cations and were thus discriminatory in intent and effect. The Court determined that it would not then reevaluate the competing considerations that might have led Congress to its conclusion. Instead, the Justice wrote that Congress "brought a specially informed legislative competence" to an appraisal of voting requirements and "it was Congress's prerogative to weigh" the considerations. The Court's role in that case was to sustain the conclusion if "we perceive a basis upon which Congress might predicate a judgment" that the requirements constituted invidious discrimination.[2126] This highly deferential standard meant that the Court would uphold Congressional legislation under § 5 if there was a "rational basis" to do so.[2127]

In dissent, Justice Harlan protested that "[i]n effect the Court reads § 5 of the Fourteenth Amendment as giving Congress the power to define the *substantive* scope of the Amendment. If that indeed be the true reach of § 5, then I do not see why Congress should not be able as well to exercise its § 5 'discretion' by enacting statutes so as in effect to dilute equal protection and due process decisions of this Court." [2128] Justice Brennan rejected this reasoning: "We emphasize that Congress's power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees." [2129]

Congress, however, has not always heeded this admonontion. On the one hand, it relied on *Morgan* in the 1968 Civil Rights Act to expand federal powers to deal with private violence that is racially motivated, and to some degree in outlawing most private housing discrimination.[2130] On the other hand, it expressly invoked *Morgan* when enacting provisions of law purporting to overrule the Court's expansion of the self-incrimination and right-to-counsel clauses of the Bill of Rights.[2131] Movements have also been initiated in Congress by opponents of certain of the other Court decisions, notably

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[2126] Katzenbach v. Morgan, 384 U.S. 641, 653–56 (1966).

[2127] Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440–441 (1968)

[2128] 384 U.S. at 668. Justice Stewart joined this dissent.

[2129] 384 U.S. at 651 n.10. Justice O'Connor for the Court quoted and reiterated Justice Brennan's language in Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 731–33 (1982).

[2130] 82 Stat. 73, 18 U.S.C. § 245. *See* S. REP. NO. 721, 90th Congress, 1st Sess. 6–7 (1967). *See also* 82 Stat. 81, 42 U.S.C. §§ 3601 *et seq.*

[2131] *See* Title II, Omnibus Safe Streets and Crime Control Act, 82 Stat. 210, 18 U.S.C. §§ 3501, 3502; S. REP. NO. 1097, 90th Congress, 2d Sess. 53–63 (1968). The cases that were purported to be overuled were were Miranda v. Arizona, 384 U.S. 436 (1966), and United States v. Wade, 388 U.S. 218 (1967).