Section 5’s Geographic Reach Works

- **Theory of Coverage.**
  - Section 5 covers those areas of the country with the worst *histories of and ongoing problems* with voting discrimination.
  - Congress recognized that the coverage provision reflects the continuity of discrimination from the past to the present. It targets areas that have a demonstrated record of persistent and adaptive discrimination that has proven particularly difficult to dislodge over time. For this reason, it is appropriate that the coverage provision be narrow and deep (i.e., aimed at the areas where the problem has shown itself to be most intractable) rather than shallow and wide.
  - In reauthorizing the Section 5 in 2006, Congress started with the existing coverage provision, because it identified those parts of the country that historically had the worst problems with voting discrimination.
  - But Congress didn’t stop there: it then conducted 21 hearings to take a fresh look at current conditions around the country, and determined that, overall, these same areas continue to have much worse problems of voting discrimination than the rest of the country.
  - It is, therefore, not correct to say that the coverage provision is simply “based on old data.” While it is true that the statute identifies places for Section 5 coverage based in part on their past registration rates, the recent evidence shows that these same places generally remain the worst actors, but have largely shifted their tactics from registration barriers to other techniques, from canceling elections right as minority populations are on the verge of electing candidates; to closing polling places in minority communities; to carving minority communities up during the redistricting process. Simply updating the turnout or registration data in the coverage provision, therefore, wouldn’t really capture the nature of the discriminatory tactics that we see today.

- **Comparative Evidence of Discrimination.**
  - **Quantitative Evidence.** Comprehensive studies of case-by-case litigation under Section 2 of the VRA (a section covering all states), which compare jurisdictions that are covered by Section 5 with those that are not, strongly support Congress’s conclusion that certain areas have worse records of
voting discrimination than others. While the covered jurisdictions account for less than 25 percent of the country’s population, they account for more than 80 percent of successful Section 2 voting rights litigation. Therefore, on per capita basis, there are 12 times as many successful Section 2 cases occurring in the covered jurisdictions compared to non-covered jurisdictions.

- **Qualitative Evidence.** The nature of the discrimination witnessed in covered jurisdictions is also much more severe and persistent. Our brief alone documents dozens of examples of “repeat offenders” among the covered jurisdictions – places that, after losing one voting rights action, simply turn around and try another discriminatory measure (e.g., Texas; Mississippi; Dillard counties). By contrast, there are only 1 or 2 examples of non-covered parts of the country being sued successfully more than once for minority voting rights violations (Chicago and Bradford County, FL).

- Thus, the U.S District Court for the District of Columbia recognized that “the 21st century problem of voting discrimination remains more prevalent in those jurisdictions that have historically been subject to the preclearance requirement.”

- **The Coverage Provision Need Not Be Perfect**

  - The Court has previously rejected Shelby County’s argument that Section 5 is unconstitutional because it applies to some parts of the country and not others. It is constitutionally permissible for Congress to focus attention on areas where discrimination in voting is persistent and adaptive; a law does not become unconstitutional simply because it does not solve every instance of discrimination—particularly when that law’s demonstrated track record shows that it does solve many such instances, and in the places with the most stubbornly persistent voting discrimination.

  - As LDF pointed out on page 2 of its merits brief to the Court, “this Court’s precedent makes clear that Congress need not act with surgical precision … racial discrimination in voting remains concentrated in the jurisdictions that have historically been covered by Section 5. The evidence of ongoing voting discrimination in Alabama specifically, and the covered jurisdictions generally, exceeds, by many orders of magnitude, that in the non-covered jurisdictions.”

  - The coverage provision is structurally designed to be updated through bailout and bail-in. Those jurisdictions that have not engaged in voting discrimination for the previous 10 years are allowed to remove themselves from Section 5 preclearance requirements. One hundred and ninety jurisdictions have successfully “bailed out” of Section 5 coverage.