

**STATEMENT OF
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**U.S. HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON
THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES HEARING**

**“CONGRESSIONAL AUTHORITY TO PROTECT VOTING RIGHTS
AFTER *SHELBY COUNTY V. HOLDER*”**

SEPTEMBER 24, 2019

I. Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Joe Rich. Thank you for the opportunity to testify today.

I worked for the United States Department of Justice's Civil Rights Division for almost 37 years. Between 1999 and 2005, I was Chief of the Division's Voting Section. I also served as Deputy Chief of the Housing and Civil Enforcement Section for twelve years and Deputy Chief for the Education Section for ten years. During my nearly 37 years in the Civil Rights Division, I served in Republican administrations for over 24 years and Democratic administrations for slightly over 12 years. After leaving the Department of Justice in 2005, I was employed as the Director of the Fair Housing and Community Development Project of the Lawyers' Committee for Civil Rights Under Law until my retirement in 2018.

I am testifying today in my individual capacity and not on behalf of the Department of Justice or the Lawyers' Committee. My experience as Chief of the Voting Section and my long career enforcing civil rights laws has informed my perspective on the Voting Rights Act and the continuing need for restoring the full protections of the Act, which were curtailed by the *Shelby County v. Holder* decision.

The Voting Rights Act of 1965 was the most important and most successful civil rights law ever passed. It is one of the most important pieces of social legislation in our nation's history. Voting is our most basic civil right and the Voting Rights Act had a tremendous impact in advancing the ability of citizens of color and language minority voters to have an equal opportunity to register to vote, exercise the franchise, and to have the ability to elect candidates of their choice at all levels of government. The success of the Voting Rights Act and the need for its continuing protections were endorsed by an overwhelming majority of both Republicans and Democrats in Congress when the 2006 bill to reauthorize the Act was passed by a vote of 98-0 in the Senate and by a vote of 390-33 in the House.¹

¹ Congress.gov, H.R.9 - Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (2006), <https://www.congress.gov/bill/109th-congress/house-bill/9/all-actions?overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D>.

Notwithstanding the bipartisan support of the Voting Rights Act and its success in ensuring minority voting rights since its passage, the Supreme Court gutted important protections of the Act when it handed down the *Shelby County v. Holder* decision in June 2013.² In the aftermath of this decision, we saw jurisdictions, such as North Carolina and Texas among others, race to enact legislation undermining minority voting rights, including bills mandating strict forms of voter ID, cutbacks to early and absentee voting, and other voter suppression laws which overwhelmingly targeted minority voters.

It is now time to enact legislation to restore the protections lost by the *Shelby* decision in order to ensure that the opportunities for the sort of successes achieved by the Voting Rights Act between 1965 and 2013 are again available, and that voters of color and language minority voters will have an equal opportunity to register to vote, exercise the franchise and elect candidates of their choice to all levels of government.

II. The Importance of Preclearance of New Voting Laws

A. Section 5's Important Deterrent Effect

Jurisdictions subject to the preclearance provisions of Section 5 were required to submit proposed voting changes to the Department of Justice to demonstrate that they did not have a discriminatory purpose or effect.³ “Discriminatory purpose” under Section 5 was based upon the same standard as Fourteenth and Fifteenth Amendment prohibitions against intentional discrimination against minority voters.⁴ Effect was defined as a change which would have the effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice.⁵ This was also known as retrogression, and in most instances, this standard was easy to measure and apply.

For example, if a proposed redistricting plan maintained the same majority-black districts which elected minority-preferred candidates at the same minority population percentage as the existing plan, DOJ would have been unlikely to have found the plan to be retrogressive. On the other hand, if the plan significantly diminished the minority population percentage in the same districts and diminished the ability of minority voters to elect their preferred candidates of choice, DOJ would have been more likely to have found the plan was retrogressive.

The Section 5 preclearance process played an extremely important role in stopping discriminatory voting changes and laws before they ever took effect. The deterrent effect of Section 5 preclearance is a key reason why the full protections of the Voting Rights Act must be restored now.

² 570 U.S. 529 (2013).

³ 52 U.S.C. § 10304(c).

⁴ *Id.*

⁵ 52 U.S.C. § 10304(b), (d).

During my tenure with the Voting Section, the Attorney General objected to less than one percent of Section 5 submissions received by the Department.⁶ The relatively small number of objections underscored the impact of Section 5 in preventing discrimination. The existence of Section 5 deterred covered jurisdictions from discriminating in the first place, because jurisdictions knew DOJ would be reviewing those changes and would object to them if they had a discriminatory purpose or effect. The Department had built a tradition of excellence and meticulousness in its Section 5 review process, and covered jurisdictions would have to think long and hard before passing laws or adopting voting changes that had a discriminatory impact or purpose.

I often heard of examples of this deterrent effect during my tenure in the Voting Section. For instance, jurisdictions would make changes after careful consideration of discriminatory impact of a voting change during the legislative process. Minority elected officials would remind their white colleagues of the need for Justice Department review of laws and other changes under consideration, prompting changes. Moreover, there would be withdrawal of, or changes made to, preclearance submissions once DOJ sent letters or made inquiries requesting supplemental information (also known as, “More Information Requests” or “MIRs”). In fact, one study found that during the period from 1999 to 2005, MIRs deterred 605% more voting changes than did formal Section 5 objections.⁷ In sum, the deterrent effect of Section 5 was extremely important to the protection of minority rights and the loss of preclearance post-*Shelby* led almost immediately to a proliferation of discriminatory laws and other voting changes largely targeting minority voters that would likely have been stopped or deterred by the Section 5 preclearance process.

B. Section 5 Preclearance Was an Efficient and Transparent Process

Section 5 preclearance was an efficient and cost-effective process designed to proactively root out discriminatory voting changes before they went into effect. The process afforded notice to voters and interested parties of proposed voting changes and of DOJ’s actions on Section 5 submissions. DOJ almost always sought the views of involved minority voters, advocates, community groups, and other interested parties in the process as it assessed whether and to what extent voting changes would impact minority voters. As reflected in the very low percentage of objections, the preclearance process was instrumental in resolving concerns about proposed voting changes without the need for protracted and expensive litigation.

During my tenure with the Voting Section, DOJ received over 4,000 submissions per year from covered jurisdictions containing close to 20,000 voting changes. Review of each of these changes was carefully done pursuant to a preclearance process formally established in DOJ regulations designed to fully and carefully determine whether the jurisdiction had met its burden to demonstrate that the change did “not have the purpose and will not have the effect of denying

⁶ See Luis Ricardo Fraga and Maria Lizet Ocampo, *More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act*, in Ana Henderson (ed.), *VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER*, Berkeley Public Policy Press, Institute of Governmental Studies, University of California, Berkeley 49 (2007), available at https://www.law.berkeley.edu/files/ch_3_fraga_ocampo_3-9-07.pdf.

⁷ *Id.* at 65.

or abridging the right to vote on account of race or color" or because of membership in a language minority group.⁸

In most instances, after covered jurisdictions submitted proposed voting changes to DOJ for preclearance, DOJ had a relatively short window of sixty days to determine whether it would preclear the voting change.⁹ If DOJ precleared the change or failed to object to it within sixty days, the submitting jurisdiction could implement the change.¹⁰ If DOJ requested additional information from the jurisdiction, which often occurred when DOJ made written or verbal requests to the jurisdiction to supplement its submission, the sixty-day period would be recalculated if the supplemental information was material to the submission.¹¹

If DOJ objected to a voting change, covered jurisdictions were blocked from implementing the change, but were not left without recourse. They could modify the proposed change and re-submit it to DOJ, request reconsideration by DOJ,¹² or file a declaratory relief action in federal court seeking judicial preclearance of the proposed voting change.¹³

As noted above, the preclearance process promoted transparency and participation by community advocates, voters, and other individuals and groups who were called upon by DOJ to weigh in on proposed voting changes and provide background information about their experiences with voting discrimination in the jurisdictions.¹⁴ In addition, DOJ made information about preclearance submissions, determinations and objections available to the public on its website through a registry that provided this information.¹⁵

During my time with the Voting Section, I observed how efficient and effective the Section 5 preclearance process was in preclearing voting changes that did not have a discriminatory purpose or effect, as well as entering objections to prevent discriminatory voting changes from taking effect. Because the vast majority of Section 5 preclearance submissions were resolved by the administrative process rather than litigation, preclearance was a very cost-effective and much less burdensome way to protect the fundamental right to vote. Many discriminatory voting changes were prevented from taking effect through this time-sensitive administrative process, rather than through time-consuming, expensive litigation under Section 2 of the Voting Rights Act or the Constitution. Even when jurisdictions filed declaratory relief actions in the District Court for the District of Columbia seeking judicial preclearance, these proceedings were often relatively short in duration and did not usually require the significant expenditures of manpower and monetary resources that Section 2 or constitutional litigation often does.

⁸ Procedures for the Administration of Section 5 of the Voting Rights Act ("Section 5 Procedures"), 28 C.F.R. § 51.1, *et seq.*

⁹ *Id.*; 52 U.S.C. § 10304(a).

¹⁰ *Id.*; Section 5 Procedures, 28 C.F.R. §§ 51.41-42.

¹¹ Section 5 Procedures, 28 C.F.R. § 51.39.

¹² 28 C.F.R. § 51.45.

¹³ 52 U.S.C. § 10304(a).

¹⁴ *See also*, 28 C.F.R. § 51.29.

¹⁵ *See, e.g.*, Department of Justice, *Section 5 Objection Letters*, available at <https://www.justice.gov/crt/section-5-objection-letters>; Department of Justice, *Notices of Section 5 Submission Activity*, available at <https://www.justice.gov/crt/notices-section-5-submission-activity>.

C. The VRAA's Preclearance Provisions Will Prevent and Deter Jurisdictions from Implementing Discriminatory Voting Changes

There is a compelling need to restore the preclearance now to prevent the continuing erosion of protection of minority voting rights in the post-*Shelby* era. The enactment of the Voting Rights Advancement Act (H.R. 4) would go a long way toward restoring the protections of the Voting Rights Act lost as a result of the *Shelby County* decision. The restoration of the preclearance process for jurisdictions with a history of discrimination in H.R. 4 is based upon current conditions under a new coverage formula and it would play the same crucial role in stopping discriminatory voting changes before they are implemented that Section 5 did.

Since the *Shelby County* decision, enforcement of the Voting Rights Act has fallen primarily upon individual voters, civic engagement and civil rights groups and, to a much lesser extent, the Department of Justice. Unlike the cost-effective and efficient preclearance process of Section 5, civil litigation to enforce the Voting Rights Act tends to be a protracted and very expensive undertaking. Unlike the way changes are reviewed in the preclearance context, plaintiffs in voting rights litigation, rather than the jurisdiction adopting discriminatory changes, bear the burden of proof and face significant exposure to substantial costs if they do not prevail in the litigation.

The gutting of Section 5 by *Shelby County* has also resulted in a loss of transparency. Voters and advocates in the formerly-covered states and local jurisdictions are often left in the dark about discriminatory voting changes and laws as legislators and local officials often purposely draw up these changes behind closed doors and without adequate notice to their constituents.

This is particularly true in the context of redistricting legislation in which racially gerrymandered and discriminatory districting plans are often created by legislators and their consultants without public participation. With the looming redistricting process following the 2020 Census, the need for the restoration of preclearance is especially urgent. Otherwise, we can expect to see jurisdictions across the country such as North Carolina,¹⁶ Alabama,¹⁷ Mississippi,¹⁸ and other states with a history of racial gerrymandering and vote dilution to draw up redistricting plans behind closed doors which are very likely to undermine the ability of people of color to elect their preferred candidates of choice.

In addition, a recent study by the Leadership Conference on Human and Civil Rights found that some 1,688 polling sites have been closed in the wake of the *Shelby County* decision, a move that disrupts our democracy—particularly when these changes are made without notice or input from communities impacted by these changes.¹⁹ The majority of these closures took place in jurisdictions formerly covered under Section 5, including Texas, Georgia, and Arizona; this is a

¹⁶ See, e.g., *Cooper v. Harris*, 137 S.Ct. 1455 (2017) (concluding that two Congressional Districts constituted racial gerrymanders in violation of the Fourteenth Amendment).

¹⁷ See, e.g., *Ala. Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (holding twelve House and Senate Legislative Districts constituted racial gerrymanders in violation of the Fourteenth Amendment).

¹⁸ See, e.g., *Thomas v. Bryant*, No. 19-60133, 2019 WL 4153107 (5th Cir. Sept. 3, 2019) (finding state senate district plan diluted voting strength of Black voters in violation of Section 2 of the Voting Rights Act).

¹⁹ The Leadership Conference on Human and Civil Rights, *Democracy Diverted: Polling Place Closures and the Right to Vote* (Sept. 2019), available at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

prime example of how the preclearance process under Section 5 would have likely prevented a significant number of these closures in majority-minority areas due to their retrogressive effect on the ability of voters of color to cast ballots.²⁰

III. The Importance of Federal Observers

A. Federal Observers Deterred and Prevented Discriminatory Acts Against Minority Voters and Assisted in the Gathering of Important Evidence for Enforcement Actions

Until the *Shelby County* decision in June 2013, the ability of the Attorney General to assign federal observers to covered jurisdictions under Section 8 of the Voting Rights Act was an extremely important and effective tool to deter voting discrimination on the ground and to uncover evidence of discrimination for potential enforcement actions.

Section 8 mandated that the Attorney General could certify the assignment of federal observers to jurisdictions covered by Section 5 when:

“(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title are likely to occur; or

“(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment”²¹

Under Section 8 of the Act, observers were specially trained employees of the Office of Personnel Management, and the OPM Director was responsible for assigning as many observers for each jurisdiction as was deemed appropriate.²² Federal observers were authorized to “(1) enter and attend at any place holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and (2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.”²³ Observers were also authorized to conduct investigations and to make reports to the Attorney General.²⁴

²⁰ *Id.* at 12.

²¹ 52 U.S.C.A. § 10305(a)(2).

²² 52 U.S.C.A. § 10305(a)-(c).

²³ 52 U.S.C.A. § 10305(d).

²⁴ 52 U.S.C.A. § 10305(e).

DOJ also sent, and has continued to send since *Shelby County*, Civil Rights Division staff to “monitor” local jurisdiction elections when they have received information of possible voting rights problems. But staff “monitors” are less of a deterrent than Section 8 federal observers because they do not have the right to be present in polling stations where instances of invidious discrimination and harassment oftentimes occurred behind closed doors.

Prior to the *Shelby County* decision in 2013, the Attorney General certified 153 counties and parishes in 11 states for federal observers, including in Alabama (22 counties), Alaska (1) Arizona (4), Georgia (29), Louisiana (12), Mississippi (51), New York (3), North Carolina (1), South Carolina (11), South Dakota (1) and Texas (18).²⁵

Although the Supreme Court in *Shelby* did not directly address the assignment of federal observers, DOJ has taken the position that because the Court declared the Section 4(b) coverage formula used to identify jurisdictions that were subject to Section 5 preclearance to be unconstitutional, DOJ also could not certify such jurisdictions for federal observer coverage.²⁶ The negative impact of the *Shelby* decision on DOJ’s ability to assign federal observers to jurisdictions that had been covered by Section 5 was noted in July 2016 by former Attorney General, Loretta E. Lynch, who said that DOJ’s ability to deploy federal observers had been “severely curtailed” as a result of the *Shelby* decision, and that this meant DOJ would need to rely more upon staff monitors (who have no right to enter polling stations) and that DOJ would be sending “fewer people with fewer capabilities” to monitor the 2016 November general election.²⁷

As in the case of Section 5 preclearance, the Civil Rights Division had developed very careful procedures for determining when to recommend to the Attorney General that a Section 5 jurisdiction be certified for federal observers to be sent to cover an election. The most important factor in recommending observer coverage was evidence of potential Voting Rights Act violations which arose most often in elections pitting minority candidates against white candidates, resulting in increased racial or ethnic tensions.

Federal observers were carefully trained by OPM to observe elections in a neutral manner and to report any voting irregularities to their supervisors who worked closely with Voting Section attorneys while the elections were being covered. Where appropriate, and after consultation with Section management, Voting Section attorneys would often take steps to resolve the irregularities through discussions and negotiations with state and local election officials. Information obtained by observers during their coverage also was crucial if formal legal action was required.

²⁵ Department of Justice, *About Federal Observers And Election Monitoring*, available at <https://www.justice.gov/crt/about-federal-observers-and-election-monitoring#observers>.

²⁶ See Department of Justice, *Fact Sheet On Justice Department’s Enforcement Efforts Following Shelby County Decision*, available at <https://www.justice.gov/crt/file/876246/download>.

²⁷ See Loretta E. Lynch, *Attorney General Loretta E. Lynch Delivers Remarks at the League of United Latin American Citizens National Convention*, Office of the Attorney General, July 15, 2016, <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-league-united-latin-american-citizens>.

The presence of federal observers in polling stations during elections consistently had a calming effect in the voting jurisdiction, particularly during highly charged elections in which there had been allegations of possible Voting Rights Act violations. The observers helped deter discriminatory acts, and on several occasions their observations and evidence gathered on the ground was important for enforcement actions.

A good example of this was a 2004 election in Bayou La Batre, Alabama where federal observers were deployed pursuant to the authority to certify coverage of a Section 5 jurisdiction. Bayou La Batre has a Vietnamese fishing community and in 2004 an Asian-American candidate ran for mayor for the first time against a white candidate in the primary election. During the primary election, many ballots cast by Vietnamese-American voters were challenged and some were illegally forced to produce another registered voter to “vouch” for them in order to cast a ballot. After DOJ learned of the race-based challenges of Vietnamese-American voters in the primary election, federal observers were deployed to monitor the runoff election.²⁸

The important deterrent impact of federal observers was also demonstrated in elections where federal observers had been authorized by court orders. A consent decree in Passaic County, New Jersey required election officials to take specific actions to bring the county into compliance with Section 203 of the Act.²⁹ It also authorized the assignment of federal observers.

Elections held in Passaic from 1999 – 2002 are another good example of the importance of federal observers. James Thomas Tucker’s article, *The Power of Observation: The Role of Federal Observers Under the Voting Rights Act*, contains an excellent case study demonstrating the significant impact federal observers had on protecting the right to vote of Passaic County’s Latino and language minority voters in the face of repeated incidents of discriminatory harassment during elections.³⁰ Speaking to the importance of assignment of federal observers in Passaic County, Tucker notes:

The lengthy federal involvement in Passaic County illustrates the difficulties that can occur in addressing sustained, systemic exclusion of language minorities from the electoral process. The federal Court's active engagement with these problems and willingness to vigorously enforce its orders played a key role in remedying the County's violations of federal, and even state, law. Dozens of federal observers were critical in acting as the eyes and ears of the United States, the Court, and later the elections monitor, to identify and document areas of concern during elections. The Court and the parties also had to be flexible in continuously using supplemental orders to tailor remedies to address developing problem areas that existing Court orders failed to resolve. Without the presence of federal observers in the County, it would have been impossible to prevent

²⁸ See Department of Justice, *Justice Department To Monitor Elections In New York, Washington, and Alabama*, Sept. 13, 2004), available at https://www.justice.gov/archive/opa/pr/2004/September/04_crt_615.htm; See also DeWayne Wickham, *Why Renew the Voting Rights Act: Alabama Town Provides Answer*, USA Today, Feb. 22, 2006, https://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm.

²⁹ *United States v. Passaic City and Passaic County*, (D.N.J. 1999) (No. 99-2544).

³⁰ James Thomas Tucker, *The Power of Observation: The Role of Federal Observers Under the Voting Rights Act*, 13 MICH. J. OF RACE & L. 227, 254-276, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1100&context=mjrl>.

voting discrimination, enforce the Voting Rights Act, and measure progress under federal court orders.³¹

As demonstrated in the *Passaic* case, the presence of federal observers inside polling stations was a particularly important tool for protecting minority language voters who are oftentimes subjected to discriminatory practices inside polling stations when they attempt to vote. In fact, federal observer coverage between August 1982 and 2004 in New Mexico, a state with a significant population of language minority voters, was the highest authorized by DOJ, with sixty-nine observer assignments.³²

The need to re-establish the Attorney General's authority to send federal observers to elections is clear from the significant federal observer deployment by the Attorney General prior to the *Shelby* decision, and the substantial decrease in the number of observers and monitors since 2013. The United States Commission on Civil Rights found in its statutory 2018 report, *An Assessment of Minority Voting Rights Access in the United States*, “that the number of federal observers as well as monitors substantially declined following the *Shelby* decision.”³³

In 2012, the Commission found that 780 federal observers and 259 election monitors were deployed to 51 jurisdictions in 23 states in 2012.³⁴ However, in 2014, following the *Shelby* decision, the Commission found that DOJ “conduct[ed] in-person monitoring of polling place activities” in only 28 jurisdictions in 18 states and that during the period from 2012 to 2014, the number of federal observers decreased by 592 and the number of election monitors decreased by 204. While the Commission noted that the number of election monitors has increased since 2014, it has still not risen to the level of previous presidential elections during the earlier part of the time period studied.

Between 1990 and 2013, the population of Americans with limited English proficiency (LEP) grew 80 percent from nearly 14 million to 25.1 million.³⁵ Thus, the need for federal observers is particularly acute in jurisdictions covered by Section 203 of the Voting Rights Act that have significant numbers of LEP voters who need to receive oral and/or written language assistance at the polls in order to exercise their right to vote. As increasing numbers of LEP Americans are registering to vote and attempting to exercise the franchise, it is critical to have federal observers assigned to polling places in jurisdictions covered by Section 203 to ensure that that LEP voters receive appropriate language assistance and to protect them against insidious forms of discrimination inside the polls.

B. The VRAA’s Observer Provisions Will Help to Prevent, Deter and Remedy Discrimination against Minority Voters and those Needing Language Assistance at the Polls

³¹ *Id.* at 275.

³² Report of the National Commission on the Voting Rights Act, *Protecting Minority Voters*, Map 10(b), Feb. 2006.

³³ United States Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, (2018), available at https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

³⁴ *Id.* at 270-275; Appendices G and H.

³⁵ Jie Zong and Jeanne Batalova, *The Limited English Proficient Population in the United States*, Migration Policy Institute, July 8, 2015, <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

The VRAA would restore the Section 4(b) formula to include Section 5 covered jurisdictions as among those the Attorney General may certify for federal observers and it adds Section 203 covered jurisdictions to be eligible for Attorney General certification. Authority to certify 203 jurisdictions is an important addition to the Act as it will ensure that voters of color and language minority voters will not face discriminatory and hostile actions at polling stations in jurisdictions with a documented, recent history of discrimination. The authority to certify federal observers for such districts under the program employed pre-*Shelby* will provide much needed oversight inside polling stations and help to ensure that voters with limited English proficiency will receive the crucial oral and/or written language assistance that they need to be able to exercise the franchise and deter malicious, intentionally discriminatory conduct within polling stations toward minority and minority language voters.