 2012 U.S. Dist LEXIS 115647, at *5, *24–28 (D.D.C. Aug. 16, 2012). A three-judge court denied Florida's preclearance request, finding that "minority voters will be disproportionately affected by the changes in early voting procedures because they disproportionately use early in-person voting." *Id*. at *6. The court further found that if early voting were limited to six hours per day, as permitted by

the new law, "it is likely that early voting would start after the workday starts and would end before the workday ends, making it even more inaccessible to many minority voters who have inflexible work schedules." *Id.* at *91. It explained that "[t]his dramatic reduction in a form of voting disproportionately used by African-Americans would be analogous to . . . closing polling places in disproportionately African-American precincts" and would impose a burden that would dissuade African Americans from voting *Id.* at *91–92.

In the Texas and Florida cases, § 5 was used to block changes that could have limited minority voters' access to the ballot. But § 5 also plays an important role in shaping legislation so as to reduce discriminatory impact. For example, South Carolina, like Texas, enacted a photo ID law in 2011. *South Carolina v. United States*, No. 12-203, 2012 U.S. Dist LEXIS 146187, at *8–9 (D.D.C. Oct. 10, 2012). The South Carolina law, however, is less restrictive than the Texas law. Most notably, it contains a "reasonable impediment" provision which allows voters with a non-photo voter registration card to vote simply by signing an affidavit stating the reason for not having obtained a photo ID. *Id.* at *11–12. During the course of the preclearance litigation, State officials provided authoritative interpretations that this provision would be interpreted expansively so that only the veracity, not the reasonableness, of the voter's stated reasons would be subject to challenge. *Id.* at *15–21.

Relying on these interpretations, the court found that the law was not discriminatory in purpose or effect and granted preclearance. *Id.* at *55. It also concluded, however, that without the reasonable impediment provision the law might have a discrimina-

tory impact on African-American voters, who disproportionately lack the required forms of photo ID. *Id.* at *59–60. Because the court concluded that it would not be possible to implement the law in the time remaining before the 2012 election, it blocked enforcement of the law in 2012, explaining that "there is too much of a risk to African-American voters for us to roll the dice in such a fashion." *Id.* at *60. It further noted that if State officials were to narrow their interpretation of the law in the future, that change would require preclearance. *Id.* at *65–66.

Two judges noted in a concurring opinion that § 5 played a critical role in persuading the legislature to adopt the reasonable impediment provision and encouraging state officials to construe it broadly:

> "[O]ne cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive. Several legislators have commented that they were seeking to structure a law that could be precleared. . . . The key ameliorative provisions were added during that legislative process and were shaped by the need for pre-clearance. And the evolving interpretation of these key provisions of Act R54, particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials' efforts to satisfy the requirements of the Voting Rights Act." *Id.* at *70-71 (Bates, J., concurring).

Another Texas case provides an egregious illustration of dilutive tactics designed to prevent minority voters from electing their preferred candidates. In

Texas v. United States, No. 11-1303, 2012 U.S. Dist. LEXIS 121685 (D.D.C. Aug. 28, 2012), the court declined to preclear Texas's redistricting plans for Congress, the State Senate, and the State House of Representatives. The court did not rely only on § 5's discriminatory effects prong, but also expressly found that some of the plans were enacted with discriminatory purpose.

The court held that the Congressional plan would have a retrogressive effect and that it was enacted with discriminatory purpose. *Id.* at *53, *76–77. It noted that "substantial surgery" had been conducted to remove the district offices of incumbent minority representatives from their new districts while no such surgery was performed on the districts of Anglo incumbents, that the "economic guts" of districts represented by minorities had also been removed, and that Texas had not offered a convincing explanation for these actions. *Id.* at *74–77. It also found that African-American and Hispanic members had been excluded from the process of drafting the new maps and that that there were procedural and substantive departures from the normal decision-making process. *Id.* at *77–79. It further noted Texas's "history of failures to comply with the VRA" in prior redistricting. *Id.* at *77.

With respect to the State Senate plan, the court concluded that the state had deliberately "cracked" an existing district by dividing politically cohesive and geographically concentrated African-American and Hispanic communities among three separate districts—again with no credible explanation for such action. *Id.* at *84–94. Finally, the court found that the State House plan would abridge minority voting rights in at least four districts. *Id.* at *94. Although

the court did not reach the issue of discriminatory intent with respect to the House plan, it cited troubling evidence that mapmakers had specifically sought to manipulate the Hispanic vote and to "crack" districts along racial lines to dilute minority voting power. *Id.* at *129–30.

These decisions demonstrate that notwithstanding the many years that have elapsed since the Voting Rights Act was first enacted, covered jurisdictions continue to engage in practices that have the effect—and in some cases the purpose—of denying minority voters access to the ballot and an equal chance to elect their preferred candidates. During the 2012 election cycle, § 5 was instrumental in blocking discriminatory voting changes in covered jurisdictions from taking effect and persuading state officials to adopt ameliorative measures to reduce discriminatory impact. Without the safeguards provided by § 5, it is likely that these discriminatory changes (and potentially others) would be implemented, and the progress made in the covered jurisdictions since 1965 would begin to erode, just as it did in the post-Reconstruction era. As history shows, the clock of progress has been turned back before, and this Court should not let it happen again.

II. Congress's Decision To Reauthorize § 5 and To Retain the Existing Coverage Formula Are Amply Supported by the Legislative Record and Are Entitled to Deference.

In reauthorizing § 5, Congress concluded that, despite significant progress toward achieving political equality for minority voters in the covered jurisdictions, "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination fol-

lowing nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." Pub. L. No. 109-246, § 2(b)(7), 120 Stat. 577 (2006). It further found that, without continuation of § 5, minority voters "will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." *Id.* § 2(b)(9).

Congress amassed a substantial legislative record to support these conclusions. Shelby County now asks the Court to reexamine that record and draw its own conclusions about whether voting discrimination still exists in the covered jurisdictions and whether the coverage formula remains reasonable. This argument fundamentally misapprehends the role of this Court in reviewing Congressional determinations.

Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180 (1997) illustrates the level of deference that is appropriate in this case.[22] In *Turner*, the Court affirmed the constitutionality of the "must-carry" provisions of the Cable Television Consumer Protection and Competition Act against a First Amendment challenge. The Court explained:

> "In reviewing the constitutionality of a statute, courts must accord substantial deference to the predictive judgments of Congress. Our sole obligation is to assure that, in formulating its judgments, Congress has drawn reasonable infer-

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[22] The Court of Appeals repeatedly cited *Turner*. *See* Pet. App. 21a, 35a, 44a, 47a.

> ences based on substantial evidence. . . . [S]ubstantiality is to be measured in this context by a standard more deferential than we accord to judgments of an administrative agency. We owe Congress' findings deference in part because the institution is far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions. . . . This is not the sum of the matter, however. We owe Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power. Even in the realm of First Amendment questions where Congress must base its conclusions upon substantial evidence, deference must be accorded to its findings as to the harm to be avoided and to the remedial measures adopted for that end, lest we infringe on traditional legislative authority to make predictive judgments when enacting nationwide regulatory policy." *Id.* at 195–96 (citations and internal quotation marks omitted).

The Court emphasized that "[t]he Constitution gives to Congress the role of weighing conflicting evidence in the legislative process," *id.* at 199, and that the Court is not to "reweigh the evidence *de novo*, or to replace Congress' factual predictions with [its] own." *Id.* at 211 (citation and internal quotation marks omitted).[23]

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[23] *See also City of Boerne v. Flores*, 521 U.S. 507, 531 (1997) ("Judicial deference, in most cases, is based not on the state of the legislative record Congress compiles but 'on due regard for the decision of the body constitutionally appointed to decide.'" (quoting *Oregon v. Mitchell*, 400 U.S. 112, 207 (1970) (opinion of Harlan, J.)).

This case, like *Turner,* involves a constitutional challenge to a statutory scheme that is based on specific Congressional findings. Congress undertook an extensive effort to collect evidence and solicit the views of potentially affected parties (including both supporters and critics of § 5). Before the bill was introduced, the House held ten oversight hearings, at which it heard testimony from 39 witnesses, including "State and local elected officials, scholars, attorneys, and other representatives from the voting and civil rights community," as well as receiving written testimony from the Department of Justice, governmental and non-governmental organizations and private citizens. H.R. REP. NO. 109-478, at 5 (2006). It then held two additional legislative hearings and received oral and written testimony from another seven witnesses. *Id.* The Senate held another ten hearings on the bill, and heard testimony from some 40 witnesses. S. REP. NO. 109-295, at 2 (2006). The views that Shelby County expresses here—that § 5 is no longer needed and that the coverage formula should be changed—were heard and considered in the legislative process. But when Congress ultimately weighed the evidence, it did not agree. It found that voting discrimination continues in the covered jurisdictions and that the coverage formula remains appropriate. There is an ample legislative record to support these conclusions. Under *Turner*, the Court should defer to Congress's judgment.

It is also significant that the decision to reauthorize § 5 and retain the coverage formula received overwhelming bipartisan support in both houses of Congress—including broad support from the elected representatives of covered jurisdictions. The House of Representatives passed the 2006 Act by a vote of

390–33, while the Senate vote was unanimous, 98–0.[24] The Act was then signed into law by President George W. Bush—himself the former governor of a covered state. Members of Congress are elected representatives who are intimately familiar with voting patterns and electoral practices in the states and districts they represent. As such, they are uniquely qualified to make decisions about the extent of ongoing voting discrimination. Their judgments as to the continued need for § 5 and the proper coverage formula should be accorded the highest deference.

A. Congress Reasonably Concluded on an Extensive Record That Discriminatory Voting Practices Still Continue in the Covered Jurisdictions.

While Shelby County argues that Congress did not build a record to support its conclusion that § 5 is still needed in the covered jurisdictions, Congress in fact made specific findings regarding the continued need for § 5 based on an extensive legislative record. Congress's conclusion that voting discrimination continues to be a serious problem in covered jurisdictions is reasonable and entitled to deference.

1. Congress found that "continued evidence of racially polarized voting in each of the jurisdictions covered by [§ 5] demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965." Pub. L. No. 109-246, § 2(b)(3). The

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[24] 152 CONG. REC. 14,303 (2006) (House vote); 152 CONG. REC. 15,325 (2006) (Senate vote). Shelby County's representative in the House, Rep. Bachus, voted for the reauthorization, as did both Alabama senators, Sen. Shelby and Sen. Sessions.

House Report cited and relied on numerous court decisions finding legally significant racially polarized voting in several covered jurisdictions. H.R. REP. NO. 109-478, at 35. Shelby County does not dispute the continued presence of racially polarized voting. Instead, it argues (Pet. Br. at 31) that racially polarized voting is not important because it is not government discrimination.

Congress, however, reasonably concluded that racially polarized voting was an important indication of the continued need for § 5. While racially polarized voting is not itself unlawful, the House Report explained that "[t]he ***potential*** for discrimination in environments characterized by racially polarized voting is great." H.R. REP. NO. 109-478, at 35 (emphasis added). When voting is polarized along racial lines, it facilitates the use of discriminatory electoral practices by the majority to limit the minority's voting power and political influence. Absent racially polarized voting, there is much less likelihood of discrimination. Thus Congress reasonably placed great weight on evidence that voting in the covered jurisdictions continues to be polarized along racial lines.

2. Congress also found that "the hundreds of objections interposed [and] requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by [§ 5]" evidenced continued discrimination. Pub. L. No. 109-246, § 2(b)(4)(A). The House Report noted that more objections were lodged between 1982 and 2004 than between 1965 and 1982 and that these objections "did not encompass minor inadvertent changes." H.R. REP. NO. 109-478, at 21. It found that the voting changes devised by covered jurisdictions resembled the methods used in earlier years, including, "enact-

ing discriminatory redistricting plans; switching offices from elected to appointed positions; relocating polling places; enacting discriminatory annexations and deannexations; setting numbered posts; and changing elections from single member districts to at-large voting and implementing majority vote requirements." *Id.* at 36. It cited numerous examples, including several from the post-2000 redistricting cycle. *Id.* at 36–40. And it found that these proposed changes were "calculated decisions to keep minority voters from fully participating in the political process," showing that "attempts to discriminate persist and evolve, such that Section 5 is still needed to protect minority voters in the future." *Id.* at 21.[25] Shelby County largely ignores this evidence, instead arguing that the number of objections is small and the rate is declining. Pet. Br. at 29-30. But Congress reasonably looked at both the number of objections and the nature of the practices that were objected to, which supported its conclusion that § 5 was still necessary.

3. Congress also found that in addition to formal objections, requests by the Department of Justice for more information ("MIRs") had "affected more than 800 additional voting changes that were submitted for preclearance, compelling covered jurisdictions to either alter the proposal or withdraw it from consideration altogether." H.R. REP. NO. 109-478, at 40–41. Shelby County argues that this evidence is not important because an MIR does not show a constitutional violation. Pet. Br. at 30. But regardless of

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

whether particular changes would have violated the Constitution, Congress could reasonably conclude that the fact that jurisdictions were withdrawing or modifying changes in response to inquiries from the Department of Justice showed that § 5 was continuing to play an important role in preventing jurisdictions from trying to implement potentially discriminatory changes in the first place.

4. Congress also looked at actions for judicial preclearance and found that "the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia" evidenced continuing discrimination. Pub. L. No. 109-246, § 2(b)(4)(B). As the Court of Appeals noted, the evidence before Congress showed that plaintiffs either withdrew their proposed changes or lost on the merits in 25 declaratory judgment actions filed between 1982 and 2004, compared to 17 between 1966 and 1982. Shelby County ignores this evidence.

5. Congress also found that actions undertaken by the Department of Justice since 1982 to block enforcement of changes that had not been precleared evidenced continued discrimination. It noted that these enforcement actions had "prevented election practices, such as annexation, at-large voting, and the use of multi-member districts, from being enacted to dilute minority voting strength." Pub. L. No. 109-246, § 2(b)(4)(A). The House Report cites numerous examples. H.R. REP. NO. 109-478, at 41–44. Shelby County argues that § 5 enforcement actions are not important because they only show that changes were not properly submitted for preclearance and that some of these changes may have been nondiscriminatory. Pet. Br. at 30 n.6. But the examples cited by Congress involve practices that are potentially

highly discriminatory and could have had a severe impact on minority voting rights.

In sum, Congress had an ample factual record to support its conclusion that § 5 is still needed in the covered jurisdictions. Even if the evidence could be read to support a different conclusion, the role of this Court is not to reweigh the evidence *de novo* but simply to determine whether Congress has drawn reasonable inferences based on substantial evidence. Congress's conclusion that § 5 is necessary was reasonably based on a careful consideration of the record, and the Court should defer to that judgment.

B. Congress's Decision To Retain the Existing Coverage Formula Was Reasonable.

In *Northwest Austin*, this Court expressed concern that § 5 "differentiates between the States, despite our historic tradition that all states enjoy equal sovereignty," and questioned whether "the evil that § 5 is meant to address" is still "concentrated in the jurisdictions singled out for preclearance." *Nw. Austin*, 557 U.S. at 203. Picking up on this theme, Shelby County argues that the coverage formula is no longer rational. But the legislative record shows that Congress reasonably concluded that voting discrimination was still concentrated in the jurisdictions subject to § 5 and that the existing coverage formula therefore remained appropriate. That conclusion is also entitled to deference.

1. Congress heard evidence that discriminatory practices are more common in covered jurisdictions than in non-covered jurisdictions. The most significant evidence is the study by Professor Ellen Katz

which was presented to the House.[26] Professor Katz compared published § 2 decisions and concluded that of the 114 successful plaintiff outcomes, 64 originated in covered jurisdictions, even though these jurisdictions account for less than a quarter of the U.S population. She further found that § 2 plaintiffs from covered jurisdictions were more likely to prevail on discrimination claims than plaintiffs from non-covered jurisdictions; while 30% of lawsuits from non-covered jurisdictions produced a favorable result for the plaintiffs, the comparable figure from covered jurisdictions was 40.5%.[27] The House Report cited and relied on Professor Katz's findings as evidence that discrimination was more severe in the covered jurisdictions than in non-covered jurisdictions. H.R. REP. NO. 109-478, at 53.

Shelby County does not dispute the significance of the Katz study. Rather, it argues that Congress drew the wrong conclusions from the study, and offers an alternative analysis of the data. Pet. Br. at 47–48. But it is not the role of this Court to reweigh the evidence that was before Congress. Congress examined the data and drew reasonable conclusions, and its judgment should not be second-guessed.

2. Congress did not reflexively reenact all provisions of the Voting Rights Act. It carefully considered the need for each provision and made adjustments

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[26] *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 109th Cong. 964–1124 (2006).

[27] *Id.* at 974.

where it considered them necessary.[28] For example, Congress determined that the provisions relating to the appointment of federal examiners to monitor voting registration were outdated and repealed those provisions. Pub. L. No. 109-246, § 3(c); H.R. REP. NO. 109-478 at 61–62.

Congress also gave careful consideration to whether changes should be made to the coverage formula. Rep. Norwood offered an amendment on the House floor that would have altered the formula so that coverage would be determined by voting and registration rates in the three most recent presidential elections.[29] In response, the Chairman of the House Judiciary Committee, Rep. Sensenbrenner, stated that the amendment would "gut[] the Voting Rights Act" by "radically altering the coverage formula of the Voting Rights Act in a way that severs its connection to jurisdictions with proven discriminatory histories."[30] He explained:

> "The existing formula triggering coverage under the Voting Rights Act is not at all outdated in any meaningful sense of the term, and States covered are not unfairly punished under the coverage formula. Sixteen States are covered in whole or in part under the temporary provisions

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[28] *See* H.R. REP. NO. 109-478 at 61 ("[T]he Committee recognizes that the electoral environment has evolved since 1965. . . . Recognizing these realities, the Committee amended and eliminated certain provisions to ensure that the VRA remains a relevant and effective remedy to the continued problems of discrimination in the 21st century.").

[29] 152 CONG. REC. 14,273-74 (2006).

[30] *Id.* at 14,274.

> of the Voting Rights Act. The formula does not limit coverage to a particular region, but encompasses those States and jurisdictions where less than 50 percent of the citizens of voting age population registered or turned out to vote in 1964, 1968 or 1972.
>
> "But coverage is not, and I repeat 'not' predicated on these statistics alone. States are not covered unless they applied discriminatory voting tests. And it was this aspect of the formula that brought these jurisdictions with the most serious histories of discrimination under Federal scrutiny."[31]

Following debate, the Norwood amendment was soundly defeated, 318–96.[32] Thus the legislative record shows that Congress made a considered decision that the existing coverage formula remained appropriate.

3. Congress was aware of criticisms that the existing formula is both underinclusive and overinclusive. But this problem is inherent in *any* coverage formula that could possibly be devised (including the alternative proposed by Rep. Norwood). The approach taken by Congress was to continue to target the jurisdictions where discrimination has historically been most severe and where the evidence showed that there was still a strong potential for discrimination. To the extent that changes in coverage may be appropriate, Congress addressed this issue through the statute's "bailout" and "bail-in" procedures. Bail-

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[31] *Id*. at 14,275.

[32] *Id.* at 14,301.

in allows federal courts to subject particular jurisdictions to preclearance upon finding a Fourteenth or Fifteenth Amendment violation. *See* 42 U.S.C. § 1973a(c).[33] Bailout, as amended by Congress in 1982, allows individual covered jurisdictions to obtain a declaratory judgment removing them from § 5 coverage if they can demonstrate a "clean" record for a period of 10 years *Id.* § 1973b(a).

Congress placed particular emphasis on the availability of bailout. The House Report noted that 11 counties had bailed out since the procedure was liberalized in 1982, and commented:

> "The Committee was encouraged that the bailout requirements have been utilized by some jurisdictions, and believes that the success of those jurisdictions illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so." H.R. REP. NO. 109-478 at 25.[34]

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[33] The Court of Appeals noted that Arkansas and New Mexico have been subjected to bail-in procedures, as have cities or counties in California, Florida, Nebraska, New Mexico, South Dakota and Tennessee. Pet. App. 61a-62a. *See Jeffers v. Clinton*, 740 F. Supp. 585, 626-27 (E.D. Ark, 1990) (imposing partial preclearance on Arkansas); Travis Crum, Note, *The Voting Rights Act's Secret Weapon: Pocket Trigger Litigation and Dynamic Preclearance*, 119 YALE L.J. 1992, 2010 & nn.100–08 (2010) (collecting cases).

[34] *See also* H.R. REP. NO. 109-478 at 58 ("The Committee reiterates that termination of covered status has been and continues to be within the reach of compliant covered jurisdictions and

In short, Congress expected that jurisdictions with a clean record could and would avail themselves of bailout.

4. While it is true that § 5 differentiates between states, our Constitutional system has built-in safeguards that protect the states against discrimination by the federal government—most notably, the participation of state representatives in the Legislative Branch. In the Senate, where states are represented as distinct political entities and each state has an equal vote, the vote to approve the 2006 extension was unanimous, 98–0. While there was limited opposition in the House, the reauthorization nonetheless passed with overwhelming bipartisan support, 390–33. There was not a single state, covered or uncovered, in which a majority of the House delegation voted against reauthorization.

III. The Coverage of § 5 Will Likely Be Reduced Over Time Through the Application of the Bailout Mechanism.

Shelby County urges the Court to invalidate § 5 in its entirety. This would be a drastic action that would remove a vital tool for combatting discrimination from *all* covered jurisdictions, including those that have continued to engage in discriminatory practices or where there is a significant risk of backsliding. Rather than taking such a radical step, the Court should allow decisions about whether coverage should be maintained in individual jurisdictions to be made on a case-by-case basis through the bailout

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hopes that more covered States and political subdivisions will take advantage of the process.").

process, as Congress intended and as this Court did in *Northwest Austin*.

The bailout process is working just as Congress intended. Prior to 1982 only five bailout applications were granted. From 1982 through 2006 an additional 17 applications were granted. Since 2006 the rate of bailouts has increased substantially (no doubt due in part to the Court's decision in *Northwest Austin*). A total of 25 bailout applications have been granted since 2006, including applications from covered jurisdictions in Alabama, California, Georgia, North Carolina, Texas and Virginia.[35] These figures understate the impact of the bailout process because one application often covers many different political subdivisions. Of the 236 jurisdictions that have bailed out so far, 145 have occurred since 2006.[36]

Obtaining a bailout is not a difficult or expensive proposition for a jurisdiction that has maintained a clean record. The standards for bailout are well defined, and Congress heard evidence that "[f]or the vast majority of jurisdictions, the process is relatively straightforward and easy" and the criteria are "easily proven for jurisdictions that do not discriminate in their voting practices."[37] Since the procedure

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[35] In addition, an application by New Hampshire on behalf of itself and the 10 covered towns within the State is currently awaiting court approval. *See New Hampshire v. Holder*, No. 12-cv-1854 (D.D.C.).

[36] The figures in this paragraph are derived from the information on the Department of Justice website. *See* http://www.justice.gov/crt/about/vot/misc/sec_4.php (last visited Jan. 31, 2013).

[37] *Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act: Hearing*

was liberalized in 1982, no bailout application has ever been denied.[38] In short, there is every reason to expect that the number of successful bailout applications will continue to climb as the covered jurisdictions continue to make progress toward eliminating voting discrimination. This process will naturally reduce the coverage of § 5 over time. The Court should allow this process to proceed in the manner that Congress intended.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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[38] J. Gerald Hebert, *An Assessment of the Bailout Provisions of The Voting Rights Act*, *in* VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER 257, 268 (Ana Henderson ed. 2007).

APPENDIX A

The Leadership Conference on Civil and Human Rights Participating Member Organizations*

(Bold names denote Executive Committee member organizations)

A. Philip Randolph Institute

AARP

Advancement Project

African Methodist Episcopal Church

Alaska Federation of Natives

Alliance for Retired Americans

Alpha Kappa Alpha Sorority, Inc.

Alpha Phi Alpha Fraternity, Inc.

American-Arab Anti-Discrimination Committee

American Association for Affirmative Action

American Association of People with Disabilities

AAUW

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

American Civil Liberties Union

American Council of the Blind

American Ethical Union

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* Some member organizations are filing separate *amicus* briefs.

American Federation of Government Employees

American Federation of Labor-Congress of Industrial Organizations

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

American Federation of Teachers, AFL-CIO

American Friends Service Committee

American Islamic Congress (AIC)

American Jewish Committee

American Nurses Association

American Society for Public Administration

American Speech-Language-Hearing Association

Americans for Democratic Action

Amnesty International USA

Anti-Defamation League

Appleseed

Asian American Justice Center

Asian Pacific American Labor Alliance

Association for Education and Rehabilitation of the Blind and Visually Impaired

B'nai B'rith International

Brennan Center for Justice at New York University School of Law

Building & Construction Trades Department, AFL-CIO

Center for Community Change

Center for Responsible Lending

Center for Women Policy Studies

Children's Defense Fund

Church of the Brethren-World Ministries Commission

Church Women United

Coalition of Black Trade Unionists

Common Cause

Communications Workers of America

Community Action Partnership

Community Transportation Association of America

Compassion & Choices

DC Vote

Delta Sigma Theta Sorority

DEMOS: A Network for Ideas & Action

Disability Rights Education and Defense Fund

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

Epilepsy Foundation of America

Episcopal Church-Public Affairs Office

Equal Justice Society

Evangelical Lutheran Church in America

FairVote: The Center for Voting and Democracy

Families USA

Federally Employed Women

Feminist Majority

Friends Committee on National Legislation

Gay, Lesbian and Straight Education Network (GLSEN)

General Board of Church & Society of the United Methodist Church

Global Rights: Partners for Justice

GMP International Union

Hip Hop Caucus

Human Rights Campaign

Human Rights First

Immigration Equality

Improved Benevolent & Protective Order of Elks of the World

International Association of Machinists and Aerospace Workers

International Association of Official Human Rights Agencies

International Brotherhood of Teamsters

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Iota Phi Lambda Sorority, Inc.

Japanese American Citizens League

Jewish Council for Public Affairs

Jewish Labor Committee

Jewish Women International

Judge David L. Bazelon Center for Mental Health Law

Kappa Alpha Psi Fraternity

Labor Council for Latin American Advancement

Laborers' International Union of North America

Lambda Legal

LatinoJustice PRLDEF

Lawyers' Committee for Civil Rights Under Law

League of United Latin American Citizens

League of Women Voters of the United States

Legal Aid Society – Employment Law Center

Legal Momentum

Mashantucket Pequot Tribal Nation

Matthew Shepard Foundation

Mexican American Legal Defense and Educational Fund

Na'Amat USA

NAACP

NAACP Legal Defense and Educational Fund, Inc.

NALEO Educational Fund

National Alliance of Postal & Federal Employees

National Association for Equal Opportunity in Higher Education

National Association of Colored Women's Clubs, Inc.

National Association of Community Health Centers

National Association of Consumer Advocates (NACA)

National Association of Human Rights Workers

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

National Association of Neighborhoods

National Association of Social Workers

9 to 5 National Association of Working Women

National Bar Association

National Black Caucus of State Legislators

National Black Justice Coalition

National CAPACD – National Coalition For Asian Pacific American Community Development

National Center for Transgender Equality

National Center on Time & Learning

National Coalition for the Homeless

National Coalition on Black Civic Participation

National Coalition to Abolish the Death Penalty

National Committee on Pay Equity

National Community Reinvestment Coalition

National Conference of Black Mayors, Inc.

National Congress for Puerto Rican Rights

National Congress of American Indians

National Consumer Law Center

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

National Council of Jewish Women

National Council of La Raza

National Council of Negro Women

National Council on Independent Living

National Disability Rights Network

National Education Association

National Employment Lawyers Association

National Fair Housing Alliance

National Farmers Union

National Federation of Filipino American Associations

National Gay & Lesbian Task Force

National Health Law Program

National Hispanic Media Coalition

National Immigration Forum

National Immigration Law Center

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

National Latina Institute for Reproductive Health

National Lawyers Guild

National Legal Aid & Defender Association

National Low Income Housing Coalition

National Organization for Women

National Partnership for Women & Families

National Senior Citizens Law Center

National Sorority of Phi Delta Kappa, Inc.

National Urban League

National Women's Law Center

National Women's Political Caucus

Native American Rights Fund

Newspaper Guild

OCA (formerly known as Organization of Chinese Americans)

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

Omega Psi Phi Fraternity, Inc.

Open Society Policy Center

ORT America

OutServe-SLDN

Paralyzed Veterans of America

Parents, Families, Friends of Lesbians and Gays

People for the American Way

Phi Beta Sigma Fraternity, Inc.

Planned Parenthood Federation of America, Inc.

PolicyLink

Poverty & Race Research Action Council (PRRAC)

Presbyterian Church (USA)

Pride at Work

Progressive National Baptist Convention

Project Vote

Public Advocates

Religious Action Center of Reform Judaism

Retail Wholesale & Department Store Union, AFL-CIO

SAALT (South Asian Americans Leading Together)

Secular Coalition for America

Service Employees International Union

Sierra Club

Sigma Gamma Rho Sorority, Inc.

Sikh American Legal Defense and Education Fund

Sikh Coalition

Southeast Asia Resource Action Center (SEARAC)

Southern Christian Leadership Conference

Southern Poverty Law Center

Teach For America

The Association of Junior Leagues International, Inc

The Association of University Centers on Disabilities

The National Conference for Community and Justice

The National PTA

TransAfrica Forum

Union for Reform Judaism

Unitarian Universalist Association

UNITE HERE!

United Brotherhood of Carpenters and Joiners of America

United Church of Christ-Justice and Witness Ministries

United Farm Workers of America (UFW)

United Food and Commercial Workers International Union

United Mine Workers of America

United States International Council on Disabilities
United States Students Association
United Steelworkers of America
United Synagogue of Conservative Judaism
Women of Reform Judaism
Workers Defense League
Workmen's Circle
YMCA of the USA, National Board
YWCA USA
Zeta Phi Beta Sorority, Inc.

APPENDIX B

Additional Signatories

In addition to The Leadership Conference and The Education Fund, the following organizations are signatories to this Brief:

American-Arab Anti-Discrimination Committee

The American-Arab Anti-Discrimination Committee ("ADC") is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. ADC is the largest Arab-American grassroots civil rights organization in the United States. ADC is at the forefront in addressing discrimination and bias against Arab Americans. Through its Legal Department, ADC offers counseling in cases of discrimination and defamation, and provides assistance in selected litigation. ADC strongly urges the Court to find Section 5 of the Voting Rights Act constitutional. It is apparent that Section 5 provides the necessary safeguards to prevent discrimination. States with high concentrations of Arab Americans have encountered racial polarization, which in turn affects the community's ability to vote and feelings of comfort when voting. ADC has been, and continues to be, a significant force in securing justice for members of this community.

AARP

AARP is a nonpartisan, nonprofit organization with a membership. AARP strives to enable people age 50+ to secure independence, choice and control in ways beneficial and affordable to them and to society as a whole. In a variety of ways, including legal ad-

vocacy as an amicus curiae, AARP supports the fundamental right to vote. To that end, AARP advocates for interpretation and enforcement of federal and state laws so as to encourage robust political engagement, including voting by all persons eligible to do so. AARP strongly favors removal of unfair and unnecessary impediments to electoral participation, including measures that diminish the voting rights of minority citizens.

Anti-Defamation League

The Anti-Defamation League ("ADL") was founded in 1913—at a time when anti-Semitism was rampant in the United States—to advance good will and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States. ADL is vitally interested in protecting the civil rights of all persons, whether they are members of the minority or the majority, and in ensuring that each individual receives equal treatment under the law regardless of race, ethnicity, or religion. ADL recognizes the Voting Rights Act of 1965 as one of the most important and most effective pieces of civil rights legislation ever passed.

Advancement Project

Advancement Project ("AP"), is a nonpartisan, not for profit, national racial justice organization. In partnership with local communities, AP engages in legal advocacy to achieve universal opportunity and a just democracy. AP has a voter protection program that focuses on litigation, policy, coalition-building, and voter education and community empowerment strategies. In 2012, AP utilized Section 5 to protect

against retrogression of voting rights for African American and Latino communities in Florida and Texas. The continued viability of Section 5 is essential to AP's voter protection work in these and other covered jurisdictions. Thus, the issues in this case are directly related to AP's work to protect the right to vote and ensure that elections are free, fair, and accessible.

American Federation of Labor and Congress of Industrial Organizations

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") is a federation of 56 national and international labor organizations with a total membership of approximately 12.2 million working men and women throughout the Nation, including in every jurisdiction that is covered by Section 5 of the Voting Rights Act. The AFL-CIO represents the interests of working families, many of whom reside in jurisdictions covered by section 5 and are affected by changes to election laws. The AFL-CIO has long been active in legislative efforts and litigation to protect and advance the right to vote and to keep elections fair and free from discrimination. The AFL-CIO has a strong interest in the Court upholding and respecting Congress's legislative decisions in 2006 regarding the reauthorization of the Voting Rights Act.

American Jewish Committee

American Jewish Committee ("AJC") is a national organization of Jewish Americans founded in 1906 committed to, among other concerns, assuring equal protection of law and equal rights of citizenship for

all Americans, including the right to vote. Long before enactment of the 1965 Voting Rights Act, AJC sought effective federal protection of the right to vote.

The Center for American Progress

The Center for American Progress is an independent nonpartisan educational institute dedicated to improving the lives of Americans through progressive ideas and action. Building on the achievements of progressive pioneers such as Teddy Roosevelt and Martin Luther King, the Center's work addresses 21st-century challenges, including combating racial and ethnic discrimination. The issues of this case are directly related to the work of the Center for American Progress work in these areas.

Charles Hamilton Houston Institute for Racial Justice

Established in the fall of 2005 at Harvard Law School, the Charles Hamilton Houston Institute for Race and Justice ("CHHIRJ") seeks to honor the extraordinary contributions of one of the great lawyers of the twentieth century. Charles Hamilton Houston dedicated his life to using the law to address matters of racial discrimination. CHHIRJ is committed to continuing Mr. Houston's legacy through research, instruction, and advocacy. CHHIRJ, through research and litigation, seeks to address various issues of disparity and racial justice. The issue of ensuring the voting rights of minority group members protected under Section 5 of the Voting Rights Act is directly related to the Institute's mission.

Church Women United

Church Women United is a national volunteer Christian ecumenical women's organization that works to prevent discrimination and promotes actions and programs that embody racial, ethnic, and religious diversity and inclusion. The issues in this case are directly related to Church Women United's work in these areas.

Common Cause

Common Cause is a nonpartisan, nonprofit advocacy organization founded in 1970 as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Today, Common Cause is one of the largest nonprofit organizations working for accountability and reform in America. With over 400,000 members and supporters, Common Cause advocates for honest and open government. As part of its core mission, Common Cause works at the state and federal levels to defend the bedrock freedom of our democracy: casting a vote and having it counted, free from discrimination, suppressive tactics and intimidation. Common Cause is a leading partner organization of the national nonpartisan "Election Protection" coalition, which provides nonpartisan information to voters about the election process. Common Cause has a long history of supporting the Voting Rights Act, including its renewal in 2006 and 1982. Common Cause's former chairman emeritus, the late Archibald Cox, defended the constitutionality of the Voting Rights Act before this Court in 1966.

Dēmos

Dēmos is a national public policy center working for an America where we all have an equal say in our democracy and an equal chance in our economy. Removing barriers to political participation and ensuring full representation of America's diverse citizenry are central to Dēmos' mission. Dēmos actively supported Congress' 2006 reauthorization of the protections of Section 5 of the Voting Rights Act and believes those protections remain indispensable to the goal of full and equal access to political participation.

The Fair Elections Legal Network

The Fair Elections Legal Network ("FELN") is a national, nonpartisan advocacy organization whose overall mission is to remove barriers to registration and voting for traditionally underrepresented constituencies and protect their ability to exercise the right to vote. The issues of this case are directly related to FELN's work in these areas.

The Hip Hop Caucus

The Hip Hop Caucus is a national membership organization working to combat discrimination and promote inclusion, particularly on behalf of urban and hip hop communities. The issues of this case are directly related to Hip Hop Caucus' work in these areas; voter suppression laws were the main target of its Respect My Vote! Campaign in which the Caucus aimed to educate urban voters (mostly 18-40) so as to help them exercise their right to vote in spite of suppression efforts. The Hip Hop Caucus uses its high profile platform of hip hop connections and networks to bring attention to issues that affect urban com-

munities, especially where there are injustices. It is honored to join forces with other leading civil rights organizations in a concerted effort to address issues surrounding the voting rights of the underrepresented, namely African Americans.

The Lawyers' Committee for Civil Rights-San Francisco Bay Area

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR-SF") was founded after the assassination of Dr. Martin Luther King, Jr. in 1968 by leading members of the San Francisco Bar. LCCR-SF is a civil rights and legal services organization that advances, protects and promotes the rights of communities of color and immigrants and refugees, with a specific focus on low-income communities and a long-standing commitment to African Americans. Its core programs remain focused on addressing structural racism and ensuring that everyone has equal access to justice. LCCR-SF continues to expand on its legacy as a leader in the development, advocacy, and advancement of voting rights protections, both state and federal, through ongoing contributions to scholarly, litigation and community outreach and education efforts. The issues in this case are directly related to LCCR-SF's work in these areas.

The League of Women Voters

The League of Women Voters of the United States is a nonpartisan, community-based organization that promotes political responsibility by encouraging Americans to participate actively and knowledgeably in government and the electoral process. Founded in

1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 140,000 members and supporters, and is organized in approximately 800 communities and in every state. For more than 90 years, the League has worked to protect every American citizen's right to vote. The League has been a leader in seeking to remove the unnecessary barriers that too many Americans face in registering to vote and casting a ballot, and the League continues to reach out to increase political participation among women, youth, and traditionally underrepresented communities, including racial and ethnic minorities and new citizens. The League has long supported the Voting Rights Act as a fundamental guarantee of the rights of American citizenship.

National Association for Equal Opportunity in Higher Education

The National Association for Equal Opportunity in Higher Education ("NAFEO"), 209 3rd Street, S.E., Washington, D.C., was founded in 1969 as the nonprofit, voluntary, independent association of the 105 historically black colleges and universities ("HBCUs") and other equal educational opportunity institutions in 25 states, the District of Columbia, and Virgin Islands. NAFEO institutions today include 92 Predominantly Black Institutions ("PBIs"). HBCUs and PBIs enroll 500,000 students, have 52,000 faculty and 5 million alumni, most of whose opportunities and successes are as the direct result of the Voting Rights Act. NAFEO was organized to articulate the need for a higher education system where race, income, and previous education are not the determinants of either the quality or quantity of

higher education, and to tear down barriers to the full and unfettered participation of African Americans and other Americans who were historically disenfranchised in the educational, economic and civic life of this nation. NAFEO is not only committed to these goals, but its members are committed in terms of their resources, human and financial, to achieving these goals. NAFEO views the full and fair enforcement under the Voting Rights Act as well as its extension and expansion as essential to the realization of these goals.

The National Association of Social Workers

The National Association of Social Workers ("NASW") is the largest professional membership organization of social workers in the world with nearly 145,000 social workers and 56 chapters. The NASW, Alabama Chapter has 1,148 members. With the purpose of developing and disseminating high standards of practice while strengthening and unifying the social work profession as a whole, NASW promulgates professional standards and criteria, conducts research, publishes studies of interest to the profession, provides continuing education and enforces the NASW Code of Ethics. The National Association of Social Workers recognizes that "those who are young, not white, poor and less educated are disproportionately unlikely to vote . . . [and] that increasing voter participation for these groups . . . is important as those elected will make decisions on policies that affect [the] lives of society's most vulnerable populations" (NASW, Voter Participation in SOCIAL WORK SPEAKS 346, 348 (9th ed., 2012; approved by the NASW Delegate Assembly in August 2011). NASW supports full implementation and enforce-

ment of federal voting rights laws, including the Voting Rights Act of 1965, as amended in 2006. SOCIAL WORK SPEAKS, supra, at 349-350.

National Black Law Students Association

The National Black Law Students Association ("NBLSA") is a membership organization formed in 1968 to promote the educational, professional, political, and social objectives of Black law students. Today, NBLSA is the largest student-run organization in the United States, with nearly 6,000 members, over 200 chapters in our nation's law schools, a growing pre-law division, and six international chapters or affiliates. NBLSA has an interest in this case because one of the purposes of NBLSA is to utilize the collective resources of the member chapters to influence the legal community by bringing about meaningful legal and political change that addresses the needs and concerns of the Black community. In renewing the Voting Rights Act, Congress gathered extensive evidence of a continuing need for prophylactic legislation that ensures that the right to vote is not abridged on account of race. Without section 5, there is a risk that much of the political and social progress made since the passage of the Voting Rights Act would be lost.

National Council of Jewish Women

The National Council of Jewish Women ("NCJW") is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individu-

al rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Election laws, policies, and practices that ensure easy and equitable access to the electoral process and that every vote counts and can be verified." In addition its principles state that "A democratic society and its people must value diversity and promote mutual understanding and respect for all" and "discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, or gender identity must be eliminated." Consistent with its Principles and Resolutions, NCJW joins this brief.

National Education Association

The National Education Association ("NEA") is a nationwide employee organization with more than three million members, the vast majority of whom are employed by public school districts, colleges, and universities. NEA is strongly committed to equal voter access and enfranchisement. To that end, NEA vigorously supports the Voting Rights Act, including its 2006 reauthorization.

National Urban League

The National Urban League, founded in 1910, is an historic national civil rights organization dedicated to economic empowerment, combating discrimination, and promoting inclusion in order to elevate the standard of living in significantly underserved urban communities. The organization and its 98 local affiliates work through program development, public policy, research, advocacy, civic engagement, and provide direct services—including education, employment training and placement, health services, and

housing—that improve the lives of over 2.6 million people. The National Urban League has historically fought for and supported the Voting Rights Act of 1965, including the Congressional decision in 2006 to extend § 5 of the Voting Rights Act for 25 years. Given its history and direct work in local communities, the National Urban League finds that the single issue that arguably stands to have the greatest impact on the future of Black America is the right to vote and have that vote counted. Indeed, more than half a century after the Voting Rights Act of 1965 was passed, protecting the Constitutional right to vote from poll taxes, literacy tests or other barriers, we face today a nationwide strategic campaign to suppress the vote of African Americans. As a 103-year old civil rights and human services organization, the National Urban League remains committed to this fight. Protecting each individual's fundamental right to vote, and the implications of the power of the vote, is inextricably linked to every individual's economic and social wellbeing and essential to preserving the very functioning of our democracy. The issues of this case are therefore especially and directly related to the work of the National Urban League.

Project Vote

Project Vote, Inc. is a national nonpartisan, nonprofit 501(c)(3) based in Washington, DC that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are able to fully participate in American civic life by registering and voting. Since its founding, Project Vote has assisted millions of low-income and minority citizens nationwide with

voter registration, trained hundreds of low-income and minority organizers, and provided nonpartisan voter education on issues of voting rights and election administration.

Public Advocates, Inc.

Public Advocates Inc. is a California-based civil rights law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories. Public Advocates spurs change through collaboration with grassroots groups representing low-income communities, people of color and immigrants, combined with strategic policy reform, media advocacy and litigation. Since its founding in 1971, Public Advocates has engaged in a wide range of cutting edge civil rights issues from school finance, urban development, transportation policy, and climate justice, to language access, employment discrimination, and health services disparities. The issues of this case are directly related to Public Advocates' civil rights mission and work.

Service Employees International Union

Service Employees International Union ("SEIU") is one of the largest unions in North America. It represents over 2.1 million workers in service industries throughout the United States and Canada. Directly and through its affiliated local unions, SEIU activity participates in federal elections and has historically promoted legislation designed to assure full participation in the political process to citizens without regard to race, gender, sexual orientation or other clas-

sifications that should have no bearing on such participation. Because SEIU has many members who reside in jurisdictions currently subject to section 5 of the Voting Rights Act who wish to participate in a fair and open electoral process, SEIU has a substantial interest in the outcome of this litigation.

Southern Poverty Law Center

The Southern Poverty Law Center, founded in 1971 and based in Montgomery, Alabama, has litigated numerous civil rights cases on behalf of minorities, women, prisoners, and other victims of discrimination. The Center also founded and operates Teaching Tolerance, a national program designed to reduce prejudice, improve intergroup relations and support equitable school experiences for our nation's children. Although the Center's legal work is concentrated in the South, its attorneys appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law. The issues of this case are directly related to the Southern Poverty Law Center's purpose and mission.

Union for Reform Judaism
Central Conference of American Rabbis
Women of Reform Judaism

The Union for Reform Judaism has 900 congregations across North America, and these congregations include 1.5 million Reform Jews. The membership of the Central Conference of American Rabbis includes more than 2000 Reform rabbis. The Women of Reform Judaism represents more than 65,000 women in nearly 500 women's groups in North America and

around the world. Discrimination has no place in our society, including at the ballot box. Voting is the foundation of American democracy and the most important tool Americans have to influence our government's policies. We must not allow our nation's commitment to voting rights to be diminished.