No. 08-322

In The
Supreme Court of the United States

NORTHWEST AUSTIN MUNICIPAL
UTILITY DISTRICT NUMBER ONE,

Appellant,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA, *et al.*,

Appellees.

**On Appeal From The United States
District Court For The District Of Columbia**

AMICUS CURIAE BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF APPELLANT

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QUESTIONS PRESENTED

1. Whether Section 4(a) of the Voting Rights Act, 42 U.S.C. § 1973b, which permits "political subdivisions" of a State covered by the requirement of Section 5, 42 U.S.C. § 1973c, that certain jurisdictions preclear changes affecting voting with the federal government to bail out of Section 5 coverage if they can establish a 10-year history of compliance with the Voting Rights Act, must be available to any political subunit of a covered State when the Court's precedent requires "political subdivision" to be given its ordinary meaning throughout most of the Voting Rights Act and no statutory text abrogates that interpretation with respect to Section 4(a).

2. Whether, under the Court's consistent jurisprudence requiring that remedial legislation be congruent and proportional to substantive constitutional guarantees, the 2006 enactment of the Section 5 preclearance requirement can be applied as a valid exercise of Congress's remedial powers under the Reconstruction Amendments when that enactment was founded on a congressional record demonstrating no evidence of a persisting pattern of attempts to evade court enforcement of voting rights guarantees in jurisdictions covered only on the basis of data 35 or more years old, or even when considered under a purportedly less stringent rational-basis standard.

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AMICUS CURIAE BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF APPELLANTS

Mountain States Legal Foundation respectfully submits this amicus curiae brief in support of the Appellant, Northwest Austin Municipal Utility District Number One.[1]

IDENTITY AND INTEREST OF AMICUS CURIAE

Mountain States Legal Foundation ("MSLF") is a non-profit, public interest law firm organized under the laws of the State of Colorado. MSLF and its members strongly believe that the Founders created a federal republic, in which the federal government is one of limited, enumerated powers, and that federalism is at the heart of the U.S. Constitution: "The powers delegated by the . . . Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite."[2] Accordingly, since its

[1] Pursuant to Rule 37.3(a), counsel of record states that the parties have consented to the filing of this brief. Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity, other than the amicus curiae, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief.

[2] The Federalist No. 45 (James Madison) (Jacob E. Cooke ed., 1961).

creation in 1977, MSLF has been active in litigating in opposition to legislation that violates the concept of federalism and in cases in which the federal government acts beyond its powers. Specifically, MSLF has represented clients in opposing intrusive, improper, illegal, or unconstitutional legislation, such as Section 5 of the Voting Rights Act,[3] that infringes on the rights of individuals or unnecessarily intrudes on the sovereignty of the States.

MSLF has been active in litigating in opposition to legislation that violates the concept of federalism and in cases in which the federal government acts beyond its powers. In fact, MSLF has opposed the constitutionality of Section 2 of the Voting Rights Act in three previous cases.[4] Accordingly, MSLF brings a distinctive point of view to this case that may assist this Court in its decision.

ARGUMENT

This Court should reverse the three-judge district court panel, and hold Section 5 of the Voting Rights Act unconstitutional to correct the serious and far-reaching constitutional error of the panel's holding

[3] 42 U.S.C. § 1973c.

[4] *U.S. v. Blaine County Montana*, 363 F.3d 897 (9th Cir. 2004); *U.S. v. Alamosa County Colorado*, 306 F.Supp.2d 1016 (D.Colo. 2004); *Large v. Fremont County Wyoming*, No. 05cv270J (D.Wyo. filed Oct. 20, 2005, decision pending).

that the scope of congressional power under the Fifteenth Amendment's Enforcement Clause[5] is far greater than that under the corresponding clause of the Fourteenth Amendment.[6]

The three-judge district court panel held that the congruency and proportionality test set forth in *City of Boerne v. Flores*[7] and cases following it does not apply to Section 2 of the Fifteenth Amendment, holding instead that legislation enacted to enforce Section 2 of the Fifteenth Amendment need be only rational, not congruent and proportionate.[8] The panel relied on *State of South Carolina v. Katzenbach*[9] and the pre-*Boerne* cases following it and, in doing so, compounded its error by misinterpreting and eviscerating the holding of *Katzenbach*, a holding entirely consistent with *Boerne*.

The consequence is that the panel allows Congress to define the Fifteenth Amendment substantively, a function constitutionally entrusted to the judicial branch exclusively. As a result, the panel incorrectly held that the 2006 reauthorization of Section 5 of the Voting Rights Act is constitutional when it is not.

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[5] U.S. Const. amend. XV, § 2.

[6] U.S. Const. amend. XIV.

[7] 521 U.S. 507 (1997).

[8] *Northwest Austin Mun. Utility Dist. Number One v. Mukasey*, 573 F.Supp.2d 221, 245-46 (D.D.C. 2008).

[9] 383 U.S. 301 (1966).

I. CONGRESS'S POWER UNDER THE ENFORCEMENT CLAUSES OF THE FOURTEENTH AND FIFTEENTH AMENDMENTS IS REMEDIAL, NOT SUBSTANTIVE.

A. Congress May Not Define The Substance Of The Prohibitions It Enforces.

Unlike the substantive powers conferred by Article I, which bestow on Congress the power to define the scope of substantive rights, the Enforcement Clauses of the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments[10] are remedial, empowering Congress only to enforce a prohibition, not substantively define it.[11] "Congress's power under §5 extends only to 'enforcing' the provisions of the Fourteenth Amendment. This Court has described this power as 'remedial.'"[12]

Constitutional difficulty arises when Congress, exercising its remedial powers, forbids conduct that is facially constitutional in order to prevent *potentially* unconstitutional conduct – so-called "prophylactic legislation," such as Section 5 of the Voting Rights Act. In such a case, the question arises as to whether Congress has enforced the constitutional prohibition

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[10] U.S. Const. amend. XIII-XV, XIX, XXIV, XXVI.

[11] *Boerne*, 521 U.S. at 519.

[12] *Id.* (quoting *Katzenbach*, 383 U.S. at 326).

set forth in the Amendment or whether it has unconstitutionally expanded or defined that prohibition substantively, which it may not:

> The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the States.[13]

Indeed, *Boerne* recognized that the "remedial and preventive power of Congress' enforcement power, *and the limitation inherent in the power*, were confirmed in our earliest cases on the Fourteenth Amendment."[14]

B. Congress's Enforcement Clause Power Is The Same For Each Amendment It Enforces.

Boerne recognized that analysis of any Enforcement Clause power depends, not on the nature of the constitutional prohibition it enforces but, rather, on the remedial nature of the Enforcement Clause itself.[15] Referring to *Katzenbach*, *Boerne* recognized that *Katzenbach* sustained the Voting Rights Act of 1965 "under Congress' *parallel power* to enforce the provisions of the Fifteenth Amendment . . . as a

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[13] *Id.*

[14] *Id.* at 524 (citing the *Civil Rights Cases*, 109 U.S. 3 (1883)) (emphasis added).

[15] *Boerne*, 521 U.S. at 519.

measure to combat racial discrimination in voting."[16] Indeed, *Boerne*, viewing the Enforcement Clauses interchangeably, held that, under certain circumstances, Congress may sometimes pass prophylactic legislation under its power to "enforce the Fourteenth *and* Fifteenth Amendments. . . ."[17] In doing so, *Boerne* cited as interchangeable examples cases approving such legislation under both the Fourteenth and Fifteenth Amendments, including *Katzenbach*[18] (Fifteenth), *Katzenbach v. Morgan*[19] (Fourteenth), *Oregon v. Mitchell*[20] (Fourteenth and Fifteenth), and *City of Rome v. United States*[21] (Fifteenth).

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[16] *Id.* at 518 (emphasis added); *accord*, *Lopez v. Monterey County*, 525 U.S. 266, 294, n. 6 (1999) ("[W]e have always treated the nature of the enforcement powers conferred by the Fourteenth and Fifteenth Amendments are co-extensive); *see also*, *City of Rome*, 446 U.S. at 207, n. 1 (Rehnquist, J., dissenting) ("[T]he nature of the enforcement powers conferred by the Fourteenth and Fifteenth Amendments has always been treated as co-extensive.").

[17] *Boerne*, 521 U.S. at 524 (emphasis added).

[18] 383 U.S. 301 (1966).

[19] 384 U.S. 641 (1966).

[20] 400 U.S. 112 (1970).

[21] 446 U.S. 156 (1980).

C. Congressional Legislation Under Any Enforcement Clause May Not Define Or Expand The Scope Of The Amendment It Enforces.

When Congress passes prophylactic Enforcement Clause legislation, the issue a court must determine is whether that legislation is remedial or unconstitutionally crosses over into substantive legislation:

> Congress does not enforce [any] constitutional right by changing what the right is . . . [because] [i]t has been given [only] the power "to enforce," not the power to determine what constitutes a constitutional violation. . . . Were it not so, what Congress would be enforcing would no longer be, in any meaningful sense "the provisions of [Fourteenth Amendment]."[22]

Boerne then sets out the test to determine whether a remedial statute unconstitutionally crosses over into the substantive sphere:

> [T]he line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern. . . . [Therefore,] [t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means

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[22] *Boerne*, 521 U.S. at 519 (quoting *Katzenbach*, 383 U.S. at 326).

> adapted to that end. Lacking such a connection, legislation may become substantive in operation and effect.[23]

Thus, it is plain that the remedial amendment that an enforcement clause enforces is irrelevant – each must be congruent and proportionate to the substantive power enforced.

It stretches credulity to suppose that Congress's power to pass prophylactic legislation under any Enforcement Clause depends not on the nature of the power itself but, instead, on the nature of the constitutional prohibition that it enforces. One cannot square this proposition with the plain language of *Boerne*. In the instant case, the district court panel justified its decision by remarking that *Boerne* and the cases following it deal with the Fourteenth Amendment only.[24] That is true. But not all the cases on which the panel relied in distinguishing the Enforcement Clause of the Fifteenth Amendment from that of the Fourteenth Amendment rely only on the Fifteenth Amendment. In fact, some deal with the Thirteenth and Fourteenth Amendments as well, viewing the Enforcement Clauses of the Thirteenth, Fourteenth, and Fifteenth Amendments as interchangeable. *Katzenbach*[25] (Fifteenth), *Katzenbach v.*

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[23] *Id.* at 519-20.

[24] *Northwest Austin*, 573 F.Supp.2d at 245-46.

[25] 383 U.S. 301 (1966).

Morgan[26] (Fourteenth), *Oregon v. Mitchell*[27] (Fourteenth and Fifteenth), and *City of Rome v. United States*[28] (Fifteenth).

Furthermore, the panel's distinction ignores the fact that *Boerne* itself views the Enforcement Clauses as "parallel" powers and relied for its analysis not only on Fourteenth Amendment cases, but also on Fifteenth and on Thirteenth Amendment cases interchangeably.[29]

Therefore, the panel mistakenly held *Boerne* and the post-*Boerne* line of cases irrelevant, holding itself bound only by pre-*Boerne* cases. Regrettably, the panel compounded its error by incorrectly interpreting those earlier cases to be inconsistent with *Boerne*, which they are not. As a result, the panel effectively held that there is no limit on congressional enforcement power under the Fifteenth Amendment and that Section 2 of the Fifteenth Amendment gives Congress power to define and to determine what constitutes a constitutional violation under the Fifteenth Amendment.

Accordingly, this Court should reverse the district court panel, correcting its critical error, and hold Section 5 of the Voting Rights Act, as reauthorized

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[26] 384 U.S. 641 (1966).

[27] 400 U.S. 112 (1970).

[28] 446 U.S. 156 (1980).

[29] *Boerne*, 521 U.S. at 519, 524.

in 2006, unconstitutional under this Court's congruency and proportionality jurisprudence.

II. *KATZENBACH* AND *BOERNE* ARE CONSISTENT, BOTH BEING PART OF A CONTINUUM BY WHICH THIS COURT HAS REFINED ITS VIEW OF CONGRESSIONAL POWER.

A. The Three-Judge Panel Misconstrued *Katzenbach* Because It Failed To Recognize The Difference Between Congress's Substantive Powers And Its Remedial Powers.

Because the district court panel failed to distinguish between Congress's substantive powers and its remedial powers, it wrongly concluded that *Katzenbach* and *Boerne* are inconsistent, establishing two different standards of judicial review of congressional power – one for enforcement of the Fourteenth Amendment and one for enforcement of the Fifteenth Amendment.[30] To make matters worse, the panel concluded that the Fifteenth Amendment standard is very lenient, effectively giving Congress substantive power, which the Fourteenth Amendment standard does not.

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[30] *Northwest Austin*, 573 F.Supp.2d at 245-46.

The panel,[31] though purportedly focusing on *Katzenbach*, ignored that decision's factual findings and instead relied on *Katzenbach*'s reference to *McCulloch v. Maryland*.[32] But the panel ignored the fact that these cases are consistent with, and support, *Boerne*. First, *Katzenbach* recognized that "the basic test to be applied in a case involving [the constitutionality of congressional action pursuant to] §2 of the Fifteenth Amendment is the same as in *all cases concerning the express powers of Congress* with relation to the reserved rights of the States."[33] This holding requires that all the Enforcement Clauses be subject to the same standard of review. Then, *Katzenbach* relied on *McCulloch*, a case construing whether Congress had the power under the Necessary and Proper Clause to establish a national bank, as the general rule of law for all powers of Congress, including those contained in the Enforcement Clauses:[34]

> Let the end be *legitimate*, let it be *within the scope of the constitution*, and all means which are *appropriate*, which are *plainly adapted to that end*, which are *not prohibited*, but *consistent with the letter and spirit of the constitution*, are constitutional.[35]

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[31] *Id.* at 237.

[32] 17 U.S. 316 (1819).

[33] *Katzenbach*, 383 U.S. at 326 (emphasis added).

[34] *Id.*

[35] *McCulloch*, 17 U.S. at 421 (emphasis added).

The emphasis added in the text is important because, if one understands the difference between substantive powers, at issue in *McCulloch*, and remedial powers, at issue here, then one understands that *McCulloch*'s statement is consistent with *Boerne*. This is evident from examining the qualifying language emphasized. That is, what is "legitimate," "within the scope of the constitution," "appropriate," "plainly adapted to [a legitimate end]," "not prohibited," and "within the spirit of the constitution" differs for substantive powers and remedial powers, particularly prophylactic remedial legislation, as recognized in *Boerne*.[36] Unfortunately, the three-judge panel failed to apprehend this important distinction, a distinction critical to any constitutional analysis of the powers contained in the Enforcement Clauses.

The panel also ignored *Katzenbach*'s reliance on *Ex Parte Virginia*,[37] a Thirteenth and Fourteenth Amendment enforcement case that involved a *non-prophylactic* statute penalizing a judge who disqualified jurors on account of their race. In that case, the issue was whether Congress had power under the Thirteenth and Fourteenth Amendments to enact that statute. Following its reference to *McCulloch*, *Katzenbach* then recognized that "the Court has subsequently echoed [*McCulloch*'s] language in

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[36] *Boerne*, 521 U.S. at 524.

[37] 100 U.S. 339 (1879).

describing *each* of the Civil War Amendments,"[38] citing the following language from *Ex Parte Virginia*:

> Whatever legislation is *appropriate*, that is, *adapted to carry out the objects the amendment have in view*, whatever tends to enforce submission *to the prohibitions they contain*, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws *against State denial or invasion*, *if not prohibited,* is brought within the domain of Congressional power.[39]

This too is consistent with *McCulloch* and *Boerne.* It merely holds that any remedial legislation, whether prophylactic or not, must be "appropriate," must be "adapted to carry out the objects" of the "State denial or invasion" of the constitutional right it enforces, and must not be "prohibited" by other constitutional considerations. But what is appropriate for prohibitory remedial legislation differs from what is appropriate for prophylactic remedial legislation. The latter must be both congruent and proportionate, so that it does not exceed its remedial nature and become substantive.[40]

Consequently, contrary to the panel's view, *Ex Parte Virginia* is consistent with the holding of *Boerne*. In fact, *Boerne* relied on and cited *Ex Parte*

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[38] *Katzenbach*, 383 U.S. at 301 (emphasis added).

[39] *Ex Parte Virginia*, 100 U.S. at 345-46 (emphasis added).

[40] *Boerne*, 521 U.S. at 519-20, 524.

Virginia with approval.[41] But the *Boerne* court, unlike the three-judge panel, properly recognized the difference between exercising non-prophylactic remedial powers to enforce an Amendment, at issue in *Ex Parte Virginia*, and enacting prophylactic legislation, at issue in both *Katzenbach* and *Boerne*. Thus, it properly recognized that the Constitution requires that the Court determine that the prophylactic legislation under Congress's remedial powers is, in fact, enforcement, and not a substantive definition, of the constitutional prohibition.[42]

Similarly, the panel mistakenly held that *Morgan*, *Mitchell*, and *City of Rome* are all inconsistent with *Boerne*.[43] The panel is wrong once again due to its failure to distinguish between substantive and remedial powers, particularly in the context of remedial prophylactic legislation. Not surprisingly, *Boerne* cites to all three with approval, as does *Katzenbach*, on which *Boerne* bases its congruency and proportionality test.[44] Indeed, the lesson here is that, though the Necessary and Proper Clause applies to all Congressional powers, what is necessary and proper under Congress's substantive powers may not be necessary and proper when Congress exercises its remedial powers by enacting prophylactic legislation.

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[41] *Id.* at 517-18.

[42] *Id.* at 519-20, 524.

[43] *Northwest Austin*, 573 F.Supp.2d at 237-39.

[44] *Boerne*, 521 U.S. at 517-18.

That is, what is necessary and proper under these latter powers requires congruency and proportionality.

What one observes through this series of cases is the systematic progression and development of this Court's refinement of its understanding of Congress's limited powers as applied to the States. There is a steady progression from *McCulloch* to *Boerne* and to the post-*Boerne* cases. The pre-*Boerne* cases, on which the panel relied, are consistent with the later cases and are part of the continuum of the constitutional understanding of this Court. The three-judge panel gravely erred in not recognizing this fact.

B. *Katzenbach*'s Findings And Holding Serve As The Model For *Boerne*'s Congruency And Proportionality Test.

Boerne quoted extensively from *Katzenbach* to demonstrate when remedial prophylactic legislation is congruent and proportionate.[45] Far from employing a relaxed standard of review, *Katzenbach* recognized that Section 5 of the Voting Rights Act is "an *uncommon exercise of congressional power*" and that only "*exceptional* conditions can justify legislative measures *not otherwise appropriate*."[46] In *Katzenbach,* this Court then set forth why only exceptional conditions justify measures otherwise appropriate:

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[45] *Id.* at 525.

[46] *Katzenbach*, 383 U.S. at 334 (emphasis added).

> Congress knew that some of the States covered by . . . the Act resorted to the *extraordinary* stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the *face of adverse federal court decrees*. Congress had reason to suppose that these *States might try similar maneuvers in the future* in order to evade the remedies for voting discrimination contained in the Act itself.[47]

Therefore, this Court in *Katzenbach* concluded that, "[u]nder the compulsion of these *unique circumstances*, Congress responded in a permissibly decisive manner."[48] *Katzenbach* held that the evidence before Congress – persistent, pervasive, and intransigent State action to deny the right to vote of African Americans intentionally – was sufficient to justify the extraordinary exercise of remedial powers:

> Two points emerge vividly from the voluminous legislative history. . . . First: Congress felt itself confronted by an *insidious and pervasive evil* which had been *perpetuated* in certain parts of our country through *unremitting and ingenious defiance of the Constitution*. Second: Congress concluded that the *unsuccessful remedies which it had prescribed in the past* would have to be replaced by sterner and more elaborate measures in

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[47] *Id.* at 335 (emphasis added).

[48] *Id.* (emphasis added).

> order to satisfy the clear commands of the Fifteenth Amendment.[49]

Critical to *Katzenbach*'s holding is that such discrimination was "pursuant to a widespread pattern or practice" of unconstitutional voting discrimination and that "case-by-case litigation was inadequate to combat [such] *widespread and persistent discrimination* in voting. . . ."[50]

Thus, *Katzenbach* found that the extraordinary and uncommon exercise of congressional power was constitutional only because it was in response to a widespread pattern or practice of insidious and pervasive, unremitting, and ingenious defiance of the Constitution, which had frustrated many conventional remedies for many years. In the language of *Boerne*, the remedy adopted was congruent and proportionate to the nature and scope of the unconstitutional acts Congress sought to remedy.[51] In other words, *Katzenbach* applied the congruency and proportionality test, though it did not use those terms.

Boerne recognized *Katzenbach*'s insistence that "'the constitutional propriety of [legislation adopted under the Enforcement Clause] must be judged with reference to the historical experience . . . it reflects.'"[52] Indeed, *Boerne* noted that *Katzenbach* approved the

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[49] *Id.* at 309 (emphasis added).

[50] *Id.* at 328 (emphasis added).

[51] *Boerne*, 521 U.S. at 519-20, 524.

[52] *Id.* at 525 (quoting *Katzenbach*, 383 U.S. at 308).

severe and intrusive remedies necessary to "'banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century.'"[53] Additionally, *Boerne* found that *Katzenbach* approved these drastic remedies in part due to "evidence in the record reflecting the *subsisting* and *pervasive* discriminatory . . . use of literacy tests."[54] Referring to *Katzenbach*, *Boerne* emphasized, "The new, *unprecedented remedies* were deemed necessary given the ineffectiveness of the existing voting rights laws. . . ."[55]

Thus, far from announcing a new test for exercising remedial, prophylactic enforcement powers under the Fourteenth Amendment, *Boerne* relied heavily on *Katzenbach*, a Fifteenth Amendment case, in demonstrating the constitutional predicate necessary for a congruent and proportionate prophylactic remedy for constitutional violations of *any* of the Reconstruction Era Amendments. *Boerne* also relied on *Mitchell*, noting that the Court there "acknowledge[d] the necessity of using strong remedial and preventive measures to respond to the *widespread and persisting deprivation of constitutional rights*. . . ."[56]

The panel ignored the "exceptional" and "unique" conditions upon which *Katzenbach* upheld Section 5's

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[53] *Id.* (quoting *Katzenbach*, 383 U.S. at 308).

[54] *Id.* (emphasis added).

[55] *Id.* at 526 (emphasis added).

[56] *Id.* (emphasis added).

"uncommon exercise of congressional power." Instead, the panel focused on a single sentence in *Katzenbach*: "As against the reserved powers of the States, Congress may use *any rational means* to effectuate the constitutional prohibition of racial discrimination in voting."[57] Critically, though, the panel ignored *Katzenbach*'s next sentence: "We turn now to a more detailed description of the standards which govern our review of the Act."[58] *Katzenbach* then detailed the egregious record of unremitting, widespread patterns and practices of ingenious defiance of the Constitution, which were impervious to ordinary remedies, that justified the extraordinary remedy adopted as "rational." Only under these circumstances did *Katzenbach* find that the extraordinary remedies were "rational means." Ignoring the actual holding of *Katzenbach*, the panel cobbled together its own "rational basis" theory of constitutional power when enforcing the Fifteenth Amendment, in direct contrast to and in conflict with the holdings of *Katzenbach* and *Boerne* as set forth above.

Thus, the panel's failure to recognize the distinction between Congress's substantive and remedial powers, particularly prophylactic remedial powers, and its misunderstanding of both *Katzenbach* and *Boerne* resulted in it applying a highly lenient standard of judicial review by which it found Section 5

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[57] *Katzenbach*, 383 U.S. at 324 (emphasis added).

[58] *Id.*

constitutional, when, under the proper constitutional analysis, it should have held Section 5 unconstitutional. This Court should reverse the panel and hold Section 5, as reenacted in 2006, unconstitutional because it exceeds Congress's authority under Section 2 of the Fifteenth Amendment.

CONCLUSION

This Court's thorough and thoughtful test in *Boerne* for determining the constitutionality of legislation enacted by Congress pursuant to its remedial Enforcement Clause powers serves as the basis for this Court's ruling. This Court should reverse the district court panel's decision and hold Section 5 of the Voting Rights Act, as reenacted in 2006, unconstitutional in excess of Congress's powers under Section 2 of the Fifteenth Amendment.

Respectfully submitted,

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Submitted February 26, 2009