

INTRODUCTION TO THE REPORTS

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Recall this series of events: A very closely divided Supreme Court adopted a hostile interpretation of the Voting Rights Act (VRA), which mobilized a coalition of national civil rights interest groups to develop a comprehensive policy response. They decided to press Congress into correcting these perceived judicial “misreadings” of the law by reauthorizing the temporary provisions of the statute. Their effort started with a major public campaign to highlight instances of racial discrimination in politics, particularly in jurisdictions targeted by the law.

Allies in Congress, some of them sponsors of the previous renewal effort, scheduled their own formal hearings. These sessions served as a showcase for the competing views from the scholarly community about the effects of implementing the federal government’s pre-clearance power. Legislators concluded that while the evidence showed improved political conditions since 1965, racial minorities continued to face less than equal access to election systems in covered jurisdictions. They therefore proposed to extend the Act’s provisions relating to pre-clearance review.

Congressional opposition to this idea was most severe. Longtime conservative detractors declared that the law offended bedrock principles of federalism. Others, most notably Southerners, decried the inherent unfairness of selectively targeting their states—particularly in light of evidence showing voting problems elsewhere in the country. A few even predicted that the Supreme Court would strike down the law if renewed.

At the brink of a stalemate and certain disaster, a senior Republican fashioned an important compromise that held together a bi-partisan major-

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ity. The final version of the bill renewed the oversight system for another twenty-five years, thereby eliminating certain judicial interpretations but preserving the core structure of the oversight regime.

This progression of events just as aptly describes the politics surrounding the recent voting rights renewal in 2006¹ as it does the one more than two decades earlier. In the first case, the 1982 extension, Congress reaffirmed its original views of the pre-clearance provisions and specifically rejected a radically narrow reading of the statute by the judiciary. The final vote followed hearings that took testimony from community leaders in the South along with scholarly reports showing the marked improvements in minority participation and office-holding under the pre-clearance review system. Advocates used this information to persuade their colleagues and the president to adopt a twenty-five year renewal of the oversight procedure.

The 103rd Congress engaged in a legislative “re-enactment” of the law in 2006, taking many of the same steps in assessing the record of the pre-clearance system. Like before, the legislative effort reacted to judicial decisions viewed as hostile to federal oversight authority. Empirical evidence played an even more critical role in framing the arguments in favor of extending the statute. The continued progress of minority groups since 1982 challenged advocates to show why federal enforcement power remained vital. Despite the political circumstances that threatened its passage, the renewal campaign gained enough bi-partisan support to win a surprisingly swift approval just before the mid-term elections.

This essay recounts how the state reports found in this volume factored into the legislative debates about renewing the Voting Rights Act in 2006. After laying out some of the similarities between the two most recent renewal efforts, this piece turns to the reports themselves to highlight some of the specific evidence that forms the basis of the affirmative case for renewal. Finally, this piece offers some critical analysis of these reports by highlighting some of the remaining empirical and conceptual questions that these reports partly engage but do not entirely resolve.

In all, this series of studies provides an important viewpoint about the country’s progress toward eliminating the remaining barriers to political participation for racial minorities. Perhaps most importantly, it invites a comprehensive research agenda to chart the advancement of this federal project of governmental transformation in the years ahead.

¹ See Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006).

I. THE CAUSES

Although the most recent renewal efforts are separated by a period of more than two decades, they share a common precipitating cause—the actions of the judiciary. In both instances, Congress took notice of adverse decisions from the Supreme Court that attempted to revise established interpretations of provisions in the Voting Rights Act. Fearing that these new understandings would interfere with the law’s broad project of equalizing the political system, the legislative action focused on correcting these judicial “misreadings” through a new enactment.

The 1982 VRA renewal movement was sparked by the decision in *City of Mobile v. Bolden*,² a vote dilution case challenging the Alabama city’s at-large voting system. The majority heightened the prima facie requirements for minority plaintiffs to sue jurisdictions for vote dilution. Plaintiffs in the case had amassed a substantial record showing several unsuccessful black candidacies in city-wide elections as well as a racially divisive tone in Mobile’s local politics, but the Court found that the Act required even more evidence. According to their view of the statute, alleged violations of Section 2 required plaintiffs to demonstrate that the jurisdiction intended to discriminate racially. The logic was that Congress framed the statute to track the Fourteenth Amendment, which imposes a similar burden on plaintiffs to prove intent at trial.

But taking this approach would increase the costs for litigating voting rights claims. Particularly in jurisdictions whose election practices dated back to the end of Reconstruction, plaintiffs would need exhaustive historical research on the original purpose of the challenged election system. At the same time, the Court’s analysis would shift attention away from the current political climate giving rise to the alleged injury. While the parties in *Bolden* eventually met their burden on remand, the new requirements had the potential to slow if not entirely discourage future lawsuits. The result was inconsistent with the law’s original purpose of opening up the federal courts to these kinds of claims. Accordingly, civil rights groups presented *Bolden* as the main reason for Congress to address its time in revising the Act in 1982.

Two sets of decisions initiated the voting rights action in the summer of 2006. The first, which Congress explicitly cited in its hearings, were the voting rights cases that challenged the Department of Justice’s (DOJ) exercises of pre-clearance authority. In the 1990s, the DOJ had prompted sev-

² 446 U.S. 55 (1980).

eral states covered by Section 5 to adopt plans with new majority-black and majority-Latino election districts. The Supreme Court later invalidated many of these plans because they had illegally classified voters based on race in violation of the Fourteenth Amendment. This new legal injury was first announced in *Shaw v. Reno*,³ and it included a sharp critique of the Department for exceeding its authority under the VRA to review state redistricting plans. In a related case out of Georgia, *Miller v. Johnson*,⁴ the Court found that the Department had improperly coerced states into adopting certain redistricting plans that were constitutionally flawed. The Court explained the Department's proper role was only to indicate to states when a proposed plan violated the law, not to suggest an alternative.

Elsewhere, the Court took a more active role in changing the legal standard the Department could use to decide whether to pre-clear a submitted change. In *Reno v. Bossier Parish School Board*,⁵ the Supreme Court criticized the DOJ for denying pre-clearance to a redistricting plan based on the jurisdiction's discriminatory intent. Objections were only appropriate where the jurisdiction intended to discriminate in a retrogressive manner (i.e., to make minorities worse off than before). In *Georgia v. Ashcroft*,⁶ the Court further elaborated on its understanding of retrogression. There, the Court reversed a pre-clearance objection to a state legislative redistricting. The majority explained that the initial review had failed to assess whether eliminating majority-black election districts (normally, a clear sign of illegal "retrogression") was offset by certain factors like the creation of so-called "minority influence" districts. The Court even went as far to suggest that the support of elected black officials might provide sufficient reason to overlook an otherwise retrogressive plan.

Another set of precipitating cases that prompted the 2006 effort is linked to the Rehnquist era's contribution to the constitutional lexicon—the New Federalism Doctrine. Rooted in constitutional theories of limited federal powers and separation of powers, the Court has begun to police congressional enforcement of the civil rights amendments against the states. In the leading case of this kind, *City of Boerne v. Flores*,⁷ the majority observed that "limitations are necessary to prevent [the Reconstruction Amendments] from obliterating the Framers' carefully crafted balance of power between the States and the National Government."⁸ *Boerne* stood

³ 509 U.S. 630 (1993).

⁴ 515 U.S. 900 (1995).

⁵ 528 U.S. 320 (2000).

⁶ 539 U.S. 461 (2003).

⁷ 521 U.S. 507 (1997).

⁸ *United States v. Morrison*, 529 U.S. 598, 620 (2000) (discussing *Boerne*, 521 U.S. at 520–24).

for the proposition that Congress needed to show that using its enforcement powers was necessary and appropriate. Without sufficient evidence of such limits in the statute, the Court would find that the federal remedies were intrusive on state sovereignty.⁹

Boerne and its progeny are notable for their favorable references to the voting rights pre-clearance remedy. For the Court, the VRA was a model for the proper exercise of Congress' remedial power. Unlike the RFRA, the pre-clearance remedy targeted a specific category of state practices that were connected to an established constitutional injury. Congress also developed an evidentiary record showing a strong pattern of illegal state actions, making it clear that alternative remedial measures were ineffective. While pre-clearance prohibited activity that did not itself infringe on the right to vote, these practices carried "the significant risk of being unconstitutional." The remedy's sunset provision was limited to address parts of the country where enfranchisement problems were most severe, and only applied to state laws related to voting. These limiting features were strong indicators "to ensure Congress' means are proportionate to ends legitimate under § 5 [of the Fourteenth Amendment]."¹⁰

While the latter decisions did not directly challenge provisions of the VRA, their references to the law place them at the center of the renewal debate. The Court refers to the 1965 VRA enactment with favor in each case, but the analysis in these decisions almost never cites the later versions of the statute. The lack of such an endorsement in the Court's most recent cases casts doubt on the Act as an enactment that is consistent with *Boerne*. Thus, the work on a renewed pre-clearance provision had to address the concerns about the statute's viability as remedial legislation.

II. THE OUTCOMES

In both the 1982 and 2006 renewal efforts, the final version of the renewal bills signed into law reflected bi-partisan compromises that renewed the temporary provisions of the Act for twenty-five years. Congress forged

⁹ In *Boerne*, the Court struck down the Religious Freedom Restoration Act (RFRA) on the view that the law's remedy had impermissibly redefined the constitutional standard for religious discrimination. In rejecting this statute, the Court announced two inquiries to guide the review of all remedial statutes. First, a statutory enforcement remedy must show "congruence between the means used and the ends to be achieved." In this respect, the Court found that Congress had not identified enough cases of discrimination by states to establish a substantial "evil" that required a remedy. The law's remedy also failed the test for proportionality. Several of the RFRA's substantive provisions imposed permanent bans on government conduct and applied nationwide, which was overbroad in light of the thin record of constitutional violations.

¹⁰ *Boerne*, 521 U.S. at 533.

a major compromise between those who wished to end the law immediately and those who wished to implement the law indefinitely. As with the original enactment in 1965, renewal sponsors worked hard to attract votes from both sides of the aisle. This demonstration of unity has always been an important reason for the Act's endurance as an important part of the civil rights agenda. Importantly, though, this approach required a delicate balance of viewpoints. In the face of efforts to dismantle the VRA entirely or to significantly expand the statute, Congress consistently chose to reaffirm a more moderate version of the law's provisions.

The point of contention in the 1982 legislation had to do with proper substitute for the vote dilution standard announced in the *Bolden* decision. Among those who favored a renewal that responded to this decision, many thought that a wholesale rejection of the case's intentional discrimination requirement was warranted. Their initial proposal was to allow voting rights plaintiffs to prevail at trial if they could show the racially disparate effects of the jurisdiction's discriminatory election rules (such as the underrepresentation of minority communities in elected bodies). This was a view shared by some civil rights groups along with a few Democrats in Congress. From their viewpoint, the law needed to help provide more latitude to plaintiffs challenging voting procedures. If enacted, the change had the potential to increase the number of elected candidates from minority communities.

The key issue that other renewal advocates (and some opponents) cited about this idea was a legal one. While increasing black elected candidates was a laudable policy goal, they found that the proposed change appeared to mandate a right to political representation for racial minorities. If enacted, they warned, the language would essentially endorse a judicial policy of racial quotas in politics, which the Court had found unconstitutional in other contexts. As a political matter, the change might peel away conservative Democrats and Republicans from the South. A less robust change would help insulate the legislation from a later attack. A more defensible approach, they suggested, was either to enumerate specific kinds of evidence that would substitute for intent evidence or to develop alternative statutory language that would help foreclose the concern about racial quotas.

The settlement to this dispute was crafted in the U.S. Senate, where a group led by Republican leader Robert Dole inserted language into Section 2 that carefully limited the reach of this provision. The compromise essentially embraced both viewpoints, allowing each side to interpret the provision in a manner they preferred. On one hand, the bill specifically en-

dorsed the intent or effects evidentiary standard. But the change also included an important limiting clause. This proviso prohibited an interpretation that would guarantee any right to proportional representation based upon race. Voting rights plaintiffs could prevail by showing that an election system consistently disadvantaged their preferred candidates from winning. Importantly, the final bill included an accompanying report that clarified the factors relevant in an effects-based claim. The Supreme Court later endorsed the so-called Senate Factors in developing its own prerequisites for establishing an “effects” case.

In this respect, the bi-partisan political compromise established in the 2006 debate was not all that different. This time, the central issue separating legislators was how much the bill should change in light of the interpretations from *Georgia* and *Bossier*. In both cases, the Court had attempted to narrow the ability of the Department of Justice to regulate state election systems. In the face of the same dispute about dismantling the bill and radically expanding its reach, sponsors focused on limiting the renewal’s changes to not more (or less) than correcting what they viewed as errant readings by the Court. In doing so, the renewal explicitly set out to return the interpretation of the Act to the status quo ante.

Two good examples of this more moderate approach come from the committee action leading to the final floor votes, and both of them are procedural in nature. In the House of Representatives, where rules define the scope and extent of the debate, the Republicans adopted a rule that severely restricted the number of proposed amendments to the renewal bill. Led by Chairman James Sensenbrenner, the rule effectively protected the bill from efforts by both liberals and conservatives to dismantle or expand it. The subcommittee chair, for instance, encouraged Congresswoman Sheila Jackson Lee (a VRA supporter) to withdraw an amendment to prohibit mid-decade redistricting. At the same time, the majority rejected a proposal to eliminate bi-lingual assistance provisions and a “poison pill” amendment that would have expanded pre-clearance coverage to the entire country. Without the procedural rule, the bill was likely to have languished in committee or face a series of unfriendly amendments that might have doomed its final passage on the floor. The House managed to consider several changes on the floor, all of which were quickly debated and defeated by a working bi-partisan majority.

For its part, the U.S. Senate also promoted bi-partisanship in managing this bill. With only one minor exception, the entire floor debate was limited to eliminating the troublesome interpretations from the *Georgia* and *Bossier* cases. Much of the reason this was possible is attributable to the

work done in committee. As before, the Senate Judiciary Committee adopted a report that helped to clarify provisions of the bill that reversed Supreme Court interpretations. However, this committee report was accompanied by another report—this one representing the views of Republican members of the committee. This second document contained viewpoints that seemed to conflict with the interpretations endorsed by the Committee's report. As one scholar has noted on the matter, a record that provides a unanimous committee report but an alternative version of the legislative history is unprecedented. This fact poses an interpretive challenge for the judiciary in making sense of the renewed statute in later cases.

III. THE EVIDENTIARY CASE

The most significant feature shared by the renewal efforts lies within the evidentiary record supporting the legislative debate. In each case, the discourse in Congress turned on the factual evidence about the Act's continued effectiveness. The immediate goal of renewing the Act was correcting judicial (mis)interpretations, but these reports served as a platform for articulating the scope of the VRA's success. In this way, this record offers some of the best arguments that renewal would bring further progress toward an equal political system.

While the 1982 debate responded to the Supreme Court's concern with discriminatory intent, it also approved the enforcement of the Act's temporary provisions for an additional twenty-five years. The legislative report from that debate, which partly relied upon empirical evidence collected by the Civil Rights Commission, highlighted three types of evidence that weighed in favor of continued pre-clearance enforcement.

First, the report cited measurable improvements in minority political participation and representation. The number of black registered voters and elected officials, especially in the South, were sharply rising in the 1970s. Despite this success, the impact of this growing participation and representation seemed limited to local elections. Second, the report enumerated the frequency of administrative pre-clearance objections in several states. Particularly where redistricting and annexation changes were concerned, the study revealed a relatively steady number of objections since the previous legislative renewal. Finally, the report emphasized a wealth of witness testimony describing in great detail some of the present instances of individual and official discriminatory practices within covered jurisdictions. In particular, the report pointed to instances of racial polarization in elections that demonstrated continued racial hostility in certain covered jurisdictions.

Taken together, this information supported the proposal to continue the positive trend of improved political representation.

The evidence provided to Congress in the 2006 state reports follow the same general pattern. The final congressional report, of course, relies heavily on the information that is produced in this volume. The evidence reviewed and analyzed in these reports can be grouped into three different categories—federal pre-clearance activity, Section 2 litigation and racially polarized voting. Taken as a whole, this information develops a very compelling legislative record for continued federal oversight.

A. FEDERAL PRE-CLEARANCE ACTIVITY

The most thoroughly considered form of evidence in these reports is the federal government's intervention under the pre-clearance system. Certain "covered" jurisdictions under the Act may not adopt any change in election law that has the purpose or effect of denying or abridging the right to vote on account of race or color. The federal government may issue an objection to block such a change. The implementation of that standard has not been uniform, but courts have pretty consistently found that the remedy was designed to prevent innovative modes of discrimination against minority voters. Virtually every state report points to the frequency of federal objections as an indicator that jurisdictions continue to violate the pre-clearance regime.

Many of the reports in this volume rightly point out that the federal government continues to lodge objections in the "covered" jurisdictions. In Texas, the state with the largest number of objections, fully a third of its counties have been subject to objections since 1982. A few reports, like South Carolina's, vividly illustrate the brand of resistance that rival some of the worst times of non-compliance. In one case, state legislators tried to strip the Spartanburg Board of Education of authority after a NAACP lawsuit had successfully won an order for single-member election districts. Although the DOJ had initially objected to the change, the legislature eventually abolished the Board. More typically, though, the record reveals attempts by jurisdictions to impose rules despite the significant electoral disadvantages to racial minorities.

While this aspect of the reports is persuasive, there are at least two thorny conceptual problems with concluding, based on this data alone, that pre-clearance remains warranted. First, the nature of what is and is not permitted by Section 5 is a moving target. State jurisdictions may plausibly argue that since the standards in the law have changed rather drastically

since 1982, it would be unfair to penalize their good-faith efforts to comply that were later found insufficient. Their effort to seek judicial review is not a perfect indicator of recalcitrance or resistance. Of course, more basic violations like the failure to submit a proposed change might.

In addition, there is the vexing empirical problem of the declining frequency of pre-clearance objections. This trend represents an important change since 1982, when Congress observed a stable pattern of pre-clearance objections over time. As Richard L. Hasen has explained, administrative objections have, in absolute numbers and as a percentage of all pre-clearance submissions, declined significantly since 1982.¹¹ Some view this development as an indication that covered jurisdictions have increasingly complied with the terms of the Act. Because of the declining need for objections, jurisdictions may no longer need federal oversight.

On the other hand, others find this trend is less relevant because other agency enforcement behaviors have become more commonplace. In their view, the drop in the number of administrative objections result from the DOJ's increasing reliance on more informal, less costly enforcement measures. Luis Ricardo Fraga and Maria Lizet Ocampo outline one such possibility—the DOJ's issuance of “more information requests” (MIRs).¹² These writers argue that the DOJ can influence and regulate state behavior by signaling its likely pre-clearance objection in such a request letter. While the letters do not formally block the proposed change, they may serve the same function by encouraging states to revise or rescind a submission. This account would also help to explain the agency's reaction to judicial decisions that specifically criticized the government's use of formal objections as undue coercion. According to at least one of the studies, the MIR was responsible for blocking close to 200 proposed changes that might have imposed racially discriminatory political rules.

In any event, the fact of less frequent objections under Section 5 is a challenge for advocates to explain going forward. Assuming that the numbers continue to decline over the next twenty-five years, one might wonder at what point the present form of pre-clearance oversight continues to make sense.

¹¹ See Richard L. Hasen, *Congressional Power to Renew Preclearance Provisions*, in *THE FUTURE OF THE VOTING RIGHTS ACT* 81, 90–91 (David L. Epstein et al. eds., 2006).

¹² See Luis Ricardo Fraga & Maria Lizet Ocampo, *More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act*, in *VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER* 47 (Ana Henderson ed., 2007).

B. THE EFFECT OF LITIGATION

The second type of evidence cited throughout these reports comes from private lawsuits, including those brought under the Section 2 and Section 203 provisions. The U.S. District Courts around the country have the authority to remedy injuries under these provisions, which prohibit election practices and procedures whose purpose or effect dilute the voting power of racial or language minority groups. This feature of the Act has been a major offensive weapon for voting rights plaintiffs seeking to dismantle election systems like at-large elections. District courts have frequently invoked this provision to reject election rules and structures like the at-large voting scheme.

This evidence has three distinct advantages over the pre-clearance objection data. First, information from these cases often represents complete adjudication of a voting lawsuit. Administrative review under Section 5 is largely an agency-run function, involving a limited analysis about the potential for discriminatory impact. By contrast, litigation includes both the challengers and defenders of a rule that often is already enacted. In other words, the best arguments for and against the rule are presented on the merits of the case. Moreover, the burden of proving a violation rests with the challengers instead of the jurisdiction. Accordingly, these decisions provide a more comprehensive view about the actual effects of the rule on elections and the constituency in question.

Judicial orders for relief in the litigation context normally include findings of fact that specifically address key questions about discrimination. These cases often involve extensive expert studies of the jurisdiction's election system. Sworn witness testimony from voters and elected officials alike is essentially the kind of evidence that Congress itself might collect in making its own findings. This information includes both reviews of the jurisdiction's political history as well as the political behavior analyses of current and recent elections. To reach a decision in the case, the judge must review all of this information to assess credibility. Ultimately, the court will adopt formal findings of fact to justify a decision to order relief in a given case.

A third advantage of this category of information is that the reach of Section 2 is broader than Section 5. The remedy found in this provision, unlike the administrative remedy, is permanent and applies nationally. The difference allows one to compare the frequency and outcomes of voting rights lawsuits in places that are subject to pre-clearance review with those that are not. One can then assess the extent to which pre-clearance protec-

tions help to deter racial discrimination in election administration. If the frequency of litigation serves as a useful proxy for discrimination, one can use this information to say something meaningful about the extent to which non-covered jurisdictions engage in discriminatory behavior.

Each of the state reports relies both on the frequency of filing these lawsuits and on the content of the orders resulting from the lawsuits. The most commonly challenged election practice is the at-large voting system, which continues to slow the progress of minority preferred candidates. Examples of this particular problem are quite thoroughly documented in Louisiana's report, which details successful lawsuits in several of its southern and central parishes using at-large or multi-member voting schemes that were found to dilute minority voting strength. In Georgia, a perennial state player in the voting rights debate, at-large voting systems were dismantled in eleven of the state's counties as a result of Section 2 lawsuits. Both states witnessed a significant increase in the number of local and county elections with a winning black-preferred candidate because of single member districts.

More recently, the language assistance litigation in states like New York and California has opened up greater opportunity for language minorities to participate and elect candidates of choice. In his discussion of progress due to private litigation, the author of the New York report points out that the defendant jurisdictions often acquiesced shortly after being sued. The author notes several cases filed under the Act's language provisions where evidence revealing severe dilutive effects on language minority groups led the challenged jurisdiction to accept the remedies sought by the plaintiffs. The same is true in some of California's southern counties, which have benefited the state's Asian-American and Latino communities. According to the reports, both communities increased their participation by at least a third since 1982.

C. RACIALLY POLARIZED VOTING

Though it provides a more probative form of evidence about the ongoing need for pre-clearance enforcement, racially polarized voting is often a powerful but elusive factor. This evidence can help demonstrate how much the political electorate is actually willing to embrace the principle of racial equality in the political system. In contrast to the other types of evidence mentioned here, this information examines actual behavior of voters in elections. Whereas other evidence focuses on institutional actors in the federal courts or in the state government, the political choices made by the people live in these jurisdictions provides the most compelling case about

what remains unchanged in the covered jurisdiction. To the extent race remains a salient feature of politics, one makes a strong case for extending the pre-clearance system. But an ideal racial polarization study involves a series of elections with a black and a white candidate competing for office. Such match-ups, particularly at the state level, are exceedingly rare.

Even acknowledging the numbers problem, there are additional hurdles relating to empirical and interpretive limitations. The empirical problem is that most studies can only approximate a measure for racial polarization. Casting a ballot is a private act, and most states do not collect sufficient information from the voters to produce reliable estimates for each racial group's voting preferences. Thus, some studies utilize measurements methods like exit polls or precinct analyses to extrapolate estimates of voter preferences. Even when finding an outcome that appears to show patterns racial polarization with these methods, contextual information is often needed to supplement these findings. Adding these factors into the mix opens the possibility that alternative factors explain the result.

Perhaps the best example of an effort to establish racial polarization evidence comes from the Alabama state report. Generally speaking, this report enjoys one of the strongest cases for racial polarization in the volume. As with most states, the report cites various expert studies, court findings and agency determinations that all affirm that racially polarized voting still exists both at the state and local levels. This evidence is quite credible on the whole, yet some of the report's more current findings might nevertheless raise more questions than answers about polarization. The defeat of a 2004 ballot measure, while significant, is likely explainable by matters other than racial polarization. The substantive question on that vote was whether the state should remove certain racially offensive parts of its constitution, some dating back to the Jim Crow era. Though the campaign certainly involved the provision's racial history, the outcome was not easily characterized as a racially polarized one. The vote involved measures that some argued would enhance the state's power to raise taxes. Additionally, the measure was championed by the state's white Republican governor. Without more direct examination of the votes or the reasons voters decided to reject the measure, one cannot establish that the reasons for the outcome is the state's dislike of taxes or its endorsement of racially offensive ideology.

IV. CONCLUSION

On the whole, the compendium of reports served a variety of purposes in the discussion about the future of the Voting Rights Act. Foremost, the

reports are the product of an important community mobilization behind the principle of continued voting rights enforcement. The work, which takes the view from the ground, added a much needed level of urgency and significance to congressional committee hearings. More than any summary statistics could have shown, the volume provides a factual account of the state-by-state improvements that are directly attributable to VRA enforcement. These reports established that this legislation is meaningful to real people, and it shows that their lives could be improved by its enforcement. In an era of so much ideological opposition to federal civil rights legislation, the demonstration of informed and detailed support for the Voting Rights Act provided a crucial part of the effort to spur Congress to action.

At the same time, the content of the reports themselves established the framework for legislators to examine the progress of the last twenty-five years of voting rights enforcement. Foremost, the studies help to make the affirmative case that the law remains a valid exercise of Congress' remedial power. But as a procedural matter, the studies were important. Legislators had multiple ideas about what should be done in a congressional renewal effort. Whether one favored or opposed the redistricting effort, though, one could not ignore the results borne out in these studies. The discussion of continuing problems in each of the covered jurisdictions very helpfully narrowed the terms of the discussion about what a renewed VRA ought to look like. Supporters and opponents alike therefore had to grapple with the facts and interpretations in these reports in advocating their positions about the renewal.

Finally, one hopes that this information will provide a clear standard against which the courts and future research can assess the Act's effectiveness over the next twenty-five years. In each successive renewal, Congress has looked for indications that the Act has aided the march toward political equality. Having once again accepted the notion that the project of transforming the political process is yet unfinished, these studies should help direct those who apply the law toward more innovative methods of assuring an equal right to vote is more than just an aspiration for all citizens.