



Department of Justice

STATEMENT

OF

**BRADLEY J. SCHLOZMAN
PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**THE VOTING RIGHTS ACT:
SECTIONS 6 AND 8, FEDERAL EXAMINER AND OBSERVER PROGRAMS**

PRESENTED ON

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**Statement of
Bradley J. Schlozman
Principal Deputy Assistant Attorney General
Civil Rights Division
Department of Justice**

November 15, 2005

Chairman Chabot, Ranking Member Nadler, distinguished members of the Subcommittee:

I am Bradley Schlozman, the Principal Deputy Assistant Attorney General of the Civil Rights Division at the Department of Justice. As I have underscored in previous testimony before this Subcommittee, the President has directed the full power and might of the Justice Department to enforcing the Voting Rights Act and preserving the integrity of our voting process. This Administration looks forward to working with Congress on the reauthorization of this important legislation.

It is my privilege today to provide you with an overview of the Justice Department's use of sections 6 and 8 of the Voting Rights Act,¹ which pertain to Federal examiners and Federal observers. As you know, these provisions, like section 5,² are slated to expire in August 2007.

Federal Examiners

Let me begin by explaining what "federal examiners" are within the meaning of the Voting Rights Act. Federal examiners are essentially officials assigned to a particular political subdivision to whom certain complaints of voting discrimination can be made. Governed by section 6 of the Act, the authority to appoint Federal examiners was first designed as a congressional response to the racially discriminatory voter registration practices that existed throughout the South at the time of the Act's original passage in 1965. Examiners are charged with processing (or "examining") applicants for voter registration and making a list of those applicants who meet State eligibility rules; the list is then given to the local county registrar, who is required to put those names on the county's voter registration rolls. Those on the examiner's list are commonly called "federally registered voters." The Voting Rights Act also requires the

¹ 42 U.S.C. 1973d, 1973f.

² 42 U.S.C. 1973c.

examiners to be available during each of the jurisdiction's elections, and for two days afterward, to take complaints from any federally registered voter claiming that he/she had not been allowed to vote.

Federal examiners can be appointed in two separate ways. The first route is through section 6's empowerment of the Attorney General to "certify" for the appointment of Federal examiners any jurisdiction falling within the coverage of the Voting Rights Act in which there is reason to believe that voters have been denied the right to vote on account of their race or status as a language minority. In particular, the Attorney General must certify that either: (i) he has received complaints in writing from twenty or more residents alleging that they have been denied the right to vote under color of law on account of race or color or because they are a member of a language minority and he believes such complaints to be meritorious; or (ii) in his judgment, the appointment of examiners is necessary to enforce the guarantees of the 14th or 15th Amendments. The second method by which Federal examiners may be appointed is for a Federal court to do so pursuant to section 3(a) as part of an order of equitable relief in a voting rights lawsuit to remedy violations of the 14th or 15th Amendment. Judicial certifications, unlike those of the Attorney General, are not restricted to those political subdivisions covered by section 4 of the Voting Rights Act. Regardless of who makes the formal certification, once the determination is made, the actual selection of the examiner is undertaken by the Director of the Office of Personnel Management (OPM), who then oversees the examiner's activities.

The Voting Rights Act's ban on literacy tests and other discriminatory practices has mitigated many of the voter registration problems that made examiners so important. As a result, the need for, and role of, Federal examiners has greatly diminished over time. Although there are still 148 counties and parishes in 9 States that the Attorney General has certified for Federal examiners,³ nearly all of these certifications were certified shortly after the Voting Rights Act was passed in 1965 when conditions were radically different from today.⁴ Moreover, many of the counties/parishes have not been the source of any race-based voting registration complaints for decades.

³ There are also 19 political subdivisions in 12 States currently certified by court order. With two exceptions, all of these certifications pertain to language-minority issues. An additional 14 jurisdictions in eight States previously were certified for Federal examiners by Federal courts under section 3(a), but the designations have since expired.

⁴ The complete list of counties certified by the Attorney General, along with dates of certification, can be found on the website of the Department of Justice's Voting Section. http://www.usdoj.gov/crt/voting/examine/activ_exam.htm.

According to OPM, there have been no new “federally registered voters” (*i.e.*, voters registered by Federal examiners) added in any jurisdiction throughout the country since 1983. Nor has the Department of Justice received any complaints about covered jurisdictions refusing to register Federal voters in decades.

In addition to the great advances in minority access to the franchise today as compared to 30-40 years ago, the decline in registration-related complaints is also attributable to the passage of the National Voter Registration Act of 1993 (NVRA), which made voter registration dramatically more accessible.⁵ Prior to this 1993 Act, there were few Federal standards for voter registration. Through the NVRA, however, Congress established specific, uniform requirements for voter registration and State maintenance of voter registration lists. All of these requirements are applicable across the United States, not just in those jurisdictions certified for Federal examiners or otherwise covered by the Voting Rights Act. The reality today is that the only real importance of the Federal examiner provision from a practical standpoint is its function as a statutory prerequisite to the Attorney General’s ability to call upon OPM to assign Federal observers to monitor particular elections in certified jurisdictions.

Federal Observers

At any time after a Federal examiner has been appointed to a particular jurisdiction, the Attorney General may request under section 8 that the Director of OPM assign Federal observers to monitor elections in that jurisdiction.⁶ These observers are Federal employees who are recruited and supervised by OPM. They are authorized by statute to enter polling places and vote-tabulation rooms in order to observe whether eligible voters are being permitted to vote and whether votes cast by eligible voters are being properly counted.

The OPM observers work in conjunction with attorneys from the Justice Department’s Civil Rights Division. Department of Justice attorneys assist OPM with the observers’ training, brief the observers on relevant issues prior to the election, and work closely with them on election day. Federal observers are instructed to watch, listen, and take careful notes of everything that happens inside the polling place/vote-tabulation room during an election. They are also trained not to interfere with the election in any way. After the election, Justice Department attorneys debrief the observers, and the observers usually complete written reports

⁵ 42 U.S.C. 1973gg *et seq.*

⁶ 42 U.S.C.1973f.

on their observations. These reports are sent on to the Civil Rights Division and can be used in court if necessary.

Most Federal observers dispatched to cover elections find no irregularities. Still, problems occur. Over at least the last decade, most of these have related to compliance with the language minority requirements of section 203.⁷ Where problems are discovered, a variety of actions may be taken depending on the relevant circumstances. On occasion, Justice Department personnel will assess the situation and work with county/parish officials on election day to clarify Federal legal requirements and immediately resolve the identified problem. Other times, the Department will send a letter to the jurisdiction following the election in which we identify certain incidents or practices that should be addressed or improved in the future (*e.g.*, removal of certain poll workers, additional training for election-day officials, etc.). Department attorneys likewise may recommend further investigation. If no Federal issues are identified, the matter may be referred to State authorities. If necessary, the Department will commence a civil action (or contempt motion if applicable) to enforce the protections of the Voting Rights Act.

Notwithstanding the general overall compliance with the Voting Rights Act, the Department of Justice has taken full advantage of the Federal observer provisions to help avoid slippage or complacency by covered jurisdictions. In 2004, for example, the Civil Rights Division worked with OPM to send 1,463 observers to cover 55 elections in 30 jurisdictions in 10 different States. Meanwhile, already in 2005, Federal observers have been dispatched to 21 elections in 17 jurisdictions in 10 different States.

In areas of the country where Federal observers cannot be sent, the Civil Rights Division will send its own staff lawyers to monitor elections if it has received complaints or has uncovered credible evidence of possible violations of the Voting Rights Act. In fact, the great bulk of our recent enforcement cases since, say, 1993, have involved jurisdictions (*e.g.*, Massachusetts, California, New York, New Jersey, Florida, Washington, and Pennsylvania) where there is no statutory authority to send Federal observers. We have expended substantial resources in this endeavor. For example, in 2004, the Department of Justice sent 533 departmental personnel to monitor 108 elections in 80 jurisdictions in 27 different States. So far in 2005, the Department has sent 186 personnel to cover 24 elections in 21 jurisdictions in 9 different States. Those monitors helped account for the record-setting work we have done in enforcing the Voting Rights Act in recent years.

⁷ 42 U.S.C. 1973aa-1a.

As I have said before to this Subcommittee, the Civil Rights Division has made the vigorous enforcement of voting rights a primary objective, and we have been very successful in doing so. Our election monitoring and observer coverage is just one small part of that effort. I thank the committee for the opportunity to submit this statement.