Testimony Before the House of Representatives Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties

January 20, 2022

Maureen S. Riordan
Litigation Counsel
Public Interest Legal Foundation
32 E. Washington Street, Suite 1675
Indianapolis, Indiana 46204
317-203-5599
www.PublicInterestLegal.org

Good morning Mr. Chairman, Ranking Members, and Members of the Subcommittee. Thank you for your invitation to speak with you today.

I am an attorney with the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections

I have been an attorney for approximately 35 years. For over twenty years, I served in the Civil Rights Division of the Department of Justice. Eighteen of those years were spent both as a Voting Section attorney as well as Senior Counsel to the Attorney General for Civil Rights. From August 2000 until the Supreme Court's decision in *Shelby v Holder*, my sole responsibility was to review changes in voting submitted for preclearance under Section 5. During my tenure at the Department, I have been the recipient of numerous awards.

If passed these bills will give tremendous power over the election procedures of every state and local election to partisan bureaucrats within the Voting Section. I watched this power abused firsthand. I would like share with you my experiences working in the Voting Section.

I began my employment in the Voting Section approximately 3 months prior to the 2000 election. When the Florida recount occurred, I personally observed Voting Section staff discussing strategies to assist DNC in Florida and receiving and sending faxes to Democratic National Committee and campaign operatives.

I also witnessed twisted racialism. When George W. Bush appointed Ralph Boyd, an African American, to head the Civil Rights Division, attorneys I often heard from career Voting Section attorneys "he's not really black", adding that "no self-respecting Black man would be a Republican. These statements were accepted beliefs by many staff.

I would urge every member here to read an DOJ Inspector General Report entitled "A Review of the Operation of the Voting Section of the Civil Rights Division." It provides instance after instance of bad behavior – often racially motivated – among section staff. It includes abuse of an African American paralegal deemed not black enough. When you finish reading the report, you will rightfully wonder if it is such a good idea to give this office so much power over every election.[1]

But don't just take the word of the DOJ Inspector General on this point, listen to what the Justice Department itself has said about the abuse of power. The Office of Legislative Affairs detailed in a letter to Representative Sensenbrenner the millions of dollars in sanctions the Voting Section has incurred for bad behavior in Section 5 reviews and other court cases. I have attached the letter to my testimony.

When the Voting Section brought an action against an African American named Ike Brown, in Noxubee County Mississippi, for violating the Voting Rights Act,

---

[1] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwib5dKmlbrxAhVBG80KHRquAv4QFjABegQIBRAD&url=https%3A%2F%2Foig.justice.gov%2Freports%2F2013%2Fs1303.pdf&usg=AOvVaw09dTbH3E3cEhHWZFmI48bw

these partisan bureaucrats disagreed with the filing of the case and were hostile to it throughout the prosecution of the case. They have disdain for the equal application of civil rights laws to all Americans. Furthermore, there is an accepted belief that certain States should be targeted by DOJ in their voting rights enforcement. I have witnessed signs that state "mess with Texas". After the Shelby County decision extinguished Section 5 enforcement by DOJ, the company line was " If we can just get a case against Texas, we can request Section 3 © coverage and it's big enough to provide enough work to keep everyone busy, we won't need Section 5".

Past Abuse of Section 5 Powers

The Voting Section has a long record of abuse by its lawyers, for improper collaboration in reviewing Section 5 submissions, and has been sanctioned by courts.

Between 1993 and 2000, the Voting Section has been sanctioned $2,358,687.31 If you want to know what will happen should States be required to submit a redistricting plan pursuant to the proposed practiced based portion of the Lewis Bill, one only need to look to the case of *Johnson v. Miller* (864 F. Supp. 1354, 1364 (S.D. Ga. 1994)), (attached) where the United States District Court sanctioned the Voting Section $594,000 for collusive misconduct by DOJ Voting Section lawyers. That case originated with the State of Georgia's submission of its Congressional redistricting plan to the DOJ for Section 5 Preclearance. In its previous decennial districting plan the State of Georgia had 10 congressional Districts and one majority black district. Based upon

the new census data the proposed plan called for 11 districts and the proposed plan contained two majority black districts. The proposed plan increased the voting strength of African Americans in Georgia. Despite that, the DOJ working in coordination with an attorney from the ACLU refused to clear the Georgia plan. Furthermore, DOJ demanded that the State devise a plan that "maxxed" the black representation in the State. The State of Georgia had to submit the redistricting plan three times before it received preclearance. In its final submission the State of Georgia caved to DOJ and essentially adopted the plan put forward by the ACLU attorney. However, the plan was ultimately struck down because it violated the 14th Amendment because it was strictly race based focused. In its decision striking down the plan the court noted that the ACLU was "in constant contact with the DOJ line attorneys" during the preclearance process. Pronouncing the communications between the DOJ and the ACLU "disturbing," the court declared, "It is obvious from a review of the materials that [the ACLU attorneys'] relationship with the DOJ Voting Section was informal and familiar; the dynamics were that of peers working together, not of an advocate submitting proposals to higher authorities." After a Voting Section lawyer professed that she could not remember details about the relationship, the court found her "professed amnesia" to be "less than credible." Abuse of power in the Section 5 process is not confined to *Johnson v. Miller*.

Yet even after the imposition of these sanctions, on more than one occasion after receiving a submission to review for preclearance, I was instructed to strategize

with these very same advocacy groups. By providing a private cause of action for alleged violations of the Act, you will encourage even more collusion by DOJ and other groups. One only has to look at the Georgia and Texas litigation so see it in operation. Funny though, who was the last one into the litigation foray? The Department of Justice. Such unethical behavior has cost federal taxpayers too. Department of Justice has payed 2, 358, 687.31 in sanctions for improper actions. (Please letter dated 2006 to Sen. Sensenbrenner letter detailing Voting Section abuses attached as Exhibit C)

A 2009 objection in Kinston, North Carolina, shows the outrageous, abusive and legally indefensible positions the Voting Section will adopt using Section 5. Kinston, a majority black jurisdiction, in a referendum decided to dump partisan elections for town office and move to nonpartisan elections. The Voting Section, required that Kinston prove that this change, supported by African American elected officials was not adopted with a discriminatory purpose or that it had a discriminatory effect. The logic of the Section 5 objection was that if black voters did not have the word Democrat next to candidate names, they would not know for whom to vote. (Objection letter attached as EXH. B)

During a review of a statewide redistricting plan, I personally became aware of a demand made by the Front office, to target the district of a white state legislator. The legislator represented a district with a large African American population. What did this State Senator do to incur the wrath of the Front office? He sponsored local

legislation in response to requests from his minority constituents to bring accountability to a local school board. The School Board was under investigation for misuse of funds and firing 9 of the last 10 Superintendents. The local legislation was submitted for preclearance. Unfortunately for the parents of the minority students the Front office backed the school board, and then sought to punish the local legislator.

Town of North, South Carolina, submitted an annexation of two white homeowners to the city limits for preclearance. The white homeowners had requested annexation to the Town to obtain water and sewer. The Department objected to the annexation, because the Town could not show that any African Americans had been annexed, despite their never having submitted a qualifying request for annexation. Furthermore, Congress actually relied on some of these meritless objections when it reauthorized Section 5 in 2006. These abusive and meritless objections polluted the record in 2006, but no plaintiff ever challenged them, and Congress took no testimony regarding their merits. Additionally, these and other cases brought by the Voting Section have resulted in the Department of Justice paying 2, 358, 687.31 in sanctions for improper actions. (Please letter dated 2006 to Sen. Sensenbrenner letter detailing Voting Section abuses attached as Exhibit C)

Every change no matter how small

The John Lewis Voting Rights Bill's practice-based preclearance triggers will require most electoral change to be submitted for preclearance, no matter how

inconsequential the change may be. For example, a polling place change does not just include a change in physical address. It includes ANY change to the polling place. If a polling place moved from the school gym to the school cafeteria, the lawyers in the Voting Section would have to review and approve or reject the change. Voter registration changes include office hour openings from 8:30 to 8:25 would have to be approved. Any change in a polling place *signage font* would have to be approved. Any change in location of Registrar from old city hall to new city hall literally across the street, and changes in the numbering of precinct numbers that do not affect location, all of these would have to be approved.

Additionally, every local town annexation must be submitted and approved. These types of changes represent the majority of those reviewed. The Attorney General does not have the burden of establishing a discriminatory purpose or effect to issue an Objection under Section 5. The burden is on the jurisdiction submitting the change to prove that the proposed change does not have a discriminatory purpose or discriminatory effect.

Preclearance is not necessary in 2021

Section 5 was a temporary provision for a reason that no longer exists. The Supreme Court made clear in *Shelby* that only certain conditions would justify any formula for Section 5 coverage today. Among the touchstones listed by the Court are "blatantly discriminatory evasions of federal decrees," lack of minority office holding,

tests and devices, “voting discrimination ‘on a pervasive scale,” “flagrant” voting discrimination, or “rampant” voting discrimination. Such discrimination does not exist today. Indeed, this Committee could look long and hard and not find a single evasion of a federal decree – the central assumption of why preclearance was needed in 1965. As the Supreme Court stated “Federal intrusion into the powers reserved by the Constitution to the States must relate to these empirical circumstances. Triggers that are built around political or partisan goals will not withstand Constitutional scrutiny.

According to information received from the DOJ through a FOIA request, from 2000 through 2013, the Voting Section received and reviewed 222,132 submissions and issued 81 objections. That means that only .036 of 1 percent of the submissions reviewed resulted in an objection. Do you think that number represents massive, blatant discrimination?

Tools Exist to Stop Discrimination

Permanent provisions of the Voting Rights Act such as Section 2 still prohibit discrimination and provide the Justice Department with the ability to challenge election procedures.

Language minority provisions such as Section 203 and Section 4 (3) were not affected by the Shelby decision.

Section 3(c) the “bail in provision”, allows a judge to order a state or subdivision to submit to the preclearance provisions, if it finds that the jurisdiction intentionally

discriminated against minority voters. It is also consistent with the *Shelby* mandate that federal oversight of state or local elections be closely matched by need. However, these bills would also allow a jurisdiction to be subjected to the rigors of Section 3 © for violations of these bills, violations of Section 5, or when a jurisdiction has agreed to settle a case through a consent decree. None of the new allowable triggers require a showing of intentional discrimination, and are inconsistent with permissible federal as outlined in the *Shelby* decision.

Lastly, but of great importance is Section 11(b), which prohibits intimidation, threats, or coercion directed towards voters or those aiding voters. This section is also available post Shelby, yet there has not been a case brought by the Department through 11(b) since the case against the New Black Panther Party in 2009.

Lastly, these bills ban state photo ID laws, require same day registration, limit a state's ability to verify eligibility and remove ineligible voters, require online voter registration, require automatic registration, require the restoration of felon voting rights, use taxpayer money to fund congressional candidates, require drop boxes for absentee ballots without security and force ballot trafficking upon the states, and lastly limit political speech. The only thing that these provisions accomplish is to severely damage the integrity of our elections and impose unconstitutional mandates on the states.

Thank you for your time and attention.