TEARING DOWN OBSTACLES TO DEMOCRACY & PROTECTING MINORITY VOTERS

SECTION 5 VOTING RIGHTS ACT

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DEFEND EDUCATE EMPOWER

Written by
Kristen Clarke

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TEARING DOWN OBSTACLES TO DEMOCRACY
& PROTECTING MINORITY VOTERS
SECTION 5 OF THE VOTING RIGHTS ACT

A PUBLICATION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Democracy's promise lies in rules that allow everyone to participate equally. The Voting Rights Act is America's enduring commitment to fulfilling this promise.

John Payton
President and Director-Counsel
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

INTRODUCTION

The Voting Rights Act of 1965 is both a symbol and sword. It embodies the nation's aspirations toward greater political fairness and stands as a defense against efforts to stray from these commitments. The Act is generally regarded as our nation's most effective federal civil rights statute, and includes a set of very powerful and important tools for combating persisting discrimination against minority voters. It is the law that first made the promises of the Fourteenth and Fifteenth Amendments meaningful in the area of voting.

Although the Act contains a number of provisions addressing various forms of voting discrimination, the Section 5 "preclearance" provision plays a particularly critical role. By requiring officials to fully explain their purpose and impact, Section 5 of the Voting Rights Act shines a light on the big impact that even small voting changes can have on the position of minority voters and on their ability to participate equally in the political process. Specifically, Section 5 requires certain jurisdictions with a history of discrimination in voting to obtain federal preapproval or "preclearance" before implementing any changes in voting practices and procedures. Preclearance can be obtained in one of two ways, either from the U.S. Department of Justice or from the D.C. District Court. Through this process, voting changes are reviewed before they take effect to ensure that they were not adopted with a discriminatory purpose and to ensure that they will not worsen the position of minority voters.

This publication provides important information about how the Section 5 preclearance provision operates and equally important information about how you can use the law to protect the voters in your community if you live in a covered jurisdiction.

Because the Section 5 preclearance provision is not a permanent law, Congress is periodically required to reconsider it. Most recently, between 2005 and 2006, Congress conducted an intensive review and assessment evaluating whether Section 5's protections remained necessary to guarantee the constitutionally protected right to vote. Congress concluded that problems of voting discrimination persist in many places throughout our country. Congress also found that the Section 5 preclearance process was an effective tool for blocking and deterring voting discrimination. As a result, in July 2006, Congress voted to renew this important provision of the Voting Rights Act for an additional 25 years, and the President signed it.

By becoming more actively involved in the political process and sharing information about new laws and practices that impact voting, residents in covered jurisdictions can help ensure that the federal preclearance process more accurately considers and examines the impact of voting changes on minority communities. To aid in this effort, this publication provides details on how the preclearance process operates and explains improvements achieved during Congress's recent reauthorization of Section 5. In addition, this publication explains that the process works best when you become involved. Accordingly, we offer guidance about making your voice heard by submitting a Comment Letter to the U.S. Department of Justice when potentially discriminatory voting changes are adopted in your Section 5 community.

WHAT IS REQUIRED BY SECTION 5 OF THE VOTING RIGHTS ACT?

Section 5 requires that certain states or parts of states submit any new voting change or new law affecting voting to the U.S. Department of Justice or the federal district court in the District of Columbia for review. This preapproval requirement is generally called the **preclearance process**. The Section 5 preclearance process requires that jurisdictions show their proposed voting change will not have a "retrogressive effect." A retrogressive effect is simply one that worsens the position of minority voters. In addition, jurisdictions must show that the change was not adopted with a discriminatory purpose.

The preemptive role of the Section 5 preclearance provision of the Act helps eliminate barriers to political participation and provides greater levels of access to minority voters. Section 5 works in two ways. First, the oversight it requires blocks attempts to disadvantage minority voters. Second, it also helps deter officials from adopting discriminatory voting changes because they know that they are required to submit those changes for federal review.

WHICH JURISDICTIONS ARE COVERED UNDER SECTION 5?

Those states or parts of states that are required to submit their voting changes are called **covered jurisdictions**. In large part, these jurisdictions are covered by Section 5 because of their histories of voting discrimination.

The following states are covered in their entirety:
Alabama
Alaska
Arizona
Georgia
Louisiana
Mississippi
South Carolina
Texas
The following states are covered in part:
California:
Kings County
Merced County
Monterey County
Yuba County
Florida:
Collier County
Hardee County
Hendry County
Hillsborough County
Monroe County
New York:
Bronx County
Kings County
New York County

North Carolina:
Anson County
Beaufort County
Bertie County
Bladen County
Camden County
Caswell County
Chowan County
Cleveland County
Craven County
Cumberland County
Edgecombe County
Franklin County
Gaston County
Gates County
Granville County
Greene County
Guilford County
Halifax County
Harnett County
Hertford County
Hoke County
Jackson County
Lee County
Lenoir County
Martin County
Nash County
Northampton County
Onslow County
Pasquotank County
Perquimans County
Person County
Pitt County
Robeson County
Rockingham County
Scotland County
Union County
Vance County
Washington County
Wayne County
Wilson County
South Dakota:
Shannon County
Todd County
Michigan:
Allegan County: Clyde Township
Saginaw County: Buena Vista Township
New Hampshire:
Cheshire County: Rindge Town
Coos County: Millsfield Township, Pinkhams Grant, Stewartstown Town, Stratford Town
Grafton County: Benton Town
Hillsborough County: Antrim Town
Merrimack County: Boscawen Town
Rockingham County: Newington Town
Sullivan County: Unity Town

Virginia: Fifteen political subdivisions in Virginia (Augusta, Botetourt, Essex, Frederick, Greene, Middlesex, Pulaski, Roanoke, Rockingham, Shenandoah, and Warren Counties and the Cities of Fairfax, Harrisonburg, Salem and Winchester) have "bailed out" from coverage pursuant to Section 4 of the Voting Rights Act and are no longer covered under Section 5. Certain jurisdictions that can show a clean record for a sustained period of time may seek exemption from the preclearance requirement or "bail out."

WHAT VOTING CHANGES ARE COVERED JURISDICTIONS REQUIRED TO SUBMIT?

Section 5 applies only to changes in practices or procedures affecting voting. Any change affecting voting is subject to the Section 5 review requirement.

The following are examples of the type of voting changes that must be precleared before they can be implemented:

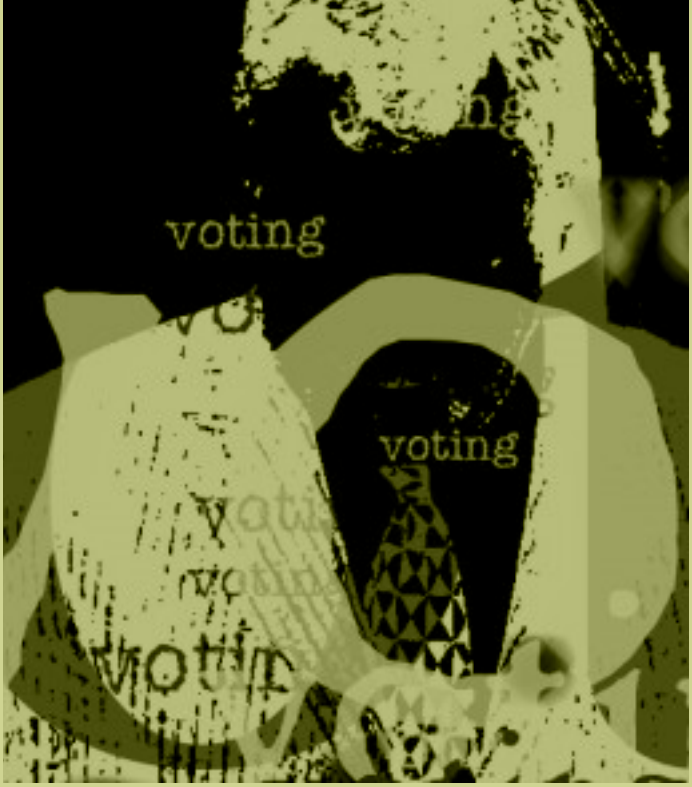
- Adoption of a new redistricting plan
- Changes in the boundaries of a city, county, school district, water district or other governing body through an annexation or consolidation
- Changing a polling place location
- Changing the hours for voting
- Scheduling a special election
- Cancellation of a regularly-scheduled election
- Merging part or all of a voting precinct together with another voting precinct
- Changing the length of term of an elected office
- Abolishing an elected office
- Expanding or reducing the size of a governing body
- Changing the method of conducting elections, such as changes from single member district plans or moving to an at-large voting system
- Changing the method for determining the outcome of an election, such as requiring a majority vote for election or imposing use of designated posts
- Changing an elected position to a non-elected position appointed by some other official(s)
- Changing the rules governing the process for voter registration
- Changing voter registration forms
- Changing locations for registering to vote
- Changing early voting locations
- Changing rules concerning absentee voting
- Changing the rules governing balloting and the counting of votes
- Changing rules governing voter assistance at the polls
- Changing the qualifications required for voting, such as imposing photo identification requirements or proof of address requirements
- Changing candidate eligibility or qualification rules
- Change with respect to the use of a language other than English in any aspect of the electoral process
- Changing rules concerning the availability of bilingual materials
- Changing rules for military voters and citizens living overseas
- Changing rules concerning the implementation of the National Voter Registration Act (also known as the "Motor Voter" Law)

WHO SUBMITS VOTING CHANGES?

There are a broad range of officials who enact or administer voting changes that are subject to Section 5 review, including:

- Legislative bodies (state legislatures, state boards of election, county commissions, boards of aldermen, city or town councils, school boards, water districts, etc.)
- Executive officials (governors and mayors)
- State court judges
- Other officials (secretaries of state, county clerks, registrars).

Beware of the flood of proposed redistricting changes that will follow the release of the 2010 Census. Also, beware of late-decade redistricting changes, which may be discriminatory in nature and may be designed to cut off new minority electoral opportunities that could be realized following the release of new Census data at the start of the decade.



"AT-LARGE" VOTING

In an "at-large" system, all voters in a jurisdiction participate in elections for the relevant governing body. In a jurisdiction governed by "single-member districts," the jurisdiction is carved up into smaller districts of roughly equal population. Under a single-member district plan, only those voters residing in a particular district select the candidate for that particular district. For example, residents of District One do not participate in elections for District Two, and vice versa. Historically, in jurisdictions where voting is racially polarized and racial minorities constitute a significant percentage of the population, at-large voting systems have had the discriminatory effect of undermining or diluting the voting strength of minority groups.

In those jurisdictions covered by Section 5, proposals to abandon single-member districts and adopt an at-large method of electing officials must be carefully assessed to determine whether the change would worsen the position of minority voters. Often, these types of voting changes are designed to produce the kind of discriminatory effect that Section 5 prohibits.

HOW LONG DOES THE DEPARTMENT OF JUSTICE (DOJ) REVIEW OF A PRECLEARANCE SUBMISSION TAKE?

The great majority of Section 5 submissions are submitted to the Department of Justice ("DOJ"). The Section 5 preclearance provision requires that the DOJ complete its review and issue a final preclearance determination within 60 days of receipt of the complete submission. DOJ's preclearance process seeks to determine that the proposed change has neither the purpose of, nor will have the effect of, discriminating on account of race, color, or membership in a language minority group.

However, if a jurisdiction fails to provide sufficient information necessary for the DOJ to make a determination, then the DOJ may request **more information** from the jurisdiction about the voting change. Once the jurisdiction has submitted all information necessary for preclearance review, the DOJ has 60 days to make a final determination.

President Bush and members of Congress at the signing ceremony of the 2006 Reauthorization of the Voting Rights Act.

THE 2006 REAUTHORIZATION OF SECTION 5 OF THE VOTING RIGHTS ACT

In July 2006, Congress voted to reauthorize Section 5 of the Voting Rights Act for an additional 25 years. The 98-0 vote in the Senate reflected tremendous bi-partisan support for the Act, and the overwhelming view that voting discrimination continued to persist in the covered jurisdictions.

During the reauthorization process, Congress developed a legislative record replete with evidence of ongoing voting discrimination. Numerous witnesses offered testimony to Congress regarding their observations and experiences in the covered jurisdictions. These witnesses, including litigators, practitioners, advocates, scholars and private citizens, presented extensive evidence of the ongoing problems. Their testimony also illustrated that Section 5 is an effective tool for blocking and deterring discrimination that might otherwise emerge without Section 5.

Examples of ongoing voting discrimination considered by Congress included the following:

- Racially Selective Annexation Process in the Town of North, South Carolina
- Discriminatory Candidate Qualification Process in North Johns, Alabama
- Cancellation of an Election in the Face of Minority Population Growth in Kilmichael, Mississippi
- The Adoption of At-Large Elections in the City of Freeport, Texas
- Maintenance of a Discriminatory At-Large Election System in Charleston County, South Carolina
- The Use of Racial Campaign Appeals in Judicial Elections in Mississippi
- Intentional Packing of American Indian Voters in a 2001 South Dakota Redistricting Plan
- Discriminatory Elimination of Viable Minority Districts in Redistricting for the Louisiana State Legislature
- Multiple Section 5 Objections to the Redistricting Plans Adopted by the School Board and Police Jury in Point Coupee Parish, Louisiana
- Fragmentation of the Hispanic Population in Redistricting Plan for Merced County, California
- Reduction in Polling Place Locations in North Harris Montgomery Community College District, Texas

Although Congress kept the overall structure of the law intact, it revised the language of Section 5 to help clarify the scope of the law's intent. These changes were made in response to a number of Supreme Court rulings in recent years that had significantly narrowed the reach of Section 5. First, Congress made clear that Section 5 prohibits the implementation of voting changes that have not been shown to be free from discriminatory purpose. In other words, Congress made clear that voting changes that appear to have been motivated by a discriminatory purpose are not entitled to preclearance. Second, Congress revised the language of Section 5 to clarify the standard for determining whether a voting change has a discriminatory or retrogressive effect.

Congress passed the 2006 reauthorization bill by overwhelming margins of 390-33 in the House of Representatives and 98-0 in the Senate. Senator Edward Kennedy offered a formal statement during the reauthorization, observing that "the goal of the Voting Rights Act was to have full and equal access for every American regardless of race," but noting that "[w]e have not achieved that goal." In support of the reauthorization, Senator Kennedy noted that the goal of the Act is to "eliminate discrimination root and branch."

A LEGAL CHALLENGE TO THE RECENTLY REAUTHORIZED SECTION 5 PRECLEARANCE PROVISION:

Northwest Austin Municipal Utility District Number One v. Mukasey

The NAACP Legal Defense and Educational Fund (LDF) represents several African American voters in *Northwest Austin Municipal Utility District Number One v. Mukasey*, a lawsuit filed by a small Austin-based utility district days after Congress overwhelmingly voted to reauthorize Section 5 of the Voting Rights Act.

This case is of critical importance because it is the first case testing the constitutionality of Congress's recent reauthorization of Section 5. Moreover, a negative ruling in this case would have far-reaching implications for the 16 states that are wholly or partially covered by the Section 5 preclearance provision of the Act.

The utility district, a political subunit that lies in the State of Texas, which is covered in its entirety by Section 5, attempted to terminate its obligations under Section 5 by seeking to "bailout" under a special provision of the Act. LDF and other Defendants in the case argued that the utility district is ineligible for "bailout" because it is not a state, county or type of jurisdiction deemed eligible for this special exemption under the Act. In anticipation of this position, the district also sought to have the court declare the Section 5 preclearance provision of the Voting Rights Act unconstitutional. In particular, the district argued that Congress exceeded its legislative authority under the 14th and 15th Amendments. The district also argued that Congress failed to identify sufficient evidence of ongoing voting discrimination in Texas and other covered jurisdictions to justify extension of the Act's preclearance provision.

The Attorney General of the U.S. Department of Justice served as the lead Defendant in the case. In addition to LDF, several other organizations intervened in the suit including the Mexican American Legal Defense and Education Fund, NAACP, Texas RioGrande Legal Aid, People for the American Way, the ACLU, and the Lawyers' Committee for Civil Rights Under Law, working in collaboration with the law firm of Wilmer, Cutler, Pickering, Hale & Dorr.

The case was argued before a three-judge panel of the District Court for the District of Columbia on September 17, 2007. On May 30, 2008, the three-judge panel issued a favorable ruling rejecting the utility district's effort to invalidate the heart of the Voting Rights Act. The court upheld Section 5 of the Act as a valid exercise of Congress's authority to remedy the ongoing problem of voting discrimination. In addition, the court recognized the extensive legislative record of voting discrimination that had been developed and found that "Section 5's protections remain as necessary today as they were during previous reauthorization periods." A direct appeal to the U.S. Supreme Court is expected. On numerous occasions since its initial passage, the Supreme Court and lower courts have rejected similar challenges to the constitutionality of Section 5.

Despite this case and any other constitutional challenge that may be filed against Section 5, covered jurisdictions (and the political subunits that lie within them) must comply with their preclearance obligations. These challenges do not change the fact that Section 5 remains in full force and effect.

"This is one of the most important civil rights cases decided this year. The Voting Rights Act does not stand at the periphery of the nation's long march to greater equality—it lies at its core. That a small utility district would think that it could take us off the path to political fairness by rehashing previously discredited arguments is unfortunate, but the Court declined that invitation."

John Payton
LDF President and Director-Counsel

"The Voting Rights Act is one of Congress's greatest legacies reauthorized after ten months of careful study. Preclearance remains critical because the notion that we have come a long way but that our constitutional promises require us to go further is easy to grasp."

Debo P. Adegbile
LDF Director of Litigation

Yvonne & Winthrop Graham
LDF clients and residents
of the Northwest Austin Municipal Utility
District Number One, Austin, Texas

THE FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

• • •

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

THE FIFTEENTH AMENDMENT

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

LDF and MALDEF attorneys following the argument in *Northwest Austin Municipal Utility District Number One v. Mukasey.* L-R: Jacqueline Berrien, Jenigh Garrett, Kristen Clarke, Ryan Haygood, Debo Adegbile, Nina Perales, Diego Bernal, and David Urias.

HOW CAN YOU PARTICIPATE IN THE SECTION 5 PROCESS?

There are different ways for impacted individuals and communities to participate in the preclearance process, and you need not be a lawyer or voting expert to do so. As set out below, many different types of information can prove valuable. Any individual or group may send the Attorney General information concerning a change affecting voting in a covered jurisdiction. Your information may help improve the Justice Department's review and assessment of the impact that a particular voting change has on the minority community. It is important to note that the Act is concerned with protecting the opportunity for minority voters to freely, fully, and effectively participate in the political process and not narrowly on the fate of particular incumbents. Here are some steps that individuals or groups can take in order to play a more active role in the Section 5 process:

First, monitor the various voting changes that are submitted to the U.S. Department of Justice for review. Weekly updates about pending Section 5 submissions can be obtained by visiting: http://www.usdoj.gov/crt/voting/sec_5/notices.htm. You can also be placed on a DOJ mailing list to receive weekly notices regarding pending Section 5 submissions. Notices can be received electronically or by mail. Interested persons can send an email to: section5.notice@usdoj.gov requesting that they be added to the distribution list for Notices of Section 5 Submission Activity. In addition, you can contact the DOJ directly at 800-253-3931 and ask to be placed on their mailing list.

Second, if you identify a local voting change that appears problematic through any source, request a copy of the submission from the submitting official in the local jurisdiction or submit a request to the DOJ, pursuant to the Freedom of Information Act (FOIA), in order to obtain a copy of the file. FOIA is a federal law that provides that federal agencies must disclose all records, except those which are specifically excluced by the law, to any individual making a written request for them. FOIA requests can be sent to the DOJ directly (see contact information at end of manual).

Third, collect as much information as possible about the process preceding the adoption of the voting change. Helpful information may be obtained through a review of records or minutes of the governmental body that instituted the change, local newspaper articles and conversations with voters impacted by the change, or any other useful sources.

Fourth, if you determine that a particular voting change may worsen the position of minority voters or determine that a voting change was adopted with a discriminatory purpose, prepare a **Comment Letter** outlining your concerns for the DOJ. **The NAACP Legal Defense and Educational Fund** frequently works with citizens and local organizations in the covered jurisdictions to prepare Comment Letters outlining concerns regarding pending voting changes, and you may contact us for assistance. Comment Letters concerning changes may be sent at any time. However, given the 60-day review period, it is important to share your views regarding voting changes as soon as possible. If requested, the DOJ will not disclose the identity of persons submitting Comment Letters to the extent permitted by the Freedom of Information Act (FOIA). The next Section provides more information on drafting an effective Comment Letter.

WHAT INFORMATION SHOULD YOU PROVIDE TO THE DOJ ABOUT VOTING CHANGES DURING THE SECTION 5 PROCESS?

Comment Letters can alert the Justice Department to the possibility that a voting change may be problematic and should be carefully studied before any preclearance determination is rendered. However, Comment Letters can also provide detailed information to assist the DOJ in deciding whether to object to a voting change because of a threat to minority voting rights. A strong Comment Letter can also help highlight problems or deficiencies with the submission that may prompt the Justice Department to seek more information about the change, or to object to or block the change.

Comment Letters that urge the Attorney General to object to a voting change should offer insight into those factors that are considered by the DOJ during its administrative Section 5 review. For example, an effective Comment Letter will:

1. **Identify the Proposed Voting Change or Changes.** Be as specific as possible.
2. **Describe the Retrogressive Effect on Minority Voters**. Assess whether the proposed voting change is **retrogressive**—whether minority voters will be placed in a worse position after the voting change. For example, the DOJ might find a discriminatory effect in its examination of the following kinds of changes:
    - A redistricting plan that reduces the number of districts with predominantly minority voters
    - A redistricting plan that significantly reduces the percentage of minority voters in a district, where those minority voters previously had an opportunity to elect candidates of their choice
    - A change in polling location that makes it more difficult for minority voters to cast a ballot on Election Day
    - Moving a polling place to a location considered hostile by minority voters
    - An annexation request made on the part of a group of predominantly white voters in a jurisdiction that historically has denied similar requests made by minority voters
    - A change in the method of election whereby a jurisdiction seeks to eliminate single-member districts and elect representatives at-large
    - A jurisdiction's decision to cancel an election in the face of significant minority population growth

3. **Identify Any Discriminatory Purpose.** Evidence of some racially discriminatory purpose underlying a voting change can also lead to a DOJ objection. The most direct evidence of discriminatory purpose includes statements from those officials who adopted the change. However, the following circumstantial evidence can also help establish the discriminatory purpose of the voting change:

a. **Sequence of events and decision-making process** that led to the voting change. Note whether the community had the opportunity to participate in the process leading up to the adoption of the proposed changes. For example, include information regarding whether meetings were held in private or whether members of the community were excluded.
b. **Legislative or administrative history** of the proposed voting change. Include, if possible, statements by members of the governing body, minutes of their meetings and public hearings, and any testimony by decision-makers regarding their motivation for adopting the voting change.
c. **Historical background** of the voting change (e.g. a history of racial discrimination in past decades, recent incidents of public controversy surrounding non-English speakers, etc.).
d. **Departures from the normal procedural sequence**. Note specific examples where the jurisdiction altered its normal decision-making process from past practices.

4. **Describe Community Support for Your Views.** Describe the views of others in your community who may share your concerns about the proposed change. For example, you could include a petition bearing signatures from individuals or local community groups. If possible, provide contact information for these individuals to aid the Justice Department's analysis of the voting change.

5. **Enclose Any Additional Information.** Enclose any additional material that would assist the Justice Department's review of the voting change, including news articles or media advisories.

CAN THE DOJ PRECLEARANCE DECISIONS BE APPEALED?

The DOJ's administrative preclearance decisions are final and cannot be challenged in court by those who oppose preclearance. A jurisdiction that draws an objection, however, may in a sense take a second bite at the apple by asking a federal court in Washington, D.C. to review the voting change anew. However, a voting change may be subject to a legal challenge on other grounds. For example, a redistricting plan may be precleared under Section 5 but could still be challenged under Section 2 of the Voting Rights Act if the plan dilutes minority voting strength. The reach of Section 5 is limited in that it only bars the implementation of changes that have a discriminatory purpose or changes that worsen the position of minority voters. However, other federal or state laws may provide a source of relief. Contact the NAACP Legal Defense and Educational Fund to discuss the other forms of relief that may be pursued in these instances.

The following documents are short examples of the kind of Comment Letters that may aid the Justice Department's Section 5 review of a particular voting change.

SAMPLE COMMENT LETTER
RECOMMENDING AN OBJECTION TO A POTENTIALLY DISCRIMINATORY POLLING PLACE CHANGE

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

June 2008

Re: Comment Letter Under Section 5 of the Voting Rights Act

Dear Chief, Voting Section,

On behalf of the NAACP Legal Defense and Educational Fund and the Ames Civil Rights Coalition, we urge the Attorney General to object to a proposal to change a polling place in the City of Ames. This voting change will have a discriminatory effect on the city's minority voters.

Currently, about 80 percent of minority voters within the City of Ames live within District 1. Voters who reside in District 1 are currently assigned to a polling place located at the Martin Luther King Center. This Center is centrally located and in close proximity to the homes of most of the District's residents. Available data indicates that as many as 600 Black voters reside in District 1, which is located east of the railroad tracks that run in a north/south direction through the length of the city.

The City now proposes to move this polling site to the Ames Lodge. This change will have a discriminatory effect on the city's minority voters by making it more difficult for minority residents to access the polling site on Election Day. The Ames Lodge is located approximately twenty miles away from the Martin Luther King Center. Many minority voters who reside in District 1 do not have access to a vehicle and rely upon public transportation. However, the Ames Lodge is located in a rural part of the District that is not accessible by public transportation. This means that the vast majority of District 1 residents, including significant numbers of minority voters, will encounter substantial difficulty accessing the polls on Election Day.

Furthermore, during closed deliberations on new polling place locations, the officials did not consider alternative locations that would address the concerns raised by the city's minority voters. In addition, the Ames Lodge has historically had racially exclusive membership rules and we understand that many minority voters would be discouraged from casting their ballots at this polling site.

The evidence shows that the proposed polling place change would have a discriminatory effect on minority voters in the City of Ames. We enclose the following petition signed by concerned citizens in the City of Ames and local community groups and businesses. These individuals and groups represent a diverse and broad range of people in the City of Ames who encourage the Department of Justice to review these proposed changes with care.

We enclose a newspaper clipping and a media advisory related to the proposed change.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. *Georgia v. United States*, 411 U.S. 526 (1973); *see also* the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations, the City of Ames cannot show that this polling place will not harm minority voters. Therefore, we respectfully request that the Department of Justice object to the designation of the Ames City Lodge as a polling place location.

Sincerely,

1. State the proposed changes.

2. **Retrogressive Effect**. Here, the letter gives a detailed, geographically specific explanation of why the proposed change puts minority voters in a worse position than before the change.

3. **Discriminatory Purpose**. Explain the **legislative or administrative history** of the decision. Include stataements by decisionmakers regarding their **intentions** in making the voting change.

4. **Community Support**. Include evidence that there is support in the community for your views.

5. Enclose any **additional material**, including newspaper articles or media advisories.

SAMPLE COMMENT LETTER
RECOMMENDING AN OBJECTION TO A POTENTIALLY DISCRIMINATORY CHANGE IN METHOD OF ELECTION & REDISTRICTING PLAN

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

June 2008

Re: Comment Letter under Section 5 of the Voting Rights Act

Dear Chief, Voting Section,

On behalf of the NAACP Legal Defense and Educational Fund, we urge the Attorney General to object to the pending Section 5 submission of the State of North Carolina's Session Law 2008-555. This law provides for the creation of five at-large seats and a reduction in the number of single-member districts for the Ames Board of Education in Ames County.

1. State the proposed changes.

We believe that the state has failed to show that the change will not have a retrogressive effect. The Ames County Board of Education is currently comprised of eight single-member districts. Only two of these districts, Districts 1 and 3, provide African-American voters an opportunity to elect candidates of their choice. These districts are currently represented by long-term Board members John Douglass and Donna James. Our conversations with African-American voters who reside in these districts confirm that Mr. Douglass and Mrs. James are the candidates of choice of the minority community.

The state proposes to alter the current plan in several ways. The state seeks to enlarge the current size of the Board of Education to include five at-large seats and also proposes to reduce the number of single-member districts by two. The reduction in single-member districts places minority voters in a worse position. It reduces the black population percentage of District 1 from 57 percent to 42 percent and also reduces the Black population percentage of District 3 from 60 percent to 50 percent. At these levels, it will be significantly more difficult for minority voters to elect candidates of their choice. The addition of five at-large seats makes the retrogressive effect clear. There is little likelihood that minority voters will be able to elect candidates of their choice to any of these five at-large seats. Indeed, our analysis of recent elections confirms that there is racially polarized voting, meaning there is a significant difference in the county between the candidates supported by black residents and the candidates typically supported by white residents.

2. **Retrogressive Effect**. This letter explains how the proposed change will reduce the minority population percentage to a level that may place minority voters in a worse position than at present.

Furthermore, the sequence of events leading up to the adoption of the proposed change illustrates, in part, the discriminatory intent underlying the change. In 2002 the school board proposed a student reassignment plan that resulted in an increase in the number of African-American students at certain predominantly white schools in the county. At a public hearing regarding the plan, Citizens About School Elections (CASE), a group comprised largely of white residents in the county, openly expressed hostility towards the idea of racial mixing. Incensed and galvanized by the school reassignment plan, CASE members lobbied and pushed vigorously for the voting change as a way to change the composition of the school board. In fact, the current School Board Chairman David Jones indicates that CASE members have openly discussed strategies to reduce minority voting strength and eliminate minority school board members.

3. **Discriminatory Purpose**. This letter explains how the **sequence of events** leading up to the change suggests the proposed change has discriminatory intent.

The decision-making process further indicates the discriminatory intent of the proposed change. At a public hearing, a number of Black voters expressed concern about the replacement of single-member

districts with at-large seats and indicated that these changes would hurt minority voting strength. The school board then unanimously rejected the idea of replacing single-member districts with at-large seats. Without providing public notice, CASE members then turned to the Ames County Commission for assistance. A local news article described the Commission's meeting leading up to the adoption of a resolution supporting the CASE proposal as an "ambush." The article indicated that the resolution was passed with "no-comment, no-discussion [and] no-questions."

The minority community of Ames is deeply concerned that the proposed changes would have a discriminatory effect on minority voters. We enclose the following petition signed by legislators, school board members, and citizens who urge you to object to the proposed change. We also enclose a newspaper clipping and a media advisory related to the proposed change.

We urge the Attorney General to interpose an objection to the proposed change or, alternatively, request additional relevant information, if any exists, that will help the state meet its burden of showing that the change lacks retrogressive effect or discriminatory purpose.

Sincerely,

3. **Discriminatory Purpose**. This letter explains how the lack of real deliberation in the **decision-making process** points to the discriminatory intent of the proposed change.

4. **Community Support.** Include evidence that there is support for your views.

5. Enclose any **additional material,** including newspaper articles or media advisories.

HOW TO SUBMIT COMMENT LETTERS TO THE U.S. DEPARTMENT OF JUSTICE?

The Department of Justice has established a single address for the receipt of all **United States Postal Service** mail including certified mail and express mail. All mail to the Voting Section must have the full address listed below:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Deliveries by **overnight express services** such as Airborne, DHL, Federal Express or UPS should be addressed to:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G St., N.W.
Washington, D.C. 20006

WHAT IF A JURISDICTION HAS IMPLEMENTED AN UNPRECLEARED VOTING CHANGE?

Covered jurisdictions must obtain preclearance for voting changes before putting them into effect. If a jurisdiction fails to obtain preclearance for the change, the DOJ or private individuals can bring a Section 5 enforcement action to stop the jurisdiction from implementing or enforcing the change until preclearance is obtained. The only questions to be resolved through a Section 5 enforcement action concern whether a particular practice constitutes a voting change and if so, whether or not it has been precleared.

Whether the change is entitled to preclearance is a substantive question that can only be answered by the D.C. District Court or the U.S. Department of Justice.

In recent years, plaintiffs filing Section 5 enforcement actions to stop jurisdictions from implementing unprecleared voting changes in various courts around the country have encountered difficulty as a result of particularly restrictive views about standing requirements. As a result, most courts require that these suits be brought by a minority voter that lives within the covered jurisdiction that has allegedly failed to obtain preclearance. In addition, some courts have required a showing that the change impace the voting rights of the individual or individuals named in the suit.

A successful Section 5 enforcement suit may require the covered jurisdiction to revert back to the last legally enforceable practice or procedure. In addition, the jurisdiction may be barred from implementing the new voting change until preclearance is properly sought and obtained.

If you learn about an unprecleared voting change in your jurisdiction, contact the NAACP Legal Defense and Educational Fund or the DOJ. The DOJ can conduct its own investigation to confirm whether the change has been precleared and issue a letter or file suit in order to push the jurisdiction to obtain preclearance. A sample letter informing DOJ officials about potentially unprecleared voting changes can be found on the next page:

SAMPLE LETTER INFORMING THE DEPARTMENT OF JUSTICE THAT A VOTING CHANGE HAS NOT BEEN SUBMITTED FOR PRECLEARANCE

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

February 2008

Re: Unprecleared Voting Change Implemented in the City of Ames

Dear Chief, Voting Section:

On behalf of the NAACP Legal Defense and Educational Fund, I am writing to request that the Assistant Attorney General issue a "please submit" letter to the City of Ames regarding two unprecleared voting changes that affected voting during this fall. First, the City scheduled a special election on September 30, 2006. This election was conducted 60 days earlier than the regularly scheduled election date. The City of Ames also adopted a new redistricting plan that altered the district boundaries for these elections. It is our understanding that these changes have not yet been submitted for preclearance as required by Section 5 of the Voting Rights Act. See *Allen v. State Board of Elections*, 393 U.S. 544, 565 (1969).

1. State the proposed changes.

The City's earlier election date and its redistricting plan constitute a change from the previously precleared practices and procedures for our city. State officials have not yet complied with their preclearance obligations pursuant to Section 5 of the Voting Rights Act. For your reference, I have enclosed a copy of a news article describing the circumstances surrounding these changes.

2. Enclose any **additional material,** including news articles, media advisories, or official proposals that support your claims.

Sincerely,

LDF

DEFEND EDUCATE EMPOWER

THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND is America's legal counsel on issues of race.

Through advocacy and litigation, LDF focuses on issues of education, voter protection, economic justice and criminal justice.

We encourage students to embark on careers in the public interest through scholarship and internship programs.

LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans.

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