No. 12-96

IN THE

Supreme Court of the United States

SHELBY COUNTY, ALABAMA,

Petitioner,

v.

ERIC HOLDER, JR., ATTORNEY GENERAL, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF POLITICAL SCIENCE AND LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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LEGISLATIVE HISTORY

BRIEF OF *AMICI CURIAE*

Professors Kareem Crayton, Matthew Barreto, Luis Fraga, Jane Junn, Terry Smith, and Janelle Wong respectfully submit this brief as *amici curiae* in support of Respondents.[1]

INTEREST OF *AMICI CURIAE*

Amici Curiae are all nationally recognized university research scholars whose collective studies on electoral behavior, public opinion, and voting rights in the United States have been published in leading scholarly journals and books.

Professor Kareem Crayton is an associate professor of law and political science at the University of North Carolina at Chapel Hill. Professor Matthew Barreto is an associate professor of political science at the University of Washington. Professor Luis Fraga is a professor of political science at the University of Washington. Professor Jane Junn is a professor of political science at the University of Southern California. Professor Terry Smith is a professor of law at the DePaul College of Law. Professor Janelle Wong is a professor of American studies at the University of Maryland.

Amici have shared their expertise with the courts to inform voting rights cases as well as with Congress in the

1. The parties' letters of consent to the filing of this brief are on file with the Clerk. No counsel for a party authored this brief in whole or in part. No person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

2006 reauthorization of the temporary provisions of the Voting Rights Act. Their extensive professional knowledge and experience in these areas are relevant to the question before the Court.

SUMMARY OF ARGUMENT

Congress acted within its constitutional authority in 2006 by reauthorizing Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 *et. seq.*, to safeguard the rights of every American citizen, regardless of race or color, to vote. Reliance on the coverage formula in Section 4(b), 42 U.S.C. § 1973b(b), which has been approved by the Court on multiple occasions, is justified by the distinct conditions that are present in covered jurisdictions due to race-based discrimination. This point is evident in the prevalence of racially discriminatory attitudes, the incidence of racially polarized voting, the enactment of voter dilution and voter disqualification devices, and data on the socioeconomic conditions of minority voters.

Amici present a comprehensive summary of empirical evidence showing the ongoing differences between covered and non-covered jurisdictions. The systematic divergence represents the legacy of racially discriminatory practices in the political system that characterizes covered jurisdictions.

In light of its 2006 legislative record and the continuing differences between covered and non-covered areas, this Court should find that Congress rightly determined that maintaining Section 5 would ensure that the movement toward equal enjoyment of the right to vote is not reversed.

ARGUMENT

The presence of higher levels of discrimination in covered jurisdictions compared with non-covered locations represents the continuing legacy of the institutionalization of racial discrimination in the political arena. The jurisdictions identified by Section 4(b) were the country's most committed purveyors of formal and informal policies to disenfranchise non-White voters. This Court has repeatedly recognized that these states created "exceptional conditions [that] justified extraordinary legislation." *NW Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 211 (2009); *see also South Carolina v. Katzenbach* 383 U.S. 301, 308, 310-15, 328 (1966).

Petitioner's brief acknowledges this long history of the most blatant forms of discrimination that compelled Congress to specify federal authority in Section 5 for voting rights enforcement. "In 1965, 95 years after the Fifteenth Amendment's ratification, African-Americans were still widely denied the right to vote throughout the South." Pet. Br. at 1-2.

Two specific arguments by Petitioner are considered in this brief. Petitioner first argues that in Alabama and other jurisdictions, institutionalized race discrimination has now been addressed by the VRA and that exceptional treatment is no longer justified. To the extent that any residual effects from this era do exist, Petitioner argues that they are neither qualitatively or quantitatively different from the voting discrimination present in non-covered jurisdictions. Pet. Br. at 24-28. These assertions are unsupported by the weight of empirical data.

Amici present a systematic analysis of empirical data that are closely related to voting discrimination – including socioeconomic antecedents to political participation, the prevalence of racially discriminatory attitudes, racially polarized voting, and patterns of devices that limit voting access – from recent and comprehensive data sources.[2]

All of the findings discussed herein corroborate the 2006 legislative record and the prudent conclusion that the jurisdictions targeted for Section 5 review should remain unchanged. Congress's obligation was to identify systemic discrimination in voting and to create a remedy or deterrent that was both congruent and proportional. *Nw. Austin*, 577 U.S. at 204. Because Petitioner attacks Section 5 facially, it "bear[s] a heavy burden of persuasion" to demonstrate that the statute lacks a "legitimate sweep." *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 200-202 (2008).[3]

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2. For the sake of the reader, *Amici* provide summary tables within the argument section to highlight the major trends cited in the analysis. More detailed presentations of these same data, corresponding to the tables presented, are available in the appendices.

3. Given its decision to challenge Section 5 facially, Petitioners' complaint that "aggregating [evidence of discrimination] denies equal dignity to each sovereign State by obscuring each State's individual record," *see* Pet. Br. at 62, is puzzling. First, as measured by the data in this Brief, Alabama ranks among the nation's most discriminatory states by almost every metric. Thus, according to Petitioner, "equal dignity" would almost certainly mean it should remain covered by Section 5. The "aggregating" that Petitioner complains of actually helps to obscure its own discrimination and to cherry-pick instances of over- and under-inclusiveness among covered and non-covered jurisdictions. But the facial nature of its challenge to Section 5 means that Petitioner must show more than an aberration here or there; it must demonstrate that Section 5's "sweep" is plainly unconstitutional.

Petitioner also characterizes Section 5's differential treatment of covered states as an affront to states' "equal dignity." Pet. Br. at 49. It is not states which are entitled to equal dignity but rather the people—including its minority citizens—from each state to whom equal treatment is due: "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'" *New York v. United States*, 505 U.S. 144, 181 (1992).[4]

Thus, Petitioner's focus on the equal dignity of states obscures a basic question in this litigation: Are non-White voters in covered jurisdictions more vulnerable to voting discrimination than those living in non-covered jurisdictions? Unless Petitioner can show that minorities in covered jurisdictions receive the "equal dignity" to which they are entitled in the electoral realm, Section 5

4. This point is equally relevant in any consideration of the Guarantee Clause. U.S. Const. art. IV § 4. To the extent this provision entrenches any judicially cognizable right to the people, *but see Luther v. Borden*, 48 U.S. 1 (1849) (finding that this provision was non-justiciable), any public right to responsive or accountable governance was surely violated by the long term use of election and governance systems that sanctioned the wholesale denial of the right to vote on the basis of race. The institutionalized harms to these citizens are neither hypothetical nor episodic – nor are they in dispute. Thus, the remedy devised in Section 5, which protects these excluded groups from continued violations, is fully consistent with Article IV's principle of assuring democratic governance to every citizen of a given state.

must be deemed a congruent and proportional response to voting discrimination. *Amici* now turn to the empirical data demonstrating the heightened vulnerability of minority voters in Section 5 jurisdictions.

Section I considers survey data on the prevalence of negative racial attitudes among White citizens, which are more pronounced in Section 5 areas than elsewhere. Section II addresses more direct evidence of racially polarized voting, which shows that the landscape remains different in the covered jurisdictions than other states. Section III provides greater detail about how preclearance jurisdictions are more likely to employ voter disqualification policy measures than elsewhere. Finally, Section IV reviews several categories of socioeconomic data showing significant racial disparities in covered jurisdictions on metrics associated with political participation.

I. Negative Racial Attitudes Among Whites Are More Prevalent in Covered Jurisdictions

An enduring feature of the era of institutionalized exclusion that preceded the Voting Rights Act is the enshrinement of racial animosity toward non-White groups. Racial animosity is embedded in the very ideology of segregation – deeming some groups unworthy of equal status as citizens. Thus, the views of antipathy or resentment for groups serve as the building blocks for establishing the structures that enforce political exclusion.

Petitioner and associated *Amici* suggest that discrimination and hostile racial attitudes today are pervasive nationwide and that the conditions in Section 5

covered jurisdictions are no different than in other states. However, data from reputable national studies on political behavior prove Petitioner's claim to be empirically false. In this section, *Amici* examine survey data on negative racial attitudes and demonstrate that such attitudes are substantially more pervasive among Whites living in jurisdictions covered by Section 5 than elsewhere.

A. American National Election Study and Racial Stereotypes

Racially polarized voting is well known and well documented as an indicator of discrimination in states and jurisdictions covered by Section 5. But it does not occur in a vacuum. Social science research has documented extensively that the underlying catalysts triggering bloc voting are racial attitudes and stereotypes.[5] The judiciary has routinely relied on measures like these as evidence of discrimination in voting lawsuits.[6]

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5. Edward G. Carmines & James A. Stimson, Issue Evolution: Race and the Transformation of American Politics (Princeton Univ. Press 1989); Thomas B. Edsall & Mary D. Edsall, Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics (W.W. Norton 1991); Michael W. Giles & Kaenan Hertz, *Racial Threat and Partisan Identification*, 88 Am. Pol. Sci. Rev. 317 (1994); Robert Huckfeldt & Carol Weitzel Kohfeld, Race and the Decline of Class in American Politics (Univ. of Illinois Press 1989); Martin Gilens, Paul M. Sniderman, & James H. Kuklinski, *Affirmative Action and the Politics of Realignment*, 28 Brit. J. Pol. Sci. 159 (1998).

6. *See, e.g.*, *Busbee v. Smith*, 549 F.Supp. 494, 501 (D. D.C. 1982) (finding state reapportionment committee's use of the term "nigger districts" to be probative of an intent to discriminate against Black voters).

Survey data on the subject leaves little doubt that these negative attitudes persist and that they are more prevalent in covered jurisdictions. A chi-square test of statistical significance finds that negative racial attitudes are statistically more widespread in Section 5 jurisdictions, and this trend holds true for data taken on multiple occasions between 2000 and 2010.

Table 1 summarizes results from White respondents in the American National Election Study (ANES), the leading national study of political attitudes, across various measures related to race. These data track the state and county of each respondent, which allows for a direct comparison of racial attitudes of Whites living in Section 5 jurisdictions with those living in outside Section 5 jurisdictions. Across all available measures of bias, reported in Table 1, Whites in Section 5 jurisdictions exhibit more negative viewpoints toward African Americans and immigrants. This regional pattern is consistent when comparing responses in studies conducted in 2000 as well as in 2008.

Table 1:

Racial attitudes among Whites in ANES, 2000 & 2008

Statement	2008 ANES			2000 ANES		
	Sec 5	Not Sec 5	Diff	Sec 5	Not Sec 5	Diff
"Government should not make any special effort to help Blacks because they should help themselves."	51	39	12**	43	29	14**
"Other minorities overcame prejudice and worked their way. Blacks should do the same without any special favors."	48	34	14**	42	32	10**
"Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way up" – percent who disagree	61	47	14**	57	43	14**
"If Blacks would only try harder they could be just as well off as Whites."	66	57	9*	54	45	9*

Table 1: (continued)

Racial attitudes among Whites in ANES, 2000 & 2008

"It is not the federal government's business to see to it that Black people get fair treatment in jobs."	36	27	9*	38	32	6†
"Do you personally hope the United States has an African American president in your lifetime."	48	56	-8*	--	--	--
"Oppose the U.S. government making it possible for undocumented immigrants to become U.S. citizens."	45	33	12**	--	--	--

Chi-square test results are statistically significant: ** P>.010 * P>.050, †P>.100
Source: American National Election Study, 2000 and 2008, data among White respondents

In fact, the measures for White attitudes in Section 5 jurisdictions actually became more negative towards Blacks between 2000 and 2008. For example, in 2000, 42% of Whites in Section 5 jurisdictions agreed with the statement that Blacks should work their way up "without any special favors" while in 2008, 48% of Whites in Section 5 jurisdictions agreed. Likewise, in 2000, 54% of Whites in Section 5 areas agreed that if Blacks would only "only try harder they could be just as well off as Whites" and in 2008, the percentage who agreed rose by 12 points to 66%. This hardening of prejudicial attitudes towards Blacks in Section 5 jurisdictions comports with evidence that White vote preferences in the 2000 and 2008 elections became more polarized against Barack Obama in 2008 than it was against Albert Gore in 2000 (discussed in greater detail in Section II below).

Other questions from this study included measures on viewpoints concerning Latinos, immigrants and other groups, which are summarized in Table 2. For example, in the 2000 ANES respondents were asked whether they thought different groups had too much influence in American politics today; too little influence; or just about the right amount. Compared to Whites living elsewhere, White respondents in Section 5 locations were more likely to report that Blacks, Latinos, Asians and Jews had too much influence in American politics today, but less likely to think Whites had too much influence.

Table 2:

Perceptions of group influence among Whites in ANES, 2000

Statement (percent who agree)	2000 ANES		
	Section 5	Non-Section 5	Diff
"Blacks have too much influence in American politics today"	37	21	16**
"Latinos have too much influence in American politics today"	15	8	7*
"Asians have too much influence in American politics today"	10	5	5†
"Jews have too much influence in American politics today"	22	14	8*
"Whites have too much influence in American politics today"	16	23	-7*

Chi-square test results are statistically significant: ** P>.010 * P>.050 †P>.100
Source:American National Election Study, 2000 data among White respondents

B. Cooperative Congressional Election Study and Racial Resentment

More recent data from a major social science study provides further evidence highlighting the distinctions present in Section 5 areas. The 2010 Cooperative Congressional Election Study (CCES) interviewed more than 50,000 respondents across the 50 states and examined attitudes towards Blacks and immigrants. The results are summarized in Table 3.

Table 3:

Racial attitudes among Whites in CCES, 2010

Percent Reporting	Section 5	Non Sec 5	Diff
Racial Resentment	66%	53%	13%***
Anti-immigrant attitudes	46%	35%	11%***

Chi-square test results are statistically significant: *** P>.001 ** P>.010 *P>.050
Source: Cooperative Congressional Election Study, 2010, data among White respondents

The first relevant measure is the degree of racial resentment expressed by voters based on an eight-point scale of animosity. Among White respondents in Section 5 covered jurisdictions, an average of 66% reported high levels of racial resentment towards Blacks – a full thirteen points higher than the measure for Whites living in non-Section 5 areas. Among all of the states, White respondents in Alabama, Louisiana, Mississippi and Georgia rated highest on their quotient of racial resentment. These four states are fully covered by Section 5. *See* Appendix D.

The same pattern emerged on the two questions that tracked attitudes towards immigrant groups. White respondents in Section 5 states were significantly more likely to report anti-immigrant attitudes than Whites in non-Section 5 states and localities. Once again, the individual states that registered the highest degree of anti-immigrant attitudes among White respondents were all covered by Section 5. Alabama, Mississippi, Texas, Georgia, Louisiana, Alaska, and Arizona were the seven states with the highest degree of anti-immigrant attitudes in the CCES 2010 data.

C. Additional Social Science Research

The survey results reviewed here are consistent with an abundance of published research in leading academic publications.[7] Scholarly research in the last decade alone has produced several findings showing that prejudice and discriminatory attitudes towards Blacks and Latinos persists and that it is strongest among Whites in states covered by Section 5.[8]

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7. Dana Ables Morales, *Racial Attitudes and Partisan Identification in the United States, 1980-1992*, 5 Party Politics 191 (1999); Nicholas A. Valentino & David O. Sears, *Old Times There Are not Forgotten: Race and Partisan Realignment in the Contemporary South*, 24 Am. J. Pol. Sci. 672 (2005).

8. M. V. Hood & Seth C. McKee, *Gerrymandering on Georgia's Mind: The Effects of Redistricting on Vote Choice in the 2006 Midterm Election*, 89 Soc. Sci. Q. 60 (2008); Richard Skinner & Philip Klinkner, *Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election*, The Forum 2 (1) (2004).

Further, a preponderance of the scholarship concludes that harboring negative racial attitudes is the underlying mechanism responsible for producing racial bloc voting among Whites, against minority candidates for elected office. For example, in a large-scale study of racial attitudes and voting, Professor Keith Reeves finds that "a significant number of Whites harbor feelings of antipathy toward Black Americans as a categorical group – feelings and sentiments that are openly and routinely expressed…. And where such prejudices are excited….they constitute the critical linchpin in Black office-seekers' success in garnering White votes."[9] Writing more than 10 years later about the 2008 presidential election, Michael Tesler and David Sears find the same pattern. Even after controlling for partisanship and ideology, they find "the most racially resentful were more than 70 percentage points more likely to support McCain in March 2008 than were the least racially resentful."[10]

Other scholarly work also supports the finding that discriminatory attitudes and racial prejudice play key roles in driving White party identification, and this is especially strong in Section 5 covered jurisdictions.[11]

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9. Keith Reeves, Voting Hopes or Fears? White Voters, Black Candidates & Racial Politics in America 74 (Oxford Univ. Press 1997).

10. Michael Tesler and David Sears, Obama's Race: The 2008 Election and the Dream of a Post-Racial America 61 (Univ. of Chicago Press 2010).

11. Jonathan Knuckey, *Racial Resentment and the Changing Partisanship of Southern Whites*, 11 Party Politics 5 (2005); Edward G. Carmines & James A. Stimson, Issue Evolution: Race and the Transformation of American Politics *(*Princeton Univ.

The most recent evidence on racial attitudes reveals a very clear and consistent pattern indicating a continuing repercussion of institutionalized exclusion. Accepted survey measures of racial resentment and animosity toward other groups find more pronounced negative attitudes in this region than elsewhere. Not only are there significant differences between Whites in the two regions, the fully covered jurisdictions rank highest among all states where these viewpoints among White voters are most common. These clear examples of the prevalence of negative racial attitudes in preclearance states fully support Congress's decision in 2006 to maintain the formula targeting the existing covered jurisdictions.

II. Racially Polarized Voting is More Prevalent in Covered Jurisdictions

Another significant point of dispute in this case is whether the contemporary evidence of racially polarized voting shows a significant distinction between Section 5 locations and the rest of the country. While most of the parties draw different interpretations from the study of data recently published by Professor Ellen Katz, *Amici* present additional data that support the legislative finding that racially polarized voting remains more prevalent in Section 5 jurisdictions.

Congress noted in its 2006 report supporting reauthorization that the sustained pattern of racially polarized voting is a key factor of present discrimination.

Press 1989); Dana Ables Morales, *Racial Attitudes and Partisan Identification in the United States, 1980-1992*, 5 Party Politics 191 (1999); Nicholas A. Valentino & David O. Sears, *Old Times There Are Not Forgotten: Race and Partisan Realignment in the Contemporary South*, 24 Am. J. Pol. Sci. 672 (2005).

The House Report, for example relied upon evidence, "that 'the degree of racially polarized voting in the South is increasing, not decreasing . . . [and is] in certain ways re-creating the segregated system of the Old South, albeit a de facto system with minimal violence rather than the de jure system of late.'" H.R. Rep. No. 109-478, at 34 (2006). Additionally, the same noted that "every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting." *Id.* at 33.

Numerous social science studies have also described the ways in which polarized voting impedes the ability of voters in protected groups to realize their political power – e.g., allying with different constituencies, competing for statewide offices, and advancing broader policy interests.[12] In *Thornburg v. Gingles*, this Court noted that polarized voting is among the clearest markers of a jurisdiction in need of a federal anti-discrimination remedy. 478 U.S. 30, 52-54 (1986).

A. Racially Polarized Voting in State Elections

Judicial findings of racially polarized voting offer even more clear evidence of ongoing discrimination. Covered jurisdictions constitute far fewer states, counties and townships, and far less of the U.S. population, than non-covered jurisdictions. *See Shelby Cnty. v. Holder*, 679 F.3d 848, 874 (D.C. Cir. 2012) (noting that covered jurisdictions constitute less than 25% of the country's population). Yet judicial findings of racially polarized voting from 2006 to the present have been disproportionately in Section 5

12. *See* Kareem Crayton, *Beat 'Em or Join 'Em? White Voters and Black Candidates in Majority-Black Districts*, 58 Syracuse L. Rev. 548, 554-58 (2008) (summarizing social science data).

jurisdictions.[13] The district court in the instant case made clear the importance of the continued existence of racially

13. The following cases found racially polarized voting in non-covered jurisdictions: *United States v. Osceola Cnty.*, 475 F. Supp. 2d 1220, 1232 (M.D. Fla. 2006); *United States v. Vill. of Port Chester*, No. 06 Civ. 15173, 2008 WL 190502, at *28 (S.D.N.Y. Jan. 17, 2008), *aff'd* 704 F. Supp. 2d 411 (S.D.N.Y. 2010); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 603 (N.D. Ohio 2008); *Large v. Fremont Cnty.,* 709 F. Supp. 2d 1176, 1207 (D. Wyo. 2010), *aff'd* 670 F.3d 1133 (10th Cir. 2012); *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 856 (E.D. Wis. 2012).

The following cases found racially polarized voting in covered jurisdictions: *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 427 (2006); *Bone Shirt v. Hazeltine*, 461 F.3d 1011 (8th Cir. 2006) (suit by Native Americans against State of South Dakota, a partially covered jurisdiction under Section 5 of the Voting Rights Act, over legislative redistricting); *United States v. Brown*, 494 F. Supp. 2d 440, 485 n.72 (S.D. Miss. 2007) (in intentional discrimination case brought under Section 2 of Voting Rights Act against African American political officials for "episodic," "one of a kind" conduct, court acknowledged racially polarized voting in Noxubee County, Miss., and finds intentional discrimination), *aff'd* 561 F.3d 420 (5th Cir. 2009); *Jamison v. Tupelo*, 471 F. Supp. 2d 706, 713 (N.D. Miss. 2007); *Fairley v. Hattiesburg*, No. 2:06cv167-KS-MTP, 2008 WL 3287200, at *4 (S.D. Miss. Aug. 7, 2008) (finding racially polarized voting but no Section 2 violation because a remedial district could not be drawn to satisfy traditional redistricting criteria), *aff'd*, 584 F.3d 660 (5th Cir. 2009); *Benavidez v. City of Irving*, 638 F. Supp. 2d 709, 726 (N.D. Tex. 2009); *Fabela v. City of Farmers Branch*, No. 3:10–CV–1425–D, 2012 WL 3135545, at *12 (N.D. Tex. Aug. 2, 2012); *Texas v. United States*, No. 11–1303, 2012 WL 3671924, at *21, *32 (D.D.C. Aug. 28, 2012) (preclearance action by State of Texas in which three-judge court found the existence of racially polarized voting and an intent to discriminate by Texas in enacting its new congressional redistricting), *juris. statement filed*, 81 USLW 3233 (October 19, 2012).

polarized voting: where it exists, minority populations are especially vulnerable to retrogressive and discriminatory electoral conduct because their political preferences diverge from the majority. *See Shelby Cnty. v. Holder*, 811 F. Supp. 2d 424, 487 (D.D.C. 2011).

Indeed, contrary to the notion that minority political success obviates Section 5, racially polarized voting offers strong evidence that this same success renders the provision as necessary as ever. As Justice Stevens has observed: "[I]t is the very political power of a racial or ethnic group that creates a danger that an entrenched majority will take action contrary to the group's political interests." *Rodgers v. Lodge*, 458 U.S. 613, 651 (1982) (Stevens, J., dissenting). This Court acted in accord with this sensible principle when it recently found that the state of Texas unlawfully had sought to dilute Latino voting strength in a congressional district in which Hispanics were "becoming increasingly politically active and cohesive." *League of Latin American Citizens v. Perry*, 548 U.S. 399, 439 (2006). The emergence of a politically active and cohesive non-White polity in jurisdictions prone to racially polarized voting is more, not less, reason for the prophylactic protections of Section 5. Structures that guarantee the opportunity to participate and to elect candidates of choice can help to offset and to diminish racially polarized voting, *see* Crayton at FN 12, but as this data shows, the effects are not immediate.

Racially polarized voting in many covered jurisdictions continues to be extreme. In addition to the racially polarized voting in covered jurisdictions in the past three presidential elections, *see* Table 4, post-reauthorization data also reveal extraordinary polarization in other

statewide contests. For instance, in post-reauthorization United States Senate contests in Mississippi, the White crossover vote for the Black-preferred candidate has averaged only 13%.[14] In the 2011 gubernatorial race in Mississippi, the Black candidate, Mayor Johnny L. DuPree, received a share of the total vote (39.02%) that was almost identical to the Black population of the state (37.3%).[15] Further analysis indicates that DuPree won an estimated 20% of the White vote, but more than 80%

14. *See* CNN, Election Center 2008 Local Exit Polls, Mississippi Results, http://www.cnn.com/ELECTION/2008/results/polls/#val=MSS01p1 (last visited Jan. 16, 2013); Election Center 2008 Local Exit Polls, Mississippi Special Results, http://www.cnn.com/ELECTION/2008/results/polls/#val=MSS02p1 (last visited Jan. 16, 2013); Election Center 2012, Mississippi Senate Race, http://www.cnn.com/election/2012/results/state/MS/senate (last visited Jan. 16, 2013). To arrive at the 13% figure, we averaged the crossover vote from the three Senate elections that occurred in Mississippi from 2008 to 2012.

15. *See* Mississippi Secretary of State, *Official Tabulation of the Vote for State Office of Governor*, http://www.sos.ms.gov/links/elections/results/statewide/Governor_Statewide%20-%20General%20Election%202011%20Results.pdf (last visited Jan. 29, 2013); *See also* U.S. Census Bureau, *State & County Quick Facts, Mississippi*, http://quickfacts.census.gov/qfd/states/28000.html (last visited Jan. 29, 2013). This pattern of extraordinarily racially polarized voting is continuation of the pre-re-authorization voting behavior in Mississippi. In 2003, a Black candidate for lieutenant governor, Barbara Blackmon, received a mere 8% of the White vote in the general election. *See* Terry Smith, *Autonomy v. Equality: Voting Rights Reconsidered*, 57 Ala. L. Rev. 261, 278 (2005). A Black candidate running for state treasurer received just 22% of the White vote despite being widely regarded as more qualified for the position than his twenty-nine-year-old White opponent. *See id.*

of the Black vote.[16] No Black political candidate has been elected statewide in Mississippi since Reconstruction.[17]

Alabama, from which the instant controversy has arisen, is another exemplar of the continuing scourge of racially polarized voting and its diminishment of minority voter opportunity. In her 2008 contest for the U.S. Senate, state senator Vivian Figures (who is Black) received only 11% of the White vote, just as presidential candidate Barack Obama carried a mere 10%.[18] Against the backdrop of numbers such as these, it is not possible to argue that covered jurisdictions are indistinct from non-covered jurisdictions in terms of minority political opportunity. Although racially polarized voting exists elsewhere in our country, *the most extreme instances of it continue to occur in covered jurisdictions*. Moreover, such polarized voting is disproportionately found in Section 5 jurisdictions.

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16. *See* Public Policy Polling, *Mississippi Governor, November 6, 2011*, http://www.publicpolicypolling.com/pdf/2011/PPP_Release_MS_1106925.pdf (last visited Jan. 28, 2013).

17. *See The Mississippi Governor's Race: A Welcome First*, The Economist (Aug. 27, 2011), http://www.economist.com/node/21526911(last visited Jan. 16, 2013).

18. *See* CNN, Election Center 2008 U.S. Senate Exit Polls, Alabama Results, http://www.cnn.com/ELECTION/2008/results/polls/#val=ALS01p1 (last visted Jan. 16, 2013, 10:57 AM); Election Center 2008 Presidential Exit Polls, Alabama Results, http://www.cnn.com/ELECTION/2008/results/polls/#ALP00p1 (last visited Jan. 16, 2013).

B. Racially Polarized Voting in National Elections

The legislative record on racially polarized voting at state and local levels finds additional support from the analysis of more recent national elections. One clear way of illustrating the effect of polarization in covered jurisdictions is by looking to survey data in national contests. Table 4 summarizes the level of support for Democratic candidates among White voters, broken out by state, in election contests for U.S. President in 2000, 2004 and 2008.[19]

The most apparent pattern from this data is that the level of White support for the Democratic nominee varies significantly between covered and non-covered states. In each year, the difference between these regions is statistically significant. The 2000 election shows an average level of white voter support for the nominee in non-covered states that was fourteen points higher than in covered states. In 2004, the average level of White support in the covered states was 25%, compared with 43% in non-covered states (a difference of 18.2 percentage points). In 2008, the level of White support in Section 5 states was 23% compared to an average of 48% in the rest of the country.

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19. A complete test of racially polarized voting would search for a sharp contrast in the level of support for a candidate among Whites compared to other racial groups. Here, *Amici* examine the preferences of White voters alone as an indicator, since well over a majority of the relevant non-White groups supported the Democratic ticket in each of the presidential elections at issue.

Table 4:
Polarized voting among Whites in 2000 – 2008 Presidential election

State	% Gore '00	% Kerry '04	% Obama '08	04-08 Chg	00-08 Chg	% Dem	% Ind	% Rep
Section 5	29	25	23	-2	-6	32	13	55
Non-	43	43	48	5	5	39	12	49
Difference	-14**	-	-25***	-7*	-11*	-7	1	6

Chi-square test results are statistically significant: *** P>.001 ** P>.010 *P>.050
Sources: National Exit Poll vote among White respondents 2000, 2004, 2008; and CCES 2010 for party identification among White voters

It is equally instructive to observe the extent to which White support diminished in the 2008 election – the first year that a major party's nominee for President was Black. On average, White support in pre-clearance states dropped an additional two percentage points below that of the nominee in 2004. The extent of this drop-off provides another way to assess the extent to which White voters remain unwilling to vote for candidates due to race.

What is also noteworthy about this data is how closely the results track the geographic pattern subject to Section 5's requirements. The group of states with the largest drop-off of White support for the Democratic nominee in 2008 includes several Section 5 jurisdictions. In fact, more than half of the nine total states where the measure dropped for the Democratic nominee between 2004 and 2008 were covered jurisdictions. The state of Louisiana had the nation's steepest decline in support among Whites, dropping ten points during this period -- from 24% to 14%.

One might be inclined to characterize these findings simply as the product of partisanship rather than racial bloc voting, but additional data refute any serious suggestion that ideology accounts for these changes. About 32% of Whites in Section 5 states identified as Democrats, yet only 23% of them supported the presidential nominee in 2008 (the lowest share of the three elections studied).

A simple comparison of different states with similar patterns of Republicanism illustrates the point. About the same percentage of White voters in the states of Utah (non-covered) and Georgia (covered) reported their affiliation with the Republican Party. *See* Appendix E. Yet

in comparing the performance of the Black Democratic candidate in 2008, one observes a marked difference among White voters. The Democratic ticket lost both statewide contests, but a much smaller share of White voters in Georgia supported the candidate than in Utah – one of the nation's most Republican states. Party affiliation alone simply cannot account for this difference in states with roughly similar patterns of allegiance to Republican ideology.

These findings comport with other existing research that has noted the pattern of polarized voting in national elections. The newest published research by political scientists finds evidence that Barack Obama received less support in 2008 than John Kerry did in 2004 among White voters in many Section 5 states as a direct result of racial prejudice and discriminatory attitudes.[20]

In his analysis of the White vote for Obama in Southern states, Professor Ben Highton notes, "at the state level, the influence of prejudice on voting was comparable to the influence of partisanship and ideology. Racial attitudes explain support for Obama and shifts in Democratic voting

20. Michael S. Lewis-Beck, Charles Tien, & Richard Nadeau, *Obama's Missed Landslide: A Racial Cost*?, 43 Pol. Sci. & Politics 69 (2010); Todd Donavan, *Obama and the White Vote*, 63 Pol. Res. Q. 863 (2010); Anthony G. Greenwald, Colin Tucker Smith, N. Sriram, Yoav Bar-Anon, & Brian A. Nosek, *Implicit Race Attitudes Predicted Vote in the 2008 U.S. Presidential Election*, 9 Analysis of Soc. Issues & Pub. Pol.'y, 241 (2009); Tom Pyszczynski, Carl Henthorn, Matt Motyl, & Kristel Gerow, *Is Obama the Anti-Christ? Racial Priming, Extreme Criticisms of Barack Obama, and Attitudes Towards the 2008 U.S. Presidential Candidates*, 46 J. of Experimental Soc. Psychol., 863 (2010).

between 2004 and 2008."[21] This finding is corroborated by Professor Spencer Piston's individual-level analysis of voter attitudes and support for Barack Obama in Southern states: "Negative stereotypes about Blacks significantly eroded White support for Barack Obama. Further, racial stereotypes do not predict support for previous Democratic presidential candidates or current prominent Democrats, indicating that White voters punished Obama for his race rather than his party affiliation."[22]

Quite apart from the evidence linking White bloc voting in the covered jurisdictions to racial animus, this Court has long recognized that racially polarized voting is independently significant as measure of the lack of minority political opportunity, regardless of what may motivate such polarization. Thus, Congress correctly focused on racially polarized voting in concluding in 2006 that the covered jurisdictions should remain unchanged.

III. Covered Jurisdictions Are More Likely to Adopt Vote Denial And Suppression Measures

In originally fashioning the Act in 1965, Congress developed a targeting formula for Section 5 that employed both the measures of political participation and the presence of certain disqualification devices. While these devices were not facially invalid as a matter of law, Congress determined that these legal measures were

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21. Ben Highton, *Prejudice Rivals Partisanship and Ideology When Explaining the 2008 Presidential Vote across the States*, 44 PS: Pol. Sci. & Politics 530 (2011).

22. Spencer Piston, *How Explicit Racial Prejudice Hurt Obama in the 2008 Electio*n, 32 Pol. Behavior 431 (2010).

relevant to identifying the group of states that tended to employ a racially unequal electoral system.

The distinct pattern of current legal devices now present in Section 5 states similarly demonstrates the heightened risk posed to minority voters in these jurisdictions. Covered and partially-covered jurisdictions are more likely than others to impose an array of restrictions on the exercise of the franchise. These restrictions, in turn, have a disparate impact on minority access to the polls.

The data in Table 5 show that the differences between states with varying levels of Section 5 coverage are stark. Across all varieties of institutional measures to restrict voting rights, states that are fully covered by Section 5 are more than twice as likely as non-covered states to adopt policies that make voting more difficult for citizens. Fully covered states are more likely to employ a combination of these restrictive measures, which amplifies the disqualification effect on voters.

Table 5. States with Limits on Enfranchisement by Section 5 Coverage

	States Fully Covered by Sec 5	States Fully or Partially Covered by Sec 5	States NOT Covered by Sec 5
Percent of states that currently require identification to vote[1]	25%	30%	11%
Percent that require or request photo ID to vote, current and pending clearance[2]	50%	50%	16%
Percent requiring proof of citizenship to vote[3]	25%	13%	8%
Percent that currently have permanent or partial limits on voting if felony conviction[4]	38%	31%	16%
States with most restrictive immigration-control legislation as current law[5]	50%	29%	6%
Number of states	8	16	34

[1]National Conference of State Legislators, Oct. 2012
[2]National Conference of State Legislators, Oct, 2012 and Ballotpedia.com, Jan 2013
[3]Lawyers Committee for Civil Rights June 2011
[4]ACLU Map of State Felon Disenfranchisement Laws (n.d.)
[5]National Conference of State Legislatures, Aug., 2012

States that are fully covered by Section 5 or that include a significant proportion of covered jurisdictions are much more likely to institute policies that require citizens to produce potentially burdensome documentation proving their identities or citizenship before they are allowed to vote. This Court has recognized that states may not impose "excessively burdensome requirements" on any class of voters. *See Crawford v. Marion County Election Bd.*, 553 U.S. at 202 (citations omitted). The disproportionate impact that restrictive voter identification requirements have on Black and Latino voters is well-established in both the scholarly literature and more general analysis.[23] Indeed, a three-judge panel recently found that Texas's photo identification law retrogressed Latinos' right to vote. *Texas v. Holder*, Civ. No. 12-128, 2012 WL 3743676, *33 (D.D.C. 2012) (describing Texas's photo ID law as "the most stringent in the country" and finding that it "would almost certainly have retrogressive effect").

States covered by Section 5 are also more likely to adopt laws that permanently or partially limit the rights of convicted felons to vote. States that are not covered by Section 5 are much more likely to allow convicted felons to vote as soon as their sentences are completed. Because Blacks and Latinos are overrepresented in the criminal justice system, felon disenfranchisement laws

23. Gabriel Sanchez, Stephen Nuno, and Matt Barreto. "Racial and Ethnic Differences in Access to Photo-ID in Texas," Latino Decisions Blog, March 12, 2012; Matt Barreto, Stephen Nuño, and Gabriel Sanchez, 2007, "Voter ID Requirements and the Disenfranchisements of Latino, Black and Asian Voters." Paper presented at the Midwest Political Science Association, Annual Conference, Chicago, IL.

disproportionately deprive minority citizens of the right to vote.

While Blacks and Latinos make up about 30% of the U.S. population, these groups account for nearly 60% of people in prison. Not surprisingly, then, nearly 15% of Black men are denied the right to vote due to felony-disenfranchisement laws.[24] During the prior extension of Section 5, this Court found that Alabama, the state in which Petitioner is situated, unconstitutionally maintained a felony disenfranchisement statute, the original purpose of which was to discriminate against Black citizens and the continuing impact of which was to disproportionately disenfranchise them. *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

Amici recognize that states may maintain voter identification and felony disenfranchisement laws for legitimate purposes. But the far greater instances of such laws in the very jurisdictions where racial prejudice among White voters is highest, where minority socioeconomic disadvantage is greatest, and where White bloc-voting is most persistent and extreme, underscores the need for Section 5's prophylactic review of these jurisdictions' voting laws to determine their impact and intent.

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24. *See*, The Sentencing Project, *Racial Disparities*, http://www.sentencingproject.org/template/page.cfm?id=122 (last visited Jan. 29, 2013); *see also*, American Civil Liberties Union, *Mass Incarceration: The Facts*, http://www.aclu.org/combating-mass-incarceration-facts-0 (last visited Jan. 29, 2013).

IV. Non-White Voters In Covered Jurisdictions Are Vulnerable Due To Socioeconomic Disparities

The negative racial attitudes, White bloc voting, and barriers to voting discussed in the foregoing sections place severe burdens on those Americans who are socioeconomically disadvantaged. The material condition of non-White citizens is therefore a core issue in assessing minority political equality. *See Thornburg v. Gingles*, 478 U.S. 30, 45 (1986) (specifying as relevant to a determination of vote dilution "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"). Economic circumstance affects citizens' ability to comply with voting requirements that covered jurisdictions may implement. *See Texas v. Holder*, Civ. No. 12-128, 2012 WL 3743676, at *19 (D.D.C. Aug. 30, 2012); *see also Harper v. Va. State Board of Elections*, 383 U.S. 663, 668 (1966) ("The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors, by analogy, bars a system which excludes those unable to pay a fee to vote or who fail to pay").

Wealth and educational attainment affect the responsiveness of the political parties to the needs of voters. *See* Bertrall L. Ross II & Terry Smith, *Minimum Responsiveness and the Political Exclusion of the Poor*, 72 Law & Contemp. Probs. 197, 209-210 (2009) (examining empirical studies of the political process's responsiveness to the concerns of the poor and concluding that "[t]he poor, at least according to these empirical studies, have

essentially become an excluded group in the political process."). [25]

Where economic and educational disadvantage correlate with race, as they do in the covered jurisdictions, non-White voters are the most vulnerable to retrogressive or intentionally discriminatory voting practices and non-responsiveness by government officials. Moreover, because these conditions of racialized economic and educational disparities are concentrated in covered jurisdictions, where a majority of the three major non-White groups protected by Section 5 resides, Congress has correctly focused its remedial authority in these locations.[26]

In this section, *Amici* compare U.S. Census data for 2000 and 2010 in states that are fully covered and partially covered by Section 5. On key metrics of socioeconomic well-being—including education, household income, home ownership, and employment—racial disparities remain substantial in fully covered and partially covered

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25. *See also* Sidney Verba, Kay L. Schlozman, & Henry L. Brady, Voice and equality: Civic voluntarism in American politics (Harvard Univ. Press 1995); Raymond E. Wolfinger, & Steven J. Rosenstone, Who Votes? (Yale Univ. Press 1980); Katherine Tate, Black Faces in the Mirror: African Americans and Their Representatives in the U.S. Congress (Princeton Univ. Press 2003); Angus Campbell, et al., The American Voter (Wiley Press 1960); Louis DeSipio, Counting on the Latino Vote: Latinos as a New Electorate (Univ. of Virginia Press 1998).

26. A majority of persons belonging to each of the three largest protected non-White groups in the United States reside in states where Section 5 now applies. Approximately two-thirds of Blacks, 63.3% in 2000 and 2010, and almost three-quarters of Hispanics (as defined in the Census), 74.6% in 2000 and 72.3% in 2010, live in fully and partially covered states. *See* Appendix A.

jurisdictions. The implications of these current data on the present legal question are plain: Minorities in covered jurisdictions continue to suffer from substantial socioeconomic disparity, "which hinder[s] their ability to participate effectively in the political process." See *Gingles*, 478 U.S. at 45.

A. States Fully Covered by Section 5

In fully covered states, 84% of all Whites compared to only 69% of Blacks had at least a high school education as of 2000. *See* Appendix B. In this same year, Whites were almost twice as likely as Blacks to have a bachelor's degree or higher. The share of Whites with a high school education or higher exceeded the percentage for Hispanics by 24 percentage points. And the share of those with a college degree or higher was 11 percentage points better for Whites than Hispanics. These racial differences in educational attainment persisted in 2010.

Substantial disparities also appear in differences among these groups, in median household income, percent home ownership, and percent unemployed. In 2000, Whites had a median household income that was $16,169 greater than that of Blacks, and $9,918 greater than that of Hispanics. In that same year, the percentage of homeownership among Whites exceeded the measure for Blacks (as a percent of all Blacks) by 33 points, and the difference between White and Hispanic homeownership was 28 percentage points. The unemployment rate for Whites in 2000 was half, or three percentage points lower, the comparable measure for Blacks. Further, the unemployment rate during this year was two points lower among Whites than it was in the Hispanic community.

Differences in home ownership rates held over the decade. In 2010, the proportion of Whites who owned homes remained far greater than the comparable figure for Blacks, and White homeownership surpassed Hispanic homeownership by 27 percentage points. The differences in unemployment rates persisted as well. In this same year, the unemployment rate of Whites was half that of Blacks, a difference of four percentage points, and White unemployment rate was two percentage points lower than that of Hispanics. In 2010, the gap between Whites and Blacks in median income grew to nearly $21,000, and increased to more than $15,000 between Whites and Hispanics.

B. States Partially Covered by Section 5

Socio-demographic disparities also appear in states that are partially covered under Section 5. The data for these states appears in Appendix C. In 2000, 86% of all Whites had a high school education or higher compared to 76% of Blacks in these states. The difference between the rates for Whites and Hispanics was even greater at 27 percentage points. Differences in the percent of each group with a bachelor's degree were also present: 10 percentage points separated the percentage of Whites and Blacks with a bachelor's degree or more, and Whites held a 14 percent advantage over Hispanics with a college degree or higher. In 2010 these differences in educational attainment were still apparent.

A similar pattern appears when one assesses median household income, home ownership, and unemployment in 2000 and in 2010. In 2000, Whites had incomes that were $13,306 greater than Blacks and $11,221 greater than

Hispanics. Thirty-one percent more Whites than Blacks own homes; Whites outpaced Hispanics in owning their homes (72% vs. 40%, or a difference of 32 percentage points). Substantial differences in unemployment rates are evident. The unemployment rate of Blacks was more than twice that of Whites as was the unemployment rate of Hispanics.

In 2010, Whites had median household incomes that were on average $19,698 greater than that of Blacks and $16,056 greater than that of Hispanics. Differences in homeownership also remained. With respect to rates of home ownership, Whites outpaced both Blacks and Hispanics by 33 and 29 percentage points respectively. Finally, the unemployment rate of Blacks was more than double that of Whites, a difference of five percentage points, and the difference of three points between Whites and Hispanics indicates that 50% more Hispanics than Whites were unemployed.

C. Covered States & Employment Discrimination Charges

While these continuing disparities in education, household income, home ownership, and unemployment are indications of the contemporary consequences of historical discrimination, they also reflect continuing present-day discrimination in the covered jurisdictions. For instance, it is well understood among scholars and experts that the higher Black unemployment rate is in part a function of job discrimination.[27]

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27. Terry Smith, Barack Obama, Post-Racialism, and the New Politics of Triangulation 94 (Palgrave MacMillan 2012).

The United States Equal Employment Opportunity Commission (EEOC) maintains state-specific data on the outcomes of job discrimination and retaliation charges filed with the agency against both private and government employers. This data provides important evidence that the pattern of discriminatory behavior in employment appears more frequently in preclearance locations than one might otherwise expect.

An examination of two categories of administrative action on these charges reveals that covered jurisdictions are the sites of a disproportionate share of job discrimination and retaliation findings. As shown in Table 6, from 2006 through 2012, fully covered jurisdictions accounted for a quarter of all merit resolutions by the EEOC, significantly in excess of their collective 19% share of U.S. adult population. Merit resolutions are "Charges with outcomes favorable to charging parties and/or charges with meritorious allegations."[28] In the period from 2006 to 2012, the EEOC was also statistically more likely to find "reasonable cause" in charges filed in covered states. An EEOC determination of reasonable cause means "cause to believe that discrimination occurred based upon evidence obtained in investigation."[29]

28. U.S. Equal Employment Opportunity Commission, *Definition of Terms*, http://www.eeoc.gov/eeoc/statistics/enforcement/definitions.cfm (last visited Jan. 29, 2013).

29. *Id.*

Table 6:
Rate of EEOC Claims with Reasonable Cause or Merit Resolutions:
Comparing outcomes in Section 5 covered and non-covered States

	EEOC Data 2006 – 2012		
	Section 5	Non-Section 5	Diff
Percent of Adult Population	19	81	--
Percent of all Reasonable Cause Determinations 2006-12	25	75	6**
Percent of all Merit Resolutions 2006-2012	26	74	7**
Rate of Reasonable Cause Determinations per 1000 Adults	0.166	0.103	0.064**
Rate of Merit Resolutions per 1000 Adults	0.718	0.457	0.261***

Note: For items 2 and 3, difference column represents difference in percent of adult population in Section 5 states (19%) and percent of EEOC outcomes in these states. For items 4 and 5, difference represents gap between Section 5 and non-Section 5 states going across the row.
Chi-square test results are statistically significant: *** P>.001 ** P>.010 *P>.050
Sources: EEOC Data by State on Resolution of Claims

The concentration of these claims follows an unmistakable pattern. Based on the same EEOC statistics, six of the nine fully covered jurisdictions have earned the unenviable sobriquet of being among the twenty states with the most workplace discrimination.[30] Here again, sheer population size alone simply cannot account for the frequency of such claims in these states. Mississippi is only the thirty-first (31st) largest state, yet it ranks eighteenth (18th) in workplace discrimination. Alabama is only the twenty-third (23rd) largest state, yet is ranked eleventh (11th) in workplace discrimination. And while Texas is the second (2nd) largest state, it ranked first (1st) in workplace discrimination.[31]

In sum, the disparities along with the distinct pattern of employment discrimination charges discussed above paint a portrait of heightened socioeconomic vulnerability in the covered states, a vulnerability which is magnified by the high concentration of racial minorities living in the covered jurisdictions. This vulnerability, in turn, adversely affects political participation and opportunity and justifies Congress's determination that Section 5 is still needed to guarantee that state and local governments do not limit the voting rights of Blacks and Hispanics.

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30. *See* Business Week, *Twenty States With the Most Workplace Discrimination*, http://images.businessweek.com/slideshows/20110728/twenty-states-with-the-most-workplace-discrimination (last visited Jan. 16, 2013).

31. *Id.*

CONCLUSION

No party in the present litigation disputes the fact that Congress' intervention in 1965 to rid the country of race discrimination in the political arena was warranted. While Petitioner asserts that the time has arrived for this project to end, the factors on which petitioner relies are woefully incomplete. Petitioner mistakes the project at hand as a very limited one – removing the legal barriers on non-White citizens from registering to vote. What Petitioner ignores, but what should not be lost on this Court, is the fact that this was only one aspect of a prolonged project to end institutionalized political exclusion based on race. The data presented here offer a clear picture that, both in 2006 and now, the decision to maintain Section 5 was a reasonable one based on sound evidence.

Congress prudently recognized that dismantling the enduring features of racial discrimination demanded continued vigilance. And it reached this conclusion for good reason. Because this project was sponsored by and often executed by well-entrenched state government actors, the effects of their efforts could not be reduced to the formal denial of access to ballots.

Amici therefore respectfully urge the Court to take account of the variety of evidence that shows that Section 5 remains a work in progress in much of our country and to affirm the decision below.

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