



Department of Justice

STATEMENT

OF

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CIVIL RIGHT DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

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

CONCERNING

THE VOTING RIGHTS ACT: PROVISIONS ON LANGUAGE MINORITIES

PRESENTED ON

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**Statement of
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United States Department of Justice**

November 8, 2005

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

I am Brad Schlozman, the Acting Assistant Attorney General of the Civil Rights Division at the Department of Justice. Thank you for the opportunity to appear before you again today. As I underscored in my prior testimony two weeks ago, the President has directed the full power and might of the Justice Department to enforce the Voting Rights Act and to preserve 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 this morning to provide you with an overview of the Justice Department's enforcement of the language minority sections of the Voting Rights Act. As you know, these provisions, like Section 5, are due to expire in August 2007.

The minority language provisions of the Voting Rights Act, which have been in effect since 1975, are found in Sections 203 and 4(f)(4) of the Act. These provisions mandate that any covered jurisdiction which "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" must provide such materials and information "in the language of the applicable minority group as well as in the English language."¹

The determination of which States or political subdivisions are subject to the dictates of the Voting Rights Act's minority language requirements is based on a formula that utilizes Census Bureau data regarding ethnicity figures, English proficiency rates, and literacy rates. Section 203, for example, is triggered if, in a particular jurisdiction: (i) more than 5% of the citizen voting age population, or 10,000 citizens of voting age, are members of a single language minority, and (ii) the illiteracy rate of the citizens in the language minority group is higher than

¹ Section 203(c), 42 U.S.C. 1973aa-1a(c).

the national illiteracy rate.² With respect to Section 4(f)(4), a jurisdiction is subject to the translation obligations if: (i) less than 50% of the citizen voting age population was either registered to vote, or actually voted, in the November 1972 presidential election, (ii) the jurisdiction provided certain specified election materials exclusively in English in November 1972, and (iii) more than 5% of the citizen voting age population in November 1972, as determined by the then-latest available Census Bureau figures, were members of a single language minority.³ The only language minority groups covered under Sections 4(f)(4) and 203 are American Indians, Asian Americans, Alaskan Natives, and citizens of Spanish heritage.⁴ Currently, there are a total of 496 jurisdictions that are subject to the requirements of either Section 203 or Section 4(f)(4).⁵

Under the Bush Administration, the Justice Department's Civil Rights Division has undertaken the most extensive Section 203 and Section 4(f)(4) enforcement activity in its history. The initiative began immediately following the Census Bureau's July 2002 determinations (using 2000 Census data) as to which jurisdictions were covered under Section 203. The Civil Rights Division not only mailed formal notice and detailed information on Section 203 compliance to each of the 296 covered jurisdictions across the United States, but it also initiated face-to-face meetings with State and local election officials and minority community members in the 80 newly covered jurisdictions to explain the law, answer questions, and work to foster the implementation of effective legal compliance programs.

In addition, the Division's Voting Section has been systematically requesting voter registration lists and bilingual poll official assignment data from all covered jurisdictions, beginning with the largest in terms of population. These lists are then reviewed in order to identify polling places with a large number of minority language voters, and to ascertain whether the polling places are served by a sufficient number of bilingual poll officials who can provide assistance to voters.

² Section 203(b)(2), 42 U.S.C. 1973aa-1a(b)(2)(A).

³ Section 4(f)(3-4), 42 U.S.C. 1973c(3-4). Essentially, Section 4(f)(4) applies the 1972 Section 5 coverage trigger to language translation obligations.

⁴ Section 203(e), 42 U.S.C. 1973aa-1a(e).

⁵ There are 296 jurisdictions throughout the United States covered by Section 203. There are approximately 298 jurisdictions covered by Section 4(f)(4). Some coverage overlaps, which explains the 496 figure in the text above.

The Division also is systematically looking at the full range of information provided by covered jurisdictions to voters in English – not just the ballot and election pamphlets themselves, but also newspaper notices required by State law, web site information, and other election materials – and determining whether: (i) the same information is being made available to each minority language community, and (ii) the translated materials are actually provided in polling places.

In August 2004, the Assistant Attorney General mailed letters to the 496 jurisdictions covered by Sections 203 and/or 4(f)(4) reminding them of their obligations to provide minority language assistance in the November 2004 general election, and offering them guidance on how to achieve compliance. Ironically, the 2004 mailing to the Section 4(f)(4) counties was the first blanket mailing to these political subdivisions since shortly after their original designations as covered jurisdictions in 1975.

Not surprisingly, the extraordinary efforts undertaken by the Civil Rights Division in this area have borne abundant fruit. Indeed, since 2001, this Administration has filed more minority language cases under Sections 4 and 203 than in the entire previous 26 years in which these provisions have been applicable.⁶ Each and every case has been successfully resolved with comprehensive relief for affected voters. And the pace is accelerating, with more cases filed and resolved in 2005 than in any previous year, breaking the previous record set in 2004. The lawsuits filed in 2004 alone provided comprehensive minority language programs to more citizens than all previous Section 203 and 4(f)(4) suits combined.

The enforcement actions include cases in Florida, California, Massachusetts, New York, Pennsylvania, Texas, and Washington. Among these cases were the first suits ever filed under Section 203 to protect Filipino and Vietnamese voters.

The Civil Rights Division recognizes of course that States and municipalities do not have unlimited budgets, and we have thus designed our enforcement strategy to minimize unnecessary costs for local election officials. For example, the Division urges covered jurisdictions to avoid costly and unhelpful expenditures such as publishing Spanish language notices in English language newspapers that are not read by those who rely on the Spanish language. Election officials are instead encouraged to identify the most effective and efficient channels of communication that are used by private enterprise, service providers, tribal governments, and the like to get information effectively to the language minority community at low cost. In a similar vein, the Division

⁶ Fourteen of the 27 minority language cases filed by the Department of Justice since the adoption of Sections 203 and 4(f)(4) have been commenced since 2001.

encourages the use of fax and e-mail “information trees,” whereby bilingual election notices are sent *at no cost* to a wide array of businesses, unions, social and fraternal organizations, service providers, churches and other organizations with a request that these entities make announcements or otherwise disseminate the information to their membership’s language minority voters. And the Division has incorporated “best practices” from around the country to help jurisdictions recruit sufficient numbers of bilingual poll workers.

I might add at this point that the Civil Rights Division’s protection of minority language voters has not been limited to those individuals residing in jurisdictions covered under Sections 203 and 4(f)(4). The Division has also used Sections 2 and 208 of the Voting Rights Act to protect the rights of Hispanic, Chinese, Vietnamese, and Haitian voters from disparate treatment, and we have aggressively monitored and obtained additional relief to protect Arab American and Native American voters. In fact, from the time the Bush Administration began in 2001, the Civil Rights Division has filed three of the only four Section 208 cases brought in the history of the Voting Act, and the Division initiated first-ever Section 2 case to protect Vietnamese voters in Boston, Massachusetts.

The lawsuits discussed above have significantly narrowed gaps in electoral participation. In Yakima County, Washington, for example, Hispanic voter registration is up over 24% since the Division’s Section 203 lawsuit. In San Diego County, California, Spanish and Filipino registration are up over 21%, and Vietnamese registration is up over 37% since the Division’s enforcement action.

The Division’s minority language enforcement efforts likewise have made a tremendous difference in enhancing minority representation in the politically elected ranks. A Section 203 lawsuit in Passaic, New Jersey, was so successful for Hispanic voters that a Section 2 challenge to the at-large election system was subsequently withdrawn. A Memorandum of Agreement in Harris County, Texas, helped double Vietnamese voter turnout, and the first Vietnamese candidate in history was elected to the Texas legislature – defeating the incumbent chair of the appropriations Committee by 16 votes out of over 40,000 cast.

I would be remiss if I did not state for the record that none of these accomplishments would have been possible without both the tremendous emphasis placed on this issue by President Bush, and the extraordinary enforcement program developed by the chief of the Civil Rights Division’s Voting Section, John Tanner. Mr. Tanner has logged hundreds of thousands of miles and spent countless hours away from his family developing, implementing, and refining our Section 203 program. We all owe him a debt of gratitude for his work.

Let me say in conclusion that the Civil Rights Division made the vigorous enforcement of the Voting Rights Act's language minority requirements one of its primary missions. I think everyone would agree that we have been enormously successful in this task. Naturally, the real beneficiaries of our work have been the millions of American citizens who desire to be full participants in our electoral process despite their lack of English proficiency.

At this point, I would be happy to answer any additional questions from the Committee.