A-1

Affidavit of Diane Joffe

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF DIANE JOFFE

BEFORE ME, the undersigned notary public, personally appeared Diane Joffe who, being duly sworn, deposes and says:

1. I am a resident of Martin County, Florida residing at 6470 SE Windsong Lane, Stuart, Florida 33497.

2. I voted absentee in the General Election held on November 7, 2000.

3. I am a registered Republican.

4. I requested my absentee ballot through a form provided to me by the Republican Party in a mailing sent to my house. I filled out the requested information on the request form provided to me, and sent it to the Supervisor of Elections.

5. I received an absentee ballot from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

6. If I had not received an absentee ballot for any reason, I would have called the Supervisor of Elections Office to obtain an absentee ballot so that I might vote in the General Election on November 7, 2000.

7. My voting by absentee is the only way I could vote in the General Election since my preplanned election day trip to Washington D.C. prevented me from voting in person at the polls on November 7, 2000.

8. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Diane Joffe
DIANE JOFFE

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of DECEMBER, 2000, by DIANE JOFFE, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Rose J. Cali
Notary Public
My Commission expires:

A-2

Affidavit of Joanne D. Payson

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	

AFFIDAVIT OF JOANNE D. PAYSON

BEFORE ME, the undersigned notary public, personally appeared Joanne D. Payson who, being duly sworn, deposes and says:

9. I am a resident of Martin County, Florida residing at 230 S. Beach Road, Hobe Sound, Florida 33455.

10. I voted absentee in the General Election held on November 7, 2000.

11. I am a registered Republican.

12. I requested my absentee ballot through a form provided to me by the Republican Party in a mailing sent to my house. I filled out the requested information on the request form provided to me, and sent it to the Supervisor of Elections.

13. I received an absentee ballot from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

14. If I had not received an absentee ballot for any reason, I would have called the Supervisor of Elections Office to obtain an absentee ballot so that I might vote in the General Election on November 7, 2000.

15. My voting by absentee is the only way I could vote in the General Election since my preplanned election day trip to Washington D.C. prevented me from voting in person at the polls on November 7, 2000.

16. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Joanne D. Payson
Joanne D. Payson

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of DECEMBER, 2000, by Joanne D. Payson, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Rose J. Cali
Notary Public
My Commission expires:

A-3

Affidavit of Richard J. Kosmoski

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF RICHARD J. KOSMOSKI

BEFORE ME, the undersigned notary public, personally appeared Richard J.Kosmoski, who, being duly sworn, deposes and says:

17. I am a resident of Martin County, Florida residing at 10803 SE Buoy Court, Hobe Sound, Florida 33455.

18. I voted absentee in the General Election held on November 7, 2000.

19. I am wheelchair-bound and voted absentee in previous elections.

20. Because I voted absentee in previous elections, I automatically received an absentee ballot request form from the Supervisor of Elections. I filled out the requested information on the request form provided to me, and sent it to the Supervisor of Elections.

21. I received an absentee ballot from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

22. If I had not received an absentee ballot for any reason, I would have called the Supervisor of Elections Office to obtain an absentee ballot so that I might vote in the General Election on November 7, 2000.

23. My voting by absentee is the only way I would be able to vote in the General Election as my physical condition (wheelchair-bound) prohibits me from voting in person at the polls on November 7, 2000.

24. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Richard J. Kosmoski
RICHARD J. KOSMOSKI

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 4th day of DECEMBER, 2000, by Richard J.Kosmoski, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ R. Carmel Kosmoski
Notary Public
My Commission expires:

A-4

Affidavit of Rose Carmel Kosmoski

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF ROSE CARMEL KOSMOSKI

BEFORE ME, the undersigned notary public, personally appeared Rose Carmel Kosmoski, who, being duly sworn, deposes and says:

25. I am a resident of Martin County, Florida residing at 10803 SE Buoy Court, Hobe Sound, Florida 33455.

26. I voted absentee in the General Election held on November 7, 2000.

27. I am the primary care-giver to Richard J. Kosmoski, who is wheelchair-bound, and I voted absentee in previous elections.

28. Because I voted absentee in previous elections, I automatically received an absentee ballot request form from the Supervisor of Elections. I filled out the requested information on the request form provided to me, and sent it to the Supervisor of Elections.

29. I received an absentee ballot from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

30. If I had not received an absentee ballot for any reason, I would have called the Supervisor of Elections Office to obtain an absentee ballot so that I might vote in the General Election on November 7, 2000.

31. My voting by absentee is the only way I would be able to vote in the General Election since I am primary care-giver to Richard J. Kosmoski which prohibits me from voting in person at the polls on November 7, 2000.

32. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Rose Carmel Kosmoski
ROSE CARMEL KOSMOSKI

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 4th day of DECEMBER, 2000, by Rose Carmel Kosmoski, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Cathy A. Lindner
Notary Public
My Commission expires:

A-5

Affidavit of Ann F. Ford

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	

AFFIDAVIT OF ANN F. FORD

BEFORE ME, the undersigned notary public, personally appeared ANN F. FORD, who, being duly sworn, deposes and says:

33. I am a resident of Martin County, Florida residing at 1950 Palm City Road, Unit 5-205, Stuart, Florida 34994.

34. I voted absentee in the General Election held on November 7, 2000.

35. I requested and obtained an absentee ballot by telephone from the

Supervisor of Elections office because I am ninety years old and cannot stand in line to vote in person.

36. I received an absentee ballot back in the mail from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

37. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Ann F. Ford
ANN F. FORD

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of DECEMBER, 2000, by ANN F. FORD, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Theresa Tomica
Notary Public
My Commission expires:

A-6

Affidavit of Horace S. Ford, Jr.

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	

AFFIDAVIT OF HORACE S. FORD, JR.

BEFORE ME, the undersigned notary public, personally appeared HORACE S. FORD, JR., who, being duly sworn, deposes and says:

38. I am a resident of Martin County, Florida residing at 1950 Palm City Road, Unit 5-205, Stuart, Florida 34994.

39. I voted absentee in the General Election held on November 7, 2000.

40. I requested and obtained an absentee ballot [in person] from the

Supervisor of Elections office because I am ninety-one years old and cannot stand in line to vote in person.

41. I received an absentee ballot back [in person] from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly [by mail].

42. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Horace S. Ford, Jr.
HORACE S. FORD, JR.

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of DECEMBER, 2000, by HORACE S. FORD, JR., who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Theresa Tomica
Notary Public
My Commission expires:

A-7

Affidavit of Katharine R. Vier

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF [KATHARINE R. VIER]

BEFORE ME, the undersigned notary public, personally appeared KATHARIN R. VIER, who, being duly sworn, deposes and says:

43. I am a resident of Martin County, Florida residing at 1950 Palm City Road, Unit 5-109, Stuart, Florida 34994.

44. I voted absentee in the General Election held on November 7, 2000.

45. I [voted by] an absentee ballot [at the office of] the Supervisor of

Elections because I was out of town from November 1 through November 16 attending to my terminally-ill son in another state.

46. I received an absentee ballot in [person] from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

47. If I had not been able to vote absentee, I would not have been able to vote at all.

48. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Katharin R. Vier
KATHARIN R. VIER

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this5th day of NOVEMBER, 2000, by KATHARIN R. VIER, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Theresa Tomica
Notary Public

My Commission expires:

A-8

Affidavit of Virginia White

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	

AFFIDAVIT OF VIRGINIA WHITE

BEFORE ME, the undersigned notary public, personally appeared VIRGINIA WHITE, who, being duly sworn, deposes and says:

49. I am a resident of Martin County, Florida residing at 1969 SW Palm City Road, Unit 35D, Stuart, Florida 34994.

50. I voted absentee in the General Election held on November 7, 2000.

51. I requested and obtained an absentee ballot through the Supervisor of

Elections because I intended to volunteer to work at the polls on election day.

52. I received an absentee ballot back in the mail from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

53. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ Virginia White
VIRGINIA WHITE

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of DECEMBER, 2000, by VIRGINIA WHITE, who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Theresa Tomica
Notary Public
My Commission expires:

A-9

Affidavit of William F. Vier, Jr.

IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RONALD TAYLOR and JOHN AND JANE DOES 1-NNN,	)	
Plaintiffs,	)	
vs.	)	Case No. CV00-2850
THE MARTIN COUNTY CANVASSING BOARD; PEGGY S. ROBBINS; THE HONORABLE STEWART HERSHEY; MARSHALL WILCOX; THE FLORIDA REPUBLICAN PARTY; TOM HAUCK GEORGE W. BUSH; RICHARD CHENEY;THE STATE OF FLORIDA ELECTION CANVASSING COMMISSION and KATHERINE HARRIS	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF WILLIAM F. [VIER JR]

BEFORE ME, the undersigned notary public, personally appeared WILLIAM F. VIER, JR, who, being duly sworn, deposes and says:

54. I am a resident of Martin County, Florida residing at 1950 Palm City Road, Unit 5-109, Stuart, Florida 34994.

55. I voted absentee in the General Election held on November 7, 2000.

56. I [voted by] an absentee ballot [at the office of] the Supervisor of

Elections because I was out of town from November 1 through November 16 attending to my terminally-ill son in another state.

57. I received an absentee ballot in [person] from the Supervisor of Elections. I completed my absentee ballot correctly, and submitted it back to the Supervisor of Elections correctly.

58. If I had not been able to vote absentee, I would not have been able to vote at all.

59. Because I submitted my absentee ballot correctly, I desire that my vote be counted, and that I not be disenfranchised by having my vote disregarded.

Further Affiant sayeth not. Under penalty of perjury, I declare that I have read the foregoing; that the facts alleged are true, to the best of my knowledge and belief.

/s/ William F. Vier Jr.
WILLIAM F. VIER, JR.

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 5th day of NOVEMBER, 2000, by WILLIAM F. VIER, JR. who is personally known to me or who has produced identification and who took an oath/affirmed.

/s/ Theresa Tomica
Notary Public

My Commission expires:

A-10

August 14, 1998 Letter From Bill Lann Lee,
Acting Assistant Attorney General, to
The Honorable Robert A. Butterworth

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

August 14, 1998

The Honorable Robert A. Butterworth
Attorney General
State of Florida
The Capitol
Tallahassee, FL 32399-1050

Dear Mr. Butterworth:

This refers to Section 7 (residence confirmation procedures), Sections 13-17 and 20-21 (absentee ballot procedures), and Section 26 (criminal penalties) of Senate Bill 1402 (1998) insofar as these changes affect voters in the counties of Collier, Hardee, Hendry, Hillsborough, and Monroe in the State of Florida, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your partial response to our July 27, 1998 request for additional information on August 5, 6, 7, and 10, 1998; supplemental information was received on August 13, 1998.

As you know, the Attorney General has already precleared twenty-five of the thirty-seven sections of Senate Bill 1402 submitted to us for review under Section 5. Three sections of Senate Bill 1402 were withdrawn from our review by the State on August 6, 1998. Upon our receipt of the State's partial response to our request for additional information, we devoted a great amount of resources in responding to the State's request for expedited consideration.

In reviewing this submission, we have been well aware of the State's concerns about voter fraud; this Department shares those concerns. Procedures which enhance the integrity of the ballot are essential in ensuring that all citizens can vote and do so in a process free from fraud, coercion, or intimidation. However, the procedures used to eliminate voter fraud should not unnecessarily burden the rights of minority voters. Racially fair procedures are essential in ensuring that all citizens can vote and that their ballots are equally effective. It is with these concerns in mind that we conducted our review.

The Attorney General does not interpose and objection to Section 7 which provides a voter residence confirmation procedure, Section 13 which provides additional procedures relating to requests for absentee ballots, Section 15 which provides additional procedures relating to the return of absentee ballots, Section 17 which provides the procedures and requirements for casting an absentee ballot in person, Section 20 only insofar as it provides procedures for notifying electors of an illegal ballot due to signature discrepancies (proposed Section 101.68(4) of the Florida Election Code), Section 21 which provides the procedures and qualifications for absentee ballot coordinators, and Section 26 (proposed Section 104.047 (1), (2), (4), and (5) of the Florida Election Code) only insofar as it provides criminal penalties unrelated to Sections 14, 16, and 20. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See the Procedures for the Administration of Section 5, 28 C.F.R. 51.41. In addition, as authorized by Section 5, we reserve the right to reexamine these changes if additional information that would other wise require an objection comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

With regard to Section 21, we note that to the extent that the political parties adopt additional practices and procedures to implement this section, those practices and procedures, insofar as they affect voters in the five covered counties, would be subject to Section 5 review prior to their implementation. In addition, if the election supervisors of the five covered counties adopt additional practices or procedures to implement the above sections (e.g., absentee voter certificates), then those practices and procedures would be subject to Section 5 review prior to their implementation. See 28 C.F.R. 51.15.

We also note that an election supervisor in one of the covered counties stated that the procedures in Section 7 may be interpreted in such a way as to conflict with the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg-1 to 1973gg- 10. For example, if a voter registration card is returned as undeliverable and a voter is prevented from voting as a result, the State's implementation may conflict with the requirements of the NVRA. The granting of Section 5 preclearance as to Section 7 does not preclude the Attorney General of private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9. Our understanding from the State, however, is that the procedures in Section 7 will not result in a person being suspended from voting if a non-forwardable card is returned as undeliverable.

Sections 14, 16, 20 (proposed Section 101.68 (2) of the Florida Election Code), and 26 (proposed Section 104.047 (3) of the Florida Election Code) are the remaining voting changes. Section 14 changes the certificate an absentee voter must sign. The following additional requirements must be filled out on the certificate: the reason why the voter is entitled to vote absentee, the last four digits of the voter's social security number, the signature of a witness who is a registered voter in the State of Florida, the signing of an oath promising that the witness has not witnessed more than five (5) absentee ballots, the voter identification number of the witness, and the county where the witness is registered. In lieu of fulfilling the witness requirement, an individual may have the ballot notarized.

Section 16 changes the instructions provided with the absentee ballot. First, the ballot must be marked by the voter unless some disability or inability to read prevents a voter from so doing. Second, the instructions explain that the last four digits of the social security number must be placed on the voter certificate. The instructions also explain the witness requirements listed in Section 14 above. Finally, a warning is included in the instructions explaining that accepting a gift in exchange for a vote is a felony and providing false information on the ballot (address, name) is also a felony.

Section 20 (proposed Section 101.68 (2) of the Florida Election Code) changes the procedures for the canvass of the absentee ballot. Under the proposed changes, an absentee ballot would be "considered illegal" if there is no social security number on the ballot of if the voter has failed to follow the witness requirements in Section 14 above. The ballot would not be illegal, however, if the person who witnessed the

ballot has observed more that five ballots in violation of Section 14.

Section 26 (proposed Section 104.047 (3) of the Florida Election Code) provides a new criminal violation related to the witnessing restrictions in Sections 14, 16, and 20.

While the State has satisfied its burden that Sections 14, 16, 20 (proposed Section 101.68 (2) of the Florida Election Code), and 25 (proposed Section 104.047 (3) of the Florida Election Code) were not enacted with the purpose of discriminating against minority voters, we cannot reach the same conclusion as to discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52.

We have considered carefully the information provided in this submission and in response to our request for additional information, as well as Census data and information and comments received from other interested persons. Our analysis has revealed that during the limited time the State chose to implement the unprecleared absentee voting requirements - where the covered counties sent absentee ballots to voters with the new state law requirements printed on the absentee voter certificate - the votes of minority electors would have been more likely than white voters to be considered "illegal" and thus not counted. Minority voters were more likely to fail to meet one of the States's new requirements than were white voters. For example, in Hillsborough County twice as many black absentee voters as white absentee voters failed to meet one of the State's new requirements. Likewise, in Collier County, minority absentee voters failed to meet one of the State's new requirements at a higher rate than did Anglo voters.

Racial disparities in literary and socio-economic data may provide reasons why these changes are likely to impact minority voters more heavily than white voters. The literacy rate in the five covered counties is significantly higher for the white population than for the minority population. Significant socio-economic differences also exist between minority and white residents. There are, for example, lower rates of home and vehicle ownership by minority persons in the covered counties.

In past elections, minority voters appeared to utilize the absentee voting system at a significant rate, and in many cases at a higher rate than white voters. For example, in Hendry and Monroe Counties black voters comprised a large percentage of

absentee voters in the 1996 election. Information we obtained indicates that minority voters disproportionately avail themselves of the absentee voting option because they often do not have accessible transportation to the polling place on election day and/or have jobs that do not permit time off to vote.

Election supervisors indicated that the absentee ballots were rejected primarily because they were not in compliance with the new witness requirements (e.g., witness is not a registered voter, witness did not include county of registration of voter identification number) or did not bear the last four digits of the voter's social security number.

Our analysis suggests that it may be more difficult for minority voters to locate registered voters to be witnesses because the pool of available witnesses is made smaller by the fact that minority voters have lower registration rates and tend to live in areas with high minority concentrations. Moreover, the ability to meet the proposed requirements appears to be made more difficult for Hispanic voters by the virtue of the fact that in two covered counties the Spanish language translation of the voter certificate is inserted in the absentee voting packet rather than appearing on the envelope as part of the absentee voter certificate itself and in two covered counties there is no Spanish language translation of the certificate at all.

Information from the counties also suggests that minority voters will be less likely to participate in absentee voting because of the new requirements. Given that minority voters appear to be filling out the absentee voter certificate incorrectly at a greater rate than white voters, it could lead to a threat of criminal penalties being enforced disproportionately against minorities.

Although the proposed changes to the absentee voter certificate and ballot are likely to make it more difficult for all voters to cast absentee ballots, because the harm appears to fall more heavily on minority voters and thus puts them in a worse position, the state has not met its burden of showing that the proposed changes will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance.

Therefore, on behalf of the Attorney General, I must object to the additional requirements for the absentee certificate and absentee ballot and the criminal penalty provided for in Section 26 (proposed Section 104.047 (3) of the Florida Election Code).

We note that under Section 5 you have the right to seek a declaratory judgement from the United States District Court for the District of Columbia that the proposed changes have neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgement from the District of Columbia Court is obtained, Sections 14, 16, 20 (proposed Section 101.68 (2) of the Florida Election Code), and 26 (proposed Section 104.047 (3) of the Florida Election Code) of Senate Bill 1402 continue to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Florida plans to take concerning this matter. If you have any questions, you should call Elizabeth Johnson (202)514-6018, the Chief of the Voting Section, or Colleen Kane-Dabu (213)894-2931, an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

cc:
George L. Waas
Michael T. Cochran
Emmett Mitchell, IV

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August 19, 1998 Memorandum Prepared By Division of Elections Regarding Absentee Voting

DE 98-13
Absentee Voting
August 19, 1998
Art. I, §§§§ 1 and 2, Fla. Const.,
Art III, §§ 11, Fla. Const.,
Ch. 98-129, Laws of Fla.,
Voting Rights Act of 1965

TO: Mr. Ronald A. Labasky, Attorney At Law, Skelding and Labasky, Post Office Box 669, Tallahassee, Florida 32302

PREPARED BY: Division of Elections

This is in response to your request for an advisory opinion regarding chapter 98-129, Laws of Florida, on behalf of the Florida State Association of Supervisors of Elections. Chapter 98-129 made numerous revisions to Florida voter registration and absentee voting laws which, as late as August 14, 1998, were the subject of preclearance review at the United States Department of Justice. Critical matters regarding the impending election are understandably causing some concern on the part of the association and are in need of some clarification. As the association''s general counsel, and pursuant to section 106.23(2), Florida Statutes, the division has authority to render this opinion to you as their representative in this matter. Specifically you ask:

1. As of this date, immediately prior to the first primary election for 1998, which sections of the law are not precleared or are otherwise unenforceable for this election; and,

2. Should sections of the law that the Justice Department failed to preclear be implemented for the first primary election?

As a preliminary matter, the division issued an opinion relating to these issues on August 6, 1998. *Op. Div. Elect. 98-12, August 6, 1998* (DE 98-12). In that opinion, we advised the Secretary of State that:

> **[U]ntil further notice** the provisions of chapter 98-129, Laws of Florida, as identified in the July 27, 1998, notice from the Justice Department are unenforceable and that all elections are to be conducted under the election laws of the state as existed prior to chapter 98-129 becoming a law. However, if preclearance is received no later than August 10, 1998, a date we believe to be the point of no

return in terms of election preparation, ballots received by voters on that date and thereafter should comply with the new law.

Id.

Therefore, to the extent this opinion conflicts with DE 98-12, we recede from the latter. DE 98-12 was promulgated under exigent circumstances resulting from the Justice Department''s dilatory review of chapter 98-129, Laws of Florida. An opinion of the Division of Elections is legally binding on the person or persons who request it until amended or revoked by the division or a court of competent jurisdiction. *Smith v. Crawford, 645 So.2d 513, 521 (Fla. 1st DCA 1994).*

As to your first question, the division received three separate notices from the Department of Justice on July 27, 1998, August 10, 1998, and a final response on August 14, 1998, identifying the sections of chapter 98-129, Laws of Florida, that either have, or have not, been precleared. As of August 14, 1998, the Justice Department has failed to preclear or has raised final objections to sections 9, 10, 14, 16 and parts of sections 20 and 26 of the new law. Section 14 provides additional requirements for the absentee voter certificate. Section 16 provides the corresponding instructions for completing the certificate. The portion of section 20 which has not been precleared provides that an absentee ballot is "illegal" if the voter does not include the last four digits of his or her social security number and comply with the witness requirements. The portion of section 20 which creates the supervisor''s notice requirement with respect to ballots rejected by the canvassing board because of signature discrepancies was precleared. Subsection (3) of section 26 containing criminal penalties for persons, other than notaries, who witness more than five absentee ballots was not precleared. However, the Justice Department raised no objection to the remaining penalties provided in subsections (1), (2), (4), and (5) of section 26.

The Justice Department seemed to indicate in its August 10, 1998, letter to us that it had no objection to sections 9 and 10 of the new law, which impose identification requirements for voters appearing at the polls. However, at a later point in the letter, the Justice Department explained that, because each of the counties subject to preclearance may establish its own list of identification cards which are acceptable, each county''s list will have to be separately precleared before the new identification requirements can be implemented. Thus, while the Justice Department raised no specific objection, the new identification requirements cannot be regarded as having been precleared.

Thus, to again summarize, sections 9, 10, 14, 16, the portion of section 20 which provides that an absentee ballot is illegal if it does not include the social security number information and correct witness information, and subsection (3) of section 26 have been finally determined by the United States Attorney General to be unenforceable with respect to the five preclearance counties of Collier, Hardee, Hendry, Hillsborough, and Monroe. *Letter to Florida Attorney General Robert A. Butterworth from Elizabeth Johnson, Chief, Voting Section, Civil Rights Division, United States Department of Justice, August 10, 1998.*[1] Application of new election laws are contingent upon preclearance by the Justice Department pursuant to the Voting Rights Act of 1965. Thus, the effective date of any such laws are delayed until such preclearance is obtained.

As a result, with respect to your second question and for the reasons set forth below, it is the opinion of the Division of Elections that all 67 Florida counties should instruct absentee voters, issue absentee ballots, count voted absentee ballots, canvass absentee ballots, and require polling place identifications pursuant to the 1997 Florida Election Code, and not penalize persons who are determined to have witnessed more than five absentee ballots as provided in subsection (3) of section 26, chapter 98-129 Laws of Florida, for the entire 1998 election cycle. To do otherwise, in our opinion, has the potential to cause widespread voter confusion, affect the integrity of the elections process, impair uniform application of the election laws and could violate Federal and State laws and both the Florida and United States Constitutions. *See, U.S. Const. amend XIV and XV, Art. I, §§§§ 1 and 2, Fla. Const., Art. III, §§ 11(a), Fla. Const., 42 U.S.C. §§ 1973c (1982), 42 U.S.C. 1973(a), (b) (1982), §§ 97.012(1), Fla. Stat.*

DISCUSSION OF SECTIONS WHICH CAN BE IMPLEMENTED IMMEDIATELY

We begin with a chronological summary of what is now a law in effect in the State of Florida, and the 67 counties therein. Chapter 98-129, Laws of Florida, section 1 provides that the Secretary of State can establish a voter fraud hotline and election-fraud education to the public.

Section 2 requires the supervisors of elections to provide certain homestead address information to the county property appraiser as disclosed to the supervisor on the uniform statewide voter registration application as provided in section 4 of chapter 98-129. However, since section 4 does not require homestead information on the voter registration application until 1999, supervisors are not required to

comply with this section at this time. *See, Johnson v. Presbyterian Homes of the Synod of Florida, Inc., 239 So.2d 256 (Fla. 1970). City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983).* (Statutes need not be interpreted to lead to an unreasonable or ridiculous conclusion.)

Section 3 defines absentee elector. However, as stated above, essentially the same definition appearing on the absentee ballot certificate in section 14 is unenforceable, which results in this definition being of no practical value, with respect to the five counties. Sections 4, 5 and 6 do not take effect this election cycle. Therefore, there is no need to discuss these provisions.

Section 7 imposes additional requirements for use in conjunction with list maintenance activities employed by the supervisors of elections. The mailing of a voter ID card is a method of notifying a registrant that the supervisor has approved the voter''s registration application and allows for a notice of denial. *§§ 97.073(1), Fla. Stat.* New section 97.071, Florida Statutes, merely says that if the voter ID card mailed out by a supervisor is returned as undeliverable, and the applicant has indicated a different mailing address on the application, the supervisor must send a notice to that mailing address advising that the voter must appear in person to pick up the card. If the applicant appears in person to pick up the card, he must produce certain identification or execute the affidavit provided in section 101.49, Florida Statutes, in order to receive the card. If the applicant does not appear in person to pick up the voter ID card, the applicant is still to be considered a registered voter. However, because the voter failed to respond to the notice, the voter''s name should be placed on the inactive list. Because these procedures constitute mere list maintenance activity, immediate implementation of this provision will not impact the voting process in any negative way. Therefore, this provision should be implemented immediately.

Section 8 relates to the central voter file which is a list maintenance tool. The central voter file has been a work in progress for two and one half months in all the counties and does not directly affect the administration of the election. Moreover, if the supervisor has reason to believe that someone should not be removed from the list of eligible voters, we recommend that the person be allowed to remain a registered voter until his status can be verified. Therefore, we believe this section should immediately be implemented on a statewide basis.

Section 11 related to the terms of office for county commissioners is not critical to the present election cycle; therefore, there is no need to address this provision.

Section 12 provides for a voter fraud poster at each polling place. This provision should be implemented immediately.

Section 13 provides procedures for requesting absentee ballots and mandates that electors, or a person making a request for an absentee ballot on behalf of an elector, must provide certain identifying information such as social security numbers and voter ID numbers. This provision should be implemented immediately. However, absentee ballot requests received prior to August 14, 1998, and requests from overseas voters pursuant to *42 U.S.C. 1973 ff*, should be treated under 1997 Florida Law. *See §§§§ 101.62, 101.694, Fla. Stat.*

Section 15 limits the number of absentee ballots that can be returned on behalf of an elector by a person designated by the elector to two. This provision should be implemented immediately.

Section 17 allows a person to appear at the supervisor''s office and vote an absentee ballot, notwithstanding the definition of absent elector in section 97.021, Florida Statutes, as amended by chapter 98-129, Laws of Florida, if they are unable to appear at the polls on election day. We see no reason this cannot be done for all election cycles, notwithstanding DE 98-12.

Section 18 provides for certain assistance to absentee voters with certain disabilities. This provision should be implemented immediately.

Section 19 allows persons designated by the supervisor to administer oaths. This provision can be implemented immediately.

Section 21 allows each political party to designate absentee ballot coordinators who can witness an unlimited number of absentee ballots. In order to qualify as an absentee ballot coordinator, a person must submit to a criminal background check conducted by the Division of Elections. Since ballot coordinators do not have to be appointed until 28 days prior to the general election, this law should be implemented immediately.

Section 22 allows persons who are preregistered voters to serve on election boards. This provision should be implemented immediately.

Sections 23, 24, and 25 provide for enhanced penalties for certain criminal activity. These provisions should be implemented immediately.

Sections 27 through 37 deal with additional or enhanced penalties and the jurisdiction of the Florida Elections Commission. These provisions should be implemented immediately.

Section 38 relating to activity by the property appraiser has been withdrawn from preclearance. Moreover, this provision relates back to the above discussion regarding section 2 which points out that homestead information is not available on the voter registration application until 1999.

Sections 39 and 40 are in effect and require no discussion.

DISCUSSION OF SECTIONS WHICH SHOULD NOT BE ENFORCED IN ANY COUNTY UNTIL PRECLEARED FOR USE IN ALL COUNTIES

Sections 9 and 10 of the new law require voters to produce a Florida Driver''s License or other form of picture ID at the polling place. The division has addressed these sections in workshops and informal communications with supervisors. As stated in our workshops and other communications, the division has not established an all inclusive list of acceptable ID and we believe that supervisors should be allowed some latitude to develop their own lists of acceptable identification. In addition to drivers licenses, we have suggested passports, employee badges, and club cards as acceptable forms of picture ID cards. In some cases picture ID cards may not have a signature which may mean that the voter will have to produce another card or document of some type that bears the voter''s signature.

We have also reminded supervisors that the voter has a right to substitute an affidavit for the ID. We have also informally approved the use of a "blanket affidavit" in conjunction with the precinct register. Of course, use of a blanket affidavit requires that poll workers be trained to direct voters'' attention to the blanket affidavit and inform voters that by signing the register they are attesting to their identity. Because of these fail-safe measures we see no risk to the integrity of the election process from the implementation of these provisions.

However, as previously noted, while the Justice Department has not raised any specific objection to sections 9 and 10 of the new law, it has indicated that because those counties subject to the Voting Rights Act are free to establish their own lists of identification, each of those counties'' lists must be separately precleared. The Justice Department''s review is limited to an examination of whether the provisions in question have a discriminatory motive or effect. Thus, we can only deduce that the Justice Department still considers that such a determination may be made based on the nature of the lists developed in individual counties. Because that is the case, and because the State of Florida cannot maintain a dual voting system and because

of the potential for adverse litigation, see *discussion infra*, these provisions should not be implemented in any county at this time. However, we will continue our discussions with the Justice Department. If preclearance is granted at some future time, we will evaluate the impact on any remaining elections at that time and consider whether these provisions can be safely implemented.

As previously noted, the Justice Department has raised specific objections to sections 14, 16, the portion of section 20 which provides that an absentee ballot is illegal if it does not include the social security number information and correct witness information, and subsection (3) of section 26. These provisions have been finally determined by the United States Attorney General to be unenforceable with respect to the five preclearance counties of Collier, Hardee, Hendry, Hillsborough, and Monroe. While the Justice Department''s determination does not directly control the application of these provisions to the 62 counties that are not subject to section 5 preclearance, we note that the Justice Department''s refusal to grant preclearance was based on a determination that these provisions may have a discriminatory effect. We do not believe that it would be appropriate to apply these provisions to any voter in the State of Florida in the face of this determination. While most Florida counties are not subject to the preclearance requirement, all counties are subject to the other laws relating to elections and discrimination. Any county that moved to implement these provisions could be subject to a legal action by the Justice Department or others. Similarly, the State could conceivably be subject to suit for allowing that implementation.

Without considering any potential discriminatory effect, disparate implementation may cause voter confusion, affect the integrity of the election, and may violate both the United States and Florida Constitutions. Under Florida''s Constitution "all political power is inherent in the people" and "all natural persons are equal before the law" regardless of which county they live in. *Art. 1, §§§§ 1 and 2, Fla. Const.* We also note that, except for charter counties, the Florida Constitution prohibits the enactment of any general law of local application with regard to elections. *Art. III, §§ 11(a), Fla. Const.*

Section 14 prescribes a voter certificate to be used for the absentee mailing envelope. When the voter signs the certificate, he or she is attesting that he or she meets the definition of absent elector. In addition, the voter is required to include the last four digits of their social security number. The ballot must then be witnessed by either a notary or any witness who is a registered voter in this state. Such witness must also include his voter registration number, county of

registration, and address. Section 16 repeats these same requirements in the form of instructions to the voter and warns the voter that the ballot will not be counted if the social security information is missing or if the ballot is not properly witnessed. The unprecleared portion of section 20 requires that absentee ballots not containing the social security information or meeting the witness requirements must be declared illegal by the county canvassing board. The unprecleared portion of section 26 provides a criminal penalty for witnessing more than five absentee ballots.

The previous law only required the voter''s signature and the signature and address of one witness 18 years of age or older on an absentee ballot and the instructions were consistent with this requirement. A ballot could only be declared illegal if it failed to include a voter''s signature and the signature and address of an attesting witness. There was no criminal penalty for witnessing more than five absentee ballots. Thus, if the new provisions of sections 14, 16, 20, and 26 are applied in 62 counties, but not in the five covered counties, the state will be applying a double standard with regard to its absentee voting procedures.

The net result of the application of this double standard is that the state will have made it easier to vote absentee in some counties than in others, and easier to gather absentee ballots in some counties than in others. This situation is further exacerbated by the fact that elections for state office, congressional elections and all statewide elections involve voters from more than a single county.

For example, State Senate District 29 includes the covered counties of Collier and Hendry and the uncovered counties of Broward and Palm Beach. If the provisions to which the Justice Department has objected were applied in nonpreclearance counties, the voters in Broward and Palm Beach -- where witness requirements would be applied under the new law -- would be less likely to have their absentee ballots counted than in Collier and Hendry where the more liberal standards of prior law would be in force. Similarly, a person who witnesses more than five absentee ballots in Collier County would not be subject to criminal penalties, while a person who witnesses more than five ballots in Broward County would be subject to criminal penalties. According to our records, when one considers just state senate districts which include both covered and noncovered counties, the differing voting standards and penalties affect voters in 16 counties, and voters in 21 counties would be subjected to disparate treatment in congressional elections.

This differing treatment would no doubt disenfranchise some voters simply based on where they live in violation of federal [1] and state law. Additionally, disparate implementation may deny persons equal protection of the law under both our state

and federal constitutions.

Needless to say, under such a dual system of voting, a person could show that it was far easier to vote an absentee ballot in Collier County than in Broward or Palm Beach, thus, making it easier for voters located in one county to elect the representative of their choice than voters located in another county -- even though both are voting in the same election. Finally, we have already noted in DE 98-12 that the Secretary of State has a legal duty to maintain uniformity and consistency with regard to the application and operation of the state''s election law. Therefore, the Secretary cannot sanction such a dual voting system for both federal and state law reasons.

For the foregoing reasons, it is the opinion of the Division of Elections that sections 9, 10, 14, 16, that portion of section 20 which provides that an absentee ballot is illegal if it does not include the last four digits of a social security number and certain witness requirements, and that portion of section 26 of chapter 98-129, Laws of Florida, which impose a criminal penalty for persons who witness more than five absentee ballots, **should not be enforced in any county in the state until preclearance has been granted by the Justice Department or the courts**. To enforce these provisions in some counties but not others would, in our opinion, violate both state and federal law and possibly violate the Florida and federal Constitutions.

Summary

Sections 9, 10, 14, 16, that portion of section 20 which provides that an absentee ballot is illegal if it does not include the last four digits of a social security number and certain witness requirements, and that portion of section 26 which imposes a criminal penalty for witnessing more than five absentee ballots, of chapter 98-129, Laws of Florida, should not be enforced in any county until precleared by the Department of Justice or the courts. All other sections can be enforced.

[1] Interestingly, in a letter to General Butterworth, Acting Assistant United States Attorney General Bill Lann Lee, without mentioning the 5 counties, simply states that "sections 14, 16, ... 20..., and 26 are unenforceable." *Letter to Florida Attorney General Robert A. Butterworth from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, August 14, 1998.*

[2] Preclearance of chapter 98-129, Laws of Florida, involves application of section 5 of the voting rights act of 1965. Section 5 of the act requires states with covered jurisdictions (counties) to preclear any changes to their election laws through the

United States Departmenbt of Justice. *42 U.S.C. 1973c (1982).* Section 2 prohibits any state or political subdivision from imposing a voting practice which results in the denial of the right to vote. *42 U.S.C. 1973 (a) (1982).* A person can prove a violation of section 2 if they can show that they did not have an equal opportunity to participate in the political process and elect representatives of their choice. *42 U.S.C. 1973 (b) (1982).*

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U.S. Department of Justice
Civil Rights Division
Voting Section
Frequently Asked Questions

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- What federal law protects me from discrimination in voting?
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What federal law protects me from discrimination in voting?

The Voting Rights Act of 1965 protects every American against racial discrimination in voting. This law also protects the voting rights of many people who have limited English skills. It stands for the principle that everyone's vote is equal, and that neither race nor language should shut any of us out of the political process. You can find the Voting Rights Act in the United States Code at 42 U.S.C. 1973 to 1973aa-6.

Where did the Voting Rights Act come from?

Congress passed the Voting Rights Act in 1965, at the height of the civil rights movement in the South, a movement committed to securing equal voting rights for African Americans. The action came immediately after one of the most important events of that movement, a clash between black civil rights marchers and white police in Selma, Alabama . The marchers were starting a 50-mile walk to the state capital, Montgomery, to demand equal rights in voting, when police used violence to disperse them. What happened that day in Selma shocked the nation, and led President Johnson to call for immediate passage of a strong federal voting rights law .

What does the Voting Rights Act do?

The Voting Rights Act bans all kinds of racial discrimination in voting. For years, many states had laws on their books that served only to prevent minority citizens from voting. Some of these laws required people to take a reading test or interpret

some passage out of the Constitution in order to vote, or required people registering to vote to bring someone already registered who would vouch for their "good character." The Voting Rights Act made these and other discriminatory practices illegal, and gave private citizens the right to sue in federal court to stop them. In recent times, courts have applied the Act to end race discrimination in the method of electing state and local legislative bodies and in the choosing of poll officials.

What kinds of racial discrimination in voting are there, and what does the Voting Rights Act do about them?

The Voting Rights Act is not limited to discrimination that literally excludes minority voters from the polls. Section 2 of the Act (42 U.S.C. 1973) makes it illegal for any state or local government to use election processes that are not equally open to minority voters, or that give minority voters less opportunity than other voters to participate in the political process and elect representatives of their choice to public office. In particular, Section 2 makes it illegal for state and local governments to "dilute" the votes of racial minority groups, that is, to have an election system that makes minority voters' votes less effective than those of other voters. One of many forms of minority vote dilution is the drawing of district lines that divide minority communities and keep them from putting enough votes together to elect representatives of their choice to public office. Depending on the circumstances, dilution can also result from at-large voting for governmental bodies. When coupled with a long-standing pattern of racial discrimination in the community, these and other election schemes can deny minority voters a fair chance to elect their preferred candidates.

To show vote dilution in these situations, there must be a geographically concentrated minority population and voting that is polarized by race, that is, a pattern in which minority voters and white voters tend to vote differently as groups. It must also be shown that white voters, by voting as a bloc against minority-choice candidates, usually beat those candidates even if minority voters are unified or cohesive at the polls.

Anyone aggrieved by minority vote dilution can bring a federal lawsuit to stop it. If the court decides that the effect of an election system, in combination with all the local circumstances, is to make minority votes less effective than white votes, it can order a change in the election system. For example, courts have ordered states and localities to adopt districting plans to replace at-large voting, or to redraw their election district lines in a way that gives minority voters the same opportunity as other voters to elect representatives of their choice.

Is it prohibited to draw majority-minority districts?

No. Over 30 years ago the Supreme Court held that jurisdictions are free to draw majority-minority election districts that follow traditional, non-racial districting considerations, such as geographic compactness and keeping communities of interest together. Later Supreme Court decisions have held that drawing majority-minority districts may be required to ensure compliance with the Voting Rights Act.

While it remains legally permissible for jurisdictions to take race into account when drawing election districts, the Supreme Court has held that the Constitution requires a strong justification if racial considerations predominate over traditional districting principles. One such justification may be the need to remedy a violation of Section 2 of the Voting Rights Act. While such a remedy may include election district boundaries that compromise traditional districting principles, such districts must be drawn where the Section 2 violation occurs and must not compromise traditional principles more than is necessary to remedy the violation.

What does the Justice Department do to enforce the Voting Rights Act?

Under Section 2 of the Act the Department may sue in federal court to challenge those practices that it has determined are racially discriminatory. Several lawsuits of this nature are filed every year. The Attorney General also has special administrative powers, under a part of the Act known as Section 5, to prevent the adoption of discriminatory voting practices in certain parts of the country. The Department also works with states and localities to help them understand the Voting Rights Act and avoid discrimination in voting, and may send federal observers to monitor elections to ensure their fairness to minorities when such monitoring is deemed necessary.

What is Section 5 of the Voting Rights Act?

Section 5 is a special provision of the statute (42 U.S.C. 1973c) that requires state and local governments in certain parts of the country to get federal approval (known as"preclearance") before implementing any changes they want to make in their voting procedures: anything from moving a polling place to changing district lines in the county.

Under Section 5, a covered state, county or local government entity must demonstrate to federal authorities that the voting change in question (1) does not have a racially discriminatory purpose; and (2) will not make minority voters worse off than they were prior to the change (i.e. the change will not be "retrogressive"). Section 5 applies to all or parts of the following states:

- Alabama
- Alaska
- Arizona
- California
- Florida
- Georgia
- Louisiana
- Michigan
- Mississippi
- New Hampshire
- New York
- North Carolina
- South Carolina
- South Dakota
- Texas
- Virginia

The detailed list of "covered jurisdictions" is printed in the Code of Federal Regulations at the end of 28 C.F.R. Part 51. These are the Justice Department's Section 5 guidelines , which explain how the Section 5 review process works and help jurisdictions with terminology, deadlines and many other matters.

What is the Justice Department's role under Section 5?

Under Section 5, covered jurisdictions cannot enforce voting changes unless and until they obtain approval ("preclearance") either from the federal district court in Washington, D.C. or from the Attorney General. If the jurisdiction chooses to obtain preclearance from the Attorney General, she has 60 days after receiving all the necessary information to decide whether a governmental entity has shown that a proposed voting change is not discriminatory in purpose or effect.

The Justice Department investigates submissions carefully by studying documents, interviewing people in the affected community, and getting to know the facts. If the Attorney General decides that a proposed change was designed to discriminate against minority voters, or that, regardless of intent, it makes minority voters worse off than before, she will "object" to the change in a letter to the jurisdiction. If that happens, the change is legally unenforceable and cannot be put into effect, just as if the federal court had issued a ruling against the proposed change. If the jurisdiction disagrees with the Attorney General's objection, it can still take the matter to the federal court in Washington, D.C., where it will have to prove that its proposed change is not discriminatory either in purpose or in effect. If the Attorney General

does not object, the change can be implemented. However, the Justice Department or a private party can still go to court under Section 2 of the Voting Rights Act and challenge the change as a racially discriminatory voting procedure.

I work for a covered jurisdiction and have the duty to make our Section 5 submissions. What do I need to do to comply with the law?

To learn what the Voting Rights Act requires of your jurisdiction, the best place to start is the Justice Department's Section 5 guidelines, 28 C.F.R. 51.01 to 51.67. The guidelines explain what should be in a submission, who should make the submission and when it should be made, how long the Department's review will take, what happens if the Attorney General objects to a change, and many other details you will want to know. You can find the guidelines in any copy of the Code of Federal Regulations, or you can request a copy of the guidelines from the Voting Section at the toll-free number.

Can individuals have their views considered in the Section 5 review process?

Yes. Anyone can write to the Attorney General or call the Voting Section with a comment for or against preclearance while the submission is pending. You don't need a lawyer or any special qualifications. We publish weekly notices showing the voting changes that have been submitted under Section 5. Those notices are posted on this Web site, and also can be requested from the Voting Section at the address listed below.

What is a federal complaints examiner?

Federal examiners are officials to whom complaints of voting discrimination can be made under certain circumstances. At the time the Voting Rights Act was passed, one of the problems faced by African Americans in the South was that many white county registrars kept them from registering to vote by applying state voter registration rules in a discriminatory way. To address this problem, Section 6 of the Voting Rights Act allows the U.S. Attorney General to "certify" a county (if it was already specially covered under the Act) for the appointment of federal officials, through the U.S. Office of Personnel Management (OPM), who would "examine" the applicants for voter registration and make a list of those who met state eligibility rules; the list would be given to the local county registrar, who had to put those names on the county's voter registration rolls. Those on the examiner's list are commonly called federally registered voters. The Act also requires the examiners to be available during each of the county's elections, and for two days afterward, to take complaints from any federally registered voters who claimed that they had not been allowed to vote. Besides the power the Attorney General has to see that

examiners are appointed, a court can certify a county for federal examiners as relief in a voting rights lawsuit.

Even though the voter registration problems that made examiners so important have been effectively eliminated because of the Voting Rights Act's ban on literacy tests and other discriminatory practices, counties have been certified in recent years to allow federal observers to monitor polling place procedures. Federal examiners continue their role of taking complaints during and after elections in nearly all of the counties that have been certified for observers under the Act.

How can I give a complaint of voting discrimination to a federal examiner?

People in certified counties can contact a federal examiner by calling the U.S. Office of Personnel Management's toll-free number: (888) 496-9455. The list of certified counties is set out in volume 45 of the Code of Federal Regulations, Part 801. Anyone who wants to know if a particular county has been certified can call OPM's toll-free number to find out.

Does the Voting Rights Act protect language minorities?

Yes. The Voting Rights Act makes it illegal to discriminate in voting based on someone's membership in a language minority group. The idea behind the Voting Rights Act's minority language provisions is to remove language as a barrier to political participation, and to prevent voting discrimination against people who speak minority languages. The Justice Department enforces these protections by bringing lawsuits in federal court, by sending federal observers to monitor elections, and by working with local jurisdictions to improve their minority language election procedures.

Many jurisdictions with people of Hispanic, Native American, and Alaskan Native heritage are covered by Section 5 of the Act, according to the formula found in Section 4(f) of the statute (42 U.S.C. 1973b(f)), and must submit all their voting changes for preclearance just as other covered jurisdictions do. When we review voting changes from jurisdictions whose Section 5 coverage is for language minority voters, we look for discrimination (either in purpose or in effect) that voters in the language minority group suffer, no matter what their race.

The Voting Rights Act further protects minority language group members by requiring particular jurisdictions to print ballots and other election materials in the minority language as well as in English, and to have oral translation help available at the polls where the need exists. The formulas for determining which jurisdictions must do this are based on the share of the local population in need, and can be found in Sections 4(f) and 203 of the Voting Rights Act (42 U.S.C. 1973b(f) and

1973aa-1a). The Act requires bilingual election procedures in various states and counties for voters who speak Spanish, Chinese, Filipino, Japanese, Vietnamese, and more than a dozen Native American and Alaskan Native languages.
The list of jurisdictions covered by the Act's minority language requirements is printed in the Code of Federal Regulations at the end of 28 C.F.R. Part 55. These are the Justice Department's minority language guidelines ; they set out the Department's interpretations of the law in detail, and explain how jurisdictions can best comply with it.
The guidelines start by saying jurisdictions should take "all reasonable steps" to enable language minority voters "to be effectively informed of and participate effectively in voting- connected activities." The guidelines also say that "a jurisdiction is more likely to achieve compliance . . . if it has worked with the cooperation . . . and to the satisfaction of organizations representing members of the applicable language minority group."

What are federal observers?

Federal observers are authorized by Section 8 of the Voting Rights Act to attend and observe voting and vote-counting procedures during elections. They are non-lawyers, hired and supervised by the federal Office of Personnel Management (OPM). They are trained by OPM and by the Justice Department to watch, listen, and take careful notes of everything that happens inside the polling place during an election, and are also trained not to interfere with the election in any way. They prepare reports that may be filed in court, and they can serve as witnesses in court if the need arises.

How do I get federal observers to monitor an election?

You can contact the Voting Section and explain where the need exists, what needs to be observed, and which minority voters are affected. We consider many such requests each year from organizations and individuals. The Attorney General can send federal observers to any jurisdiction covered by Section 5 or by a court order.

Will the Voting Rights Act expire?

No. The Voting Rights Act is a permanent federal law. Moreover, the equal right to vote regardless of race or color is protected by the Fifteenth Amendment to the U.S. Constitution, which has been part of our law since the end of the Civil War. And in case after case, our courts have held that the right to vote is fundamental. Voting rights will not expire .
However, some sections of the Voting Rights Act need to be renewed to remain in effect. When Congress amended and strengthened the Voting Rights Act in 1982, it extended for 25 more years--until 2007--the preclearance requirement of Section 5,

the authority to use federal examiners and observers, and some of the statute's language minority requirements. So, for those sections to extend past 2007, Congress will have to take action. But even if these special provisions are not renewed, the rest of the Voting Rights Act will continue to prohibit discrimination in voting.

What other voting rights laws does the Justice Department enforce?

The National Voter Registration Act of 1993 (often referred to the "motor voter" law) requires states to make voter registration opportunities available when people apply for or receive services at a variety of government agencies, from driver's license offices to social services agencies and public benefits offices. The law says states must not take voters off the rolls merely because they have not voted, and it requires states to keep their voter rolls up to date by removing the names of voters who have died or moved away. It may be found at 42 U.S.C. 1973gg to 1973gg-10.

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C. 1973ff to 1973ff-6) requires states to make sure that members of our armed forces who are stationed away from home, and citizens who are living overseas, can register and vote absentee in federal elections.

The Voting Accessibility for the Elderly and Handicapped Act of 1984 (42 U.S.C. 1973ee to 1973ee-6) requires polling places across the United States to be physically accessible to people with disabilities.

The Justice Department enforces each of these laws by working with state and local governments, advocacy groups, and private citizens, and by bringing lawsuits where necessary, to make sure the protections guaranteed by Congress are extended to all. Also, private citizens may file their own lawsuits under the Voting Accessibility for the Elderly and Handicapped Act and the National Voter Registration Act.

What responsibilities does the Justice Department have with regard to voter fraud or intimidation?

The administration of elections is chiefly a function of state government. However, federal authorities sometimes become involved in election fraud matters when a state prosecutor asks for federal assistance. In addition, the Justice Department can become involved when allegations arise that criminal vote fraud has occurred in a federal election. And, in some exceptional cases, where voting fraud or intimidation involving racial bias occurs in local or state elections, federal criminal charges may also be brought are handled by the Criminal Section of the Civil Rights Division.

If you have information about vote fraud, you should contact the nearest office of

the FBI or your local U.S. Attorney's office. If you know of vote fraud that was driven by racial animus, you can either contact the Voting Section , or contact the Criminal Section of the Civil Rights Division:

Chief, Criminal Section
Civil Rights Division
Department of Justice
P.O. Box 65798
Washington, D.C. 20035-5798

(202) 514-3204

What responsibilities does the Justice Department have with regard to campaign finance?

Generally, the Justice Department is not directly involved with campaign finance matters. Federal election campaign finance is the subject of a separate federal statute, the Federal Election Campaign Act of 1974. FECA matters are handled by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Intentional violations of federal campaign finance laws are federal crimes, and are handled by the FBI. If you have a question about campaign finance in state elections, contact your state elections office.

Can the Justice Department run elections to make sure they are fair?

The Justice Department does not administer elections; that is the responsibility of state and local election officials. The Department sometimes sends observers to monitor elections for compliance with federal civil rights laws. If you have a question about election practices, candidate qualifying rules, the location of polling places, or other voting procedures in your jurisdiction, contact your local or state election officials. If you have information about discrimination in voting, please call or write us.

How can I make a discrimination complaint under the Voting Rights Act?

You can contact us. We encourage anyone with a complaint about voting discrimination to let us know what the problem is, where it is, and how it affects minority voters. There are no special forms to use or procedures to follow--just call us toll-free at (800) 253-3931, or write to us .

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Section 5 Requirements

How Section 5 Coverage is Determined

Coverage under Section 5 is determined according to the formula contained in Section 4 of the Voting Rights Act, codified at **42 U.S.C. 1973b**. The requirement of federal preclearance of voting changes was enacted in 1965 as temporary legislation, to expire in five years, and applicable only to certain states. 1/ The specially covered jurisdictions were identified in Section 4 of the Voting Rights Act, 42 U.S.C. 1973b, by a formula, rather than by name. The first element in the formula was that the state or political subdivision of the state maintained on November 1, 1964, a "test or device," restricting the opportunity to register and vote. 2/ The second element of the formula would be satisfied if the Director of the Census determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964. Application of this formula resulted in the following states becoming "covered jurisdictions" in their entirety: Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. 3/ In addition, political subdivisions (usually counties) in four other states, 4/ became subject to Section 5. 5/

In 1970, Congress recognized the continuing need for the special provisions of the Voting Rights Act which were due to expire that year, and renewed them for another five years. It also adopted an additional coverage formula, identical to the

original formula except that it referenced November 1968 dates to determine maintenance of a test or device, and levels of voter registration and electoral participation. This additional formula resulted in the partial coverage of ten states. 6/

In 1975, the special provisions of the Voting Rights Act were extended for another seven years, and were broadened to address voting discrimination against members of "language minority groups." 7/ See 1973b(f)(1). As before, an additional coverage formula was enacted, based on the presence of tests or devices and levels of voter registration and participation as of November 1972. In addition, the 1965 definition of "test or device" was expanded to include the practice of providing election information, including ballots, only in English in states or political subdivisions where members of a single language minority constituted more than five percent of the citizens of voting age. 42 U.S.C. 1973b(3). This third formula had the effect of covering Alaska, Arizona, and Texas in their entirety, and parts of California, Florida, Michigan, New York, North Carolina and South Dakota. Section 5 was again extended in 1982, this time for 25 years, but no new Section 5 coverage formula was adopted. 8/*Back to top*

Only Voting Changes Require Section 5 Preclearance

It is important to understand that Section 5 applies only to *changes* in practices or procedures affecting voting. Continuous use of a voting practice in effect since the jurisdiction's coverage date does not implicate Section 5, nor does continued use of a practice already precleared under Section 5.

In Allen v. State Board of Elections, 393 U.S. 544, 565 (1969)(footnote omitted), the Supreme Court stated that the coverage of Section 5 was to be given a broad interpretation.

> We must reject the narrow construction that appellees would give to § 5. The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race. Moreover, compatible with the decisions of this Court, the Act gives a broad interpretation to the right to vote, recognizing that voting includes "all action to make a vote effective."
>
> The legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to

remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement. 10/ While reaffirming Allen in Presley v. Etowah County Com'n, 502 U.S. 491, 492 (1992), the Supreme Court emphasized that changes covered under Section 5 must have a direct relation to voting. The court provided a nonexclusive list of four categories in which voting changes covered under Section 5 would normally fall:

- changes in the manner of voting;

- changes in candidacy requirements and qualifications;

- changes in the composition of the electorate that may vote for candidates for a given office; and

- changes affecting the creation or abolition of an elective office. 11/

In the cases consolidated before the Court in Presley, the changes involved the transfer of authority over road maintenance and construction between elected officials and from elected officials to an appointed official. The Court found these types of transfers not directly related to voting and, therefore, not subject to Section 5. 12/ Some transfers of authority between government officials, however, clearly have a direct relation to voting if they concern authority over voting procedures, such as a change in who has authority to adopt a redistricting plan, conduct voter registration, or select polling place officials. See, e.g., Foreman v. Dallas County, 521 U.S. 979 (1997).*Back to top*

Voting Changes Enated or Administered by Any State Official Require Section 5 Preclearance

There is a broad range of officials who enact or administer voting changes that are subject to Section 5 review, including legislative bodies (*i.e.*, state legislatures, county commissions, city councils), executive officials (*i.e.*, governors and mayors), and other officials (*i.e.*, secretaries of state, county clerks, registrars). *All* voting changes adopted by a state court of a fully covered state require preclearance, as do voting changes adopted by a state court in a partially covered state if the change is to be implemented in a covered political subdivision of that state. See, e.g., Hathorn v. Lovorn, 457 U.S. 255, 265-66 n.16, 270 (1982);

LULAC of Texas v. Texas, 995 F. Supp. 719, 724 (W.D. Tex. 1998). *Back to top*

Some Federal Court Orders Require Section 5 Preclearance

The Supreme Court has held that a voting change developed and imposed on a jurisdiction by a federal court is not subject to Section 5 review. These are generally referred to as "court- drawn" or "court-fashioned" voting changes. 13/ However, if a voting change ordered by a federal court reflects the policy choices of the jurisdiction--for example, if it was presented to the court as a consent decree agreed to by the jurisdiction-- Section 5 review is required. McDaniel v. Sanchez, 452 U.S. 130 (1981); 28 C.F.R. 51.18. 14/ These are generally referred to as "court ordered" changes.*Back to top*

Obtaining Section 5 Preclearance By Court Order

Section 5 provides two methods for a covered jurisdiction to seek preclearance of voting changes. The first method mentioned in the statute is by means of a Section 5 declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia. A three-judge panel is convened in such cases. The defendant in these cases is the United States or the Attorney General, represented in court by attorneys from the Voting Section of the Civil Rights Division. Appeals from decisions of the three-judge district court go directly to the United States Supreme Court.

The jurisdiction seeking preclearance must establish that the proposed voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group]." 42 U.S.C. 1973c. Judicial preclearance is obtained in the form of a declaratory judgment from the court that this standard has been met. The status of an unprecleared voting change which is the subject of a declaratory judgment preclearance action is the same as if preclearance had not been sought at all--legally unenforceable. This means that until the declaratory judgment action is obtained, the jurisdiction may not implement or use the voting change. 15/*Back to top*

Obtaining Section 5 Preclearance Through Submission to the United States Attorney General

The second method of obtaining preclearance is known as administrative preclearance. A jurisdiction can avoid the potentially lengthy and expensive litigation route and obtain preclearance by submitting the voting change to the Civil

Rights Division of the Department of Justice, to which the Attorney General of the United States has delegated the authority to administer the Section 5 review process. Preclearance is obtained if the Attorney General affirmatively indicates that she has no objection to the change or if, at the expiration of 60 days, no objection to the submitted change has been interposed by the Attorney General. 16/ It is the practice of the Department of Justice to respond in writing to each submission, specifically stating the determination made regarding each submitted voting change. Well over 99 percent of preclearance requests follow the administrative preclearance route, no doubt because of the relative simplicity of the process, the significant cost savings over litigation, and the presence of specific deadlines governing the Attorney General's issuance of a determination letter.

In a typical year, the Voting Section receives between 4,500 and 5,500 Section 5 submissions, and reviews between 14,000 and 20,000 voting changes. So far in the 1990s the Attorney General has reviewed under Section 5 approximately 3,350 redistricting plans, districting plans, and limited redistricting plans. It is anticipated that a similar number of such plans will be submitted for Section 5 review in the years immediately following issuance of the 2000 Census data.

In administrative preclearance proceedings the Attorney General regards herself as a surrogate for the District of Columbia District Court, applying the same standards that would be applied by the court. The burden of establishing that a proposed voting change is nondiscriminatory falls on the jurisdiction, just as it would on the jurisdiction as plaintiff in a Section 5 declaratory judgment action. See 28 C.F.R. 51.52; South Carolina v. Katzenbach, 383 U.S. 301, 328, 335 (1966).

There are occasions when a jurisdiction may need to obtain Section 5 preclearance on an accelerated basis due to anticipated implementation before the end of the 60-day review period. In such cases, the jurisdiction should formally request "Expedited Consideration" in its submission letter, explicitly describing the basis for the request in light of conditions in the jurisdiction and specifying the date by which the determination must be received. 28 C.F.R. 51.34. Although the Attorney General will attempt to accommodate all reasonable requests, the nature of the review required for particular submissions will necessarily vary and an expedited determination may not be possible in certain cases. 17/

A preclearance determination removes the prohibition against enforcement that Section 5 imposes on unprecleared voting changes. The Attorney General's decision to preclear a submitted change cannot be challenged in court. Morris v. Gressette, 432 U.S. 491 (1977). A preclearance determination, however, does not protect any voting practice from challenge on any other grounds. For example, a

redistricting plan that has been precleared may still be challenged in court by the Attorney General as violating Section 2 of the Voting Rights Act, 42 U.S.C. 1973, or any other applicable provision of federal law which the Attorney General is authorized to enforce. Similarly, private individuals with standing may challenge the precleared practice under any applicable provision of state or federal law. See Reno v. Bossier Parish School Board, 520 U.S. 471, 478 (1997); 28 C.F.R. 51.49.
The declaratory judgment route to preclearance remains available to jurisdictions which have failed to obtain preclearance from the Attorney General. 18/ The proceeding before the three-judge federal court is *de novo* and does not constitute an appeal of the Attorney General's determination, although the Voting Section represents the defendant United States in these cases.*Back to top*

Lawsuits to Prevent the Use of Unprecleared Voting Changes

Voting changes for which Section 5 preclearance is required are legally unenforceable if preclearance has not been obtained. Section 12(d) of the Voting Rights Act, 42 U.S.C. 1973j(d), specifically authorizes the Attorney General to file suit to enjoin violations of Section 5. A private right of action to seek injunctive relief against a Section 5 violation was recognized by the Supreme Court in Allen v. State Board of Elections, 393 U.S. 544, 554-57 (1969). Any person or organization with standing to sue can challenge a Section 5 violation in the United States District Court in the judicial district where the violation is alleged to have occurred. Whether brought by the Attorney General or by private parties, these cases are commonly known as Section 5 enforcement actions.
Section 5 enforcement cases are heard by three-judge district court panels, whose role is to consider three things only:

1.whether a covered voting change has occurred;

2.if so, whether preclearance has been obtained; and

3.if not, what relief by the court is appropriate.
Lopez v. Monterey County, 519 U.S. 9, 23 (1996). The only court which can grant Section 5 preclearance is the United States District Court for the District of Columbia.
Upon finding a Section 5 violation, the court in an enforcement action will consider

an appropriate equitable remedy. 19/ The general objective of such remedies is to restore the situation that existed before the implementation of the unprecleared change. Thus, the typical remedy imposed by courts in such cases includes issuance of an injunction against further use of the unprecleared change. "If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change." Lopez v. Monterey County, 519 U.S. at 20; see also, Clark v. Roemer, 500 U.S. 646, 652-53 (1991). In certain circumstances, other remedies have included voiding illegally-conducted elections, enjoining upcoming elections unless and until preclearance is obtained, or ordering a special election; in some cases courts have also issued orders directing the jurisdiction to seek preclearance of the change from the Attorney General or the District of Columbia District Court. *Back to top*

Notes

1/ Other temporary provisions of the Voting Rights Act included Section 6, 42 U.S.C. 1973d, which authorized the appointment of federal examiners to receive voter registration applications which would be presented to local registrars, and Section 8, 42 U.S.C. 1973f, which authorized the appointment of federal observers to enter polling places to observe whether voters were being permitted to vote and whether their votes were properly tabulated. Like Section 5, these other temporary provisions have been extended by Congress and remain in effect.

2/ The Voting Rights Act defined a "test or device" as "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. 1973b(c).

3/ In fully covered states, the state itself and all political subdivisions of the state are subject to the preclearance requirement of Section 5. In "partially covered" states, voting changes adopted by or to be implemented in covered political subdivisions, including changes applicable to the state as a whole, are subject to the preclearance requirement of Section 5. See Lopez v. Monterey County, 119 S. Ct. 693 (1999).

4/ Arizona, Hawaii, Idaho, and North Carolina.

5/ Section 4(a) of the Voting Rights Act allows a "covered jurisdiction" to be released from the preclearance requirement of Section 5 if it obtains a judgment from the District Court for the District of Columbia finding that the standards specified for such a release have been satisfied. This procedure is commonly referred to as "bailout." See 28 C.F.R. 51.64. The United States is the defendant in

bailout cases and is represented by attorneys from the Voting Section of the Justice Department's Civil Rights Division. The State of Alaska bailed out from coverage in 1966, but was "re-covered" under the coverage formula adopted by the 1975 amendments to the Voting Rights Act and remains covered today. Since then no other fully covered state has bailed out.

6/ Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, New Hampshire, New York, and Wyoming. Half of these states have since bailed out - Connecticut, Idaho, Maine, Massachusetts, and Wyoming.

7/ The Voting Rights Act defines "'language minorities' or 'language minority group' [as] persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." 42 U.S.C. 1973l(c)(3).

8/ Congress, did, however, change the requirements for jurisdictions to bail out of Section 5 coverage. In addition, the Act now permitted bailout by individual counties within a fully covered state. Under the original bailout formula, the only bailout option in a fully covered state was for the state to bail out as a whole. A jurisdiction seeking bailout must meet the requirements adopted in 1982, regardless of the jurisdiction's original coverage date. The first bailout action filed under the 1982 bailout standards was brought in 1997 by the City of Fairfax, Virginia (in Virginia, independent cities are the functional equivalent of counties, and possess the same authority over voter registration and elections as counties). The United States consented to the declaratory judgment, which was entered on October 21, 1997. The United States has subsequently consented to bailout in declaratory judgment actions in 1999 by Frederick and Shenandoah Counties, Virginia, which were entered by the district court on September 9 and October 15, 1999, respectively.

9/ The most recent published list has not yet been updated to reflect the bailout of the City of Fairfax, Virginia.

10/ 28 C.F.R. 51.12.

11/ See also 28 C.F.R. 51.13 for examples of covered changes.

12/ The Court noted, however, that a transfer of authority that resulted in or amounts to the *de facto* replacement of an elected official by an appointed one would implicate Section 5. Id. at 508.

13/ Federal courts generally order the use of court-drawn plans only on an interim basis for one election or election cycle. The continued use of such a plan by a jurisdiction, however, would require Section 5 preclearance. See 52 Fed. Reg. 489 (1987).

14/ In some emergency situations federal courts have ordered into effect on an interim basis without preclearance voting changes which would, under McDaniel v.

Sanchez, normally require preclearance. The availability under 28 C.F.R. 51.34 of expedited administrative review of voting changes, however, should eliminate the need for such emergency action by the courts in all but the most unusual of cases, and any subsequent use of such changes remains subject to the preclearance requirement. See 28 C.F.R. 51.18(c).

15/ The District Court for the District of Columbia has broad authority to protect its jurisdiction in a declaratory judgment case and can enjoin any attempt to implement the change prior to the granting of a declaratory judgment of preclearance. See South Carolina v. United States, 589 F. Supp. 757 (D.D.C. 1984).

16/ The 60-day review period is calculated on the basis of calendar days and the day the submission is received is not counted. If the final day of the review period is not a day of regular business for the Department of Justice, then the 60th day is the next regular business day. 28 C.F.R. 51.9.

17/ Regardless whether expedited consideration has been requested, in cases where the Attorney General issues a letter interposing no objection to a submitted change in advance of the day on which a response is due, Section 5 authorizes the Attorney General to reserve the right to object to the change prior to the due date if additional information comes to her attention which would otherwise require an objection. 42 U.S.C. 1973c; 28 C.F.R. 51.43. However, the Attorney General cannot withdraw a preclearance determination and object to a voting change if the 60-day review period has expired.

18/ Jurisdictions may also ask the Attorney General to reconsider an objection at any time. 28 C.F.R. 51.45. Because the basis of the objection will have been discussed in the letter, the jurisdiction's reconsideration request should attempt to provide facts or legal analysis responding to the reasoning in the objection letter.

19/ Section 5 enforcement actions are often filed along with a request for a temporary restraining order or a preliminary injunction. The traditional four-part test for obtaining a preliminary injunction does not apply where the injunction sought is against enforcement of an unprecleared voting change. See United States v. Louisiana, 952 F. Supp. 1151, 1159-61 (W.D. La.) (three-judge court), aff'd, 521 U.S. 1101 (1997). Instead, the standards are similar to those set out above for determining a Section 5 violation, i.e., plaintiff need only show that a covered change occurred and preclearance had not been obtained.*Back to top*

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Final Order of Circuit Court

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