SUMMARY OF ARGUMENT

The appeal of this declaratory judgment action under Section 5 of the Voting Rights Act presents two separate issues: (1) whether the district court erred in holding that the Bossier Parish School Board carried its burden of proving a lack of discriminatory purpose in enacting its redistricting plan, and (2) whether a violation of Section 2 of the Voting Rights Act provides an independent basis for denying preclearance under Section 5. Amici agree that, in this case, it is unnecessary for the Court to reach the second issue, because the district court majority clearly erred in applying the purpose prong of Section 5, and its decision must be reversed on that basis. In the event, however, that the Court reaches the second issue, this amici brief is submitted to describe the context and legislative history of amended Section 2 which clearly demonstrate Congress' intent to assure that a voting change violating Section 2 of the Act would not be required to receive preclearance under Section 5 of the Act. To avoid repetition of the arguments in the principal briefs, the amici brief is limited to this latter issue, as to which amici have a special interest based on their involvement as counsel in past Section 5 cases that have addressed this issue. See Georgia v. Reno, 881 F Supp. 7 (D.D.C. 1995) (three-judge court); Texas v. United States, 1995 WL 769160 (D.D.C.1995) (three-judge court).

The legislative history of the 1982 amendments and extension of the Voting Rights Act show that Congress intended for the results standard of Section 2 to apply to Section 5 preclearance. Congress was well aware of the limitations of the retrogression standard of Beer v. United States, 425 U.S. 130 (1976), when it extended and amended the Act in 1982. The Senate Report that accompanied the amendments provides that "[i]n light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure so discriminates as to violate section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982).

The principal cosponsors of the 1982 amendments, Senator Kennedy and Representative Sensenbrenner, reiterated on the floors of the Senate and House during the legislative debates that "where there is a section 5 submission which is not retrogressive, it would be objected to only if the new practice itself violated the Constitution or amended section 2." 128 Cong. Rec. 57095 (daily ed. June 16,1982) (remarks of Sen. Kennedy);128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbrenner). Representative Edwards, a sponsor of the final bill and chair of the House subcommittee with jurisdiction over the extension of the Act, concurred with Representative Sensenbrenner's interpretation of the bill. 128 Cong. Rec. H3840-41.

Congress also acted with knowledge of the Attorney General's then established practice of denying preclearance to changes which violated other provisions of the Act. When Congress reenacts a statute and voices its approval of an administrative or other interpretation of the statute, as it did in the Senate Report, Congress is treated as having adopted that interpretation, and the courts are bound by it.

The Senate Report is entitled to greater weight than any other of the legislative history This Court has described the Senate Report as being "the authoritative source" for construction of the 1982 amendments to the Act. Thornburg v. Gingles, 478 IF.S. 30, 43 n.7 (1986). It has been the established practice of the Court, moreover, to examine the applicable committee reports to determine congressional intent and the meaning of specific provisions of the Voting Rights Act, particularly Section 5, where the statute itself was silent or ambiguous.

While Congress did not amend Section 5, it did amend the Voting Rights Acts and provided that amended Section 2 was to apply to preclearance. It is common for Congress to add a provision to an act and apply it to a second provision of the same act without changing the language of the second provision.

Some voting changes are not amenable to analysis under a retrogression standard. A change from appointed to elected county commissioners, for example, would be covered by Section 5, but it might be difficult to determine the effect of such a change based upon a retrogression analysis. In other cases, there may be no practice or procedure at all that can be used as a benchmark for determining retrogression, e.g., where a newly incorporated college district or municipality selects for the first time a method of conducting elections. Under the circumstances, a voting plan which fairly reflects the strength of the minority community as it exists would furnish the logical and appropriate basis for comparison.

The application of Section 2 to preclearance would not cause a major or disruptive change in the administration of Section 5. The Attorney General has administered the statute in such a manner in the past. The purpose or effect standards would continue to apply and dispose of the vast majority of submitted voting changes. It would make very little sense from the

standpoint of public policy and conserving judicial resources to allow violations of one section of the Voting Rights Act (Section 2) to be approved by another (Section 5). Such a result would undercut the enforcement mechanisms and the overall purpose of the Act. The evidence shows that Congress intended to correct the anomalies of Beer by applying Section 2 to Section 5 preclearance.