



# Department of Justice

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**STATEMENT OF**

**JOHN TANNER  
CHIEF, VOTING SECTION  
CIVIL RIGHTS DIVISION  
DEPARTMENT OF JUSTICE**

**BEFORE THE**

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL  
LIBERTIES  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

**“CIVIL RIGHTS DIVISION VOTING SECTION”**

**PRESENTED**

**OCTOBER 30, 2007**

**Statement of  
John Tanner  
Chief, Voting Section  
Civil Rights Division  
Department of Justice**

**Before the  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
United States House of Representatives**

**Concerning  
“Civil Rights Division Voting Section”**

**October 30, 2007**

Mr. Chairman, Ranking Member Franks, Members of the Subcommittee, it is a pleasure to appear before you as Chief of the Voting Section. I am pleased to report that the Voting Section of the Civil Rights Division remains ever vigilant in working to preserve and protect the fundamental right to vote.

I want to apologize for the comments I made at the recent meeting of the National Latino Congreso about the impact of voter identification laws on elderly and minority voters. I understand that my explanation of the data came across in a hurtful way, which I deeply regret. The reports of my comments do not in any way accurately reflect my career of devotion to enforcing federal laws designed to assure fair and equal access to the ballot. I am honored to have the opportunity to do this work, and I am honored to serve with the dedicated employees of the Voting Section who, day in and day out, work hard to protect the rights of all Americans under the Voting Rights Act.

I joined the Voting Section many years ago, in February 1976, but my participation in securing the voting rights of all Americans began much earlier. I spent much of my youth in the mid to late 1960s working on civil rights issues. I worked outside the Voting Section from 1995 to 2002, serving in the White House Office of Counsel to the President from February to September 1995; the Criminal Section of the Civil Rights Division, where I prosecuted cases of police brutality, hate crimes, and church arson from November 1995 to June 2002, when I was not detailed to other offices; the Senate Judiciary Committee from April to October 1998; and the Department’s Office of Legislative Affairs, where I worked with the Members of the Judiciary Committee and their staff, for portions of 2000 and 2001. Upon my return to the Voting Section in 2002, I became responsible for enforcement of the minority language provisions of the Voting Rights Act, and I became Chief of the Section in 2005.

The right to vote is the foundation of our democratic system of government. The Civil Rights Division is responsible for enforcing specific statutes that protect voting rights, and I will

discuss my work as Voting Section Chief under each of those laws. These laws include, among others, the Voting Rights Act of 1965 and subsequent amendments thereto, the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA), the National Voter Registration Act of 1993 (Motor Voter or NVRA), and the Help America Vote Act of 2002 (HAVA). Through the Voting Section, the Civil Rights Division enforces the civil provisions of these laws. The criminal matters involving possible Federal election offenses are assigned to and supervised by the Criminal Division or the Criminal Section of the Civil Rights Division and are prosecuted by them and by the United States Attorneys' Offices.

During my tenure as Chief of the Voting Section, we have brought lawsuits that were authorized by the Assistant Attorney General under each of the statutes referenced in the previous paragraph, as well as the Civil Rights Act of 1960. In fact, the 18 new lawsuits we filed in Calendar Year 2006 is double the average number of lawsuits filed annually in the preceding 30 years. Additionally, because 2006 was a Federal election year, the Section worked overtime to meet its responsibilities to protect the voting rights of our citizens.

In 2006, the Voting Rights Act Reauthorization and Amendments Act of 2006 became law, renewing for another 25 years certain provisions of the Act that had been set to expire. At the direction of the Assistant Attorney General, the Voting Section played a significant role in supporting the reauthorization. In advance of the hearings on the bill, the Voting Section compiled thousands of pages of documents that were provided to committee staff on compact discs, including lists of cases in which the Voting Section has participated, charts and graphs of statistics regarding the administrative review of voting changes under Section 5, lists of objections under Section 5 and letters interposing such objections, listings of declaratory judgment actions under Section 5, copies of complaints and orders, samples of correspondence sent to jurisdictions covered by the language minority provisions, maps showing election monitoring locations by year, statistics for election monitoring, and copies of federal observer reports. In addition, the Voting Section assisted the Office of the Assistant Attorney General in preparing testimony for hearings held by this Subcommittee and by the Senate Judiciary Committee, at which Civil Rights Division officials testified. Finally, the Voting Section also compiled information in response to requests and questions from members of these congressional committees. As authorized by the Assistant Attorney General, the Voting Section also is committed to defending the Act and is currently doing so against a constitutional challenge in Federal court here in the District of Columbia.

During my tenure as Section Chief, the Voting Section has filed 23 lawsuits, which were authorized by the Assistant Attorney General, to enforce various provisions of the Voting Rights Act. These cases include a lawsuit that we filed and resolved under Section 2 against Long County, Georgia, for improper challenges to Hispanic-American voters – including at least three United States citizens on active duty with the United States Army – based entirely on their perceived race and ethnicity. We also filed a Section 2 lawsuit in Ohio in 2006 that challenged the City of Euclid's mixed at-large/ward method of electing its city council on the basis that it unlawfully diluted the voting strength of African-American voters. In August 2007, the court ruled that the city's method of electing its city council violated the Voting Rights Act and stayed Euclid's council elections until a new method of election is approved by the court. Also among

the Section's successes under Section 2 during my tenure as Section Chief is our lawsuit against Osceola County, Florida, where we brought a challenge to the county's at-large election system. In October 2006, we prevailed at trial. In 2007, the Section obtained a preliminary injunction in our challenge to Port Chester, New York's at-large election system.

We also obtained additional relief in 2007 in an earlier Section 2 suit filed on behalf of Native American voters in Cibola County, New Mexico, which involves claims not only under the Voting Rights Act but also under HAVA and the NVRA. In Cibola County, which initially involved claims under Sections 2 and 203, we brought additional claims after the county failed to process voter registration applications of Laguna Pueblo and other Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. We also brought cases under HAVA in 2007 against the City of Philadelphia, where the accessible voting machines were not operational and available to voters, and Galveston County, Texas, for its failure to offer voters provisional ballots and to post voter information as required by HAVA.

The Section recently litigated a case in Mississippi under Sections 2 and 11(b) of the Voting Rights Act. On June 29, 2007, U.S. Senior District Judge Tom S. Lee found the defendants in *United States v. Ike Brown et al.* (S.D. Miss.) liable for violating the Voting Rights Act by discriminating against white voters and white candidates. The court found that the defendants acted with a racially discriminatory intent and engineered "a concerted effort to illegally 'assist' black voters."

The Division's commitment to enforcing the language minority requirements of the Voting Rights Act remains strong, with 17 lawsuits authorized by the Assistant Attorney General and filed under the language minority provisions during my tenure as Chief. In September 2007, we settled the first lawsuit filed under Section 203 on behalf of Korean Americans in the City of Walnut, California. Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. For instance, as a result of a lawsuit brought by the Section, Boston now employs five times more bilingual poll workers than before.

During my tenure as Chief, the Section also has broken records with regard to enforcement of Section 208 of the Voting Rights Act. As the Committee knows, Section 208 assures all voters who need assistance in marking their ballots the right to choose a person they trust to provide that assistance. Voters may choose any person other than an agent of their employer or union to assist them in the voting booth. During my tenure as Chief, the Assistant Attorney General has authorized and the Voting Section has brought five out of the eleven lawsuits filed under Section 208 since it was enacted twenty-five years ago.

In 2006, the Voting Section processed the largest number of Section 5 submissions in its history. Career staff members are involved in the review and decision-making process of every Section 5 submission, and the Assistant Attorney General has final decision-making authority in these matters, *see* 28 CFR § 51.3. We interposed two objections to submissions pursuant to Section 5 in 2006, in Georgia and Texas, and filed the Section's first Section 5 enforcement

action since 1998. The Department also interposed an objection pursuant to Section 5 in Alabama in January 2007 and recently filed an amicus brief in a Mississippi Section 5 case. Again, we are vigorously defending the constitutionality of Section 5 before the District of Columbia court. We consented to several actions in Fiscal Year 2006 in jurisdictions that satisfied the statutory requirements for obtaining a release, or “bailout,” from Section 5 coverage. The Section also has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions on-line. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory. The Section also has significantly expanded its contacts to minority citizens during the Section 5 process, both in terms of the number and frequency of contacts, and we have broadened the scope of interviews of minority community members beyond the narrow scope of Section 5 to include other provisions of federal law. The result has been five affirmative Voting Rights Act lawsuits in 2007 that were prompted by Section 5 review.

During my tenure as Chief, the Section has continued to work diligently to protect the voting rights of our nation’s military and overseas citizens. The Section has enforcement responsibility for UOCAVA, which ensures that overseas citizens and members of the military, and their household dependents, are able to request, receive, and cast a ballot for Federal offices in a timely manner for Federal elections. As authorized by the Assistant Attorney General, in Fiscal Year 2006, the Voting Section filed the largest number of cases under UOCAVA in any year since 1992. In Calendar Year 2006, we filed successful UOCAVA suits in Alabama, Connecticut, and North Carolina and reached a voluntary legislative solution without the need for litigation in South Carolina. In Alabama and North Carolina, we obtained relief for military and overseas voters in the form of State legislation. In 2007, we have initiated a similar approach to structural issues in special elections and worked with the Secretary of State of Mississippi to obtain curative legislation for that state. Also in 2007, we have worked with states conducting special congressional elections to overcome UOCAVA issues. For example, Ohio extended the deadline for receipt of UOCAVA ballots, and Massachusetts sent out ballots by express mail.

In 2006, the Voting Section also filed the largest number of suits under the National Voter Registration Act at the direction of the Assistant Attorney General since shortly after the Act became effective in 1995. We filed lawsuits in Indiana, Maine, and New Jersey. The Voting Section’s suits against New Jersey and Maine also alleged violations of HAVA. We resolved these two suits with settlement agreements that set up timetables for implementation of a statewide computer database. Finally, we received a favorable decision in our lawsuit against New York for its failure to designate disability services offices that serve disabled students as mandatory voter registration offices. The court largely denied the defendants’ motion to dismiss, and the case is currently in litigation.

With January 1, 2006, came the first year of full, nationwide implementation of the database and accessible voting machine requirements of HAVA. HAVA requires that each State and territory have a statewide computerized voter registration database in place for Federal

elections, and that, among other requirements, there be accessible voting equipment for voters with disabilities throughout the nation. Many States, however, did not achieve full compliance.

At the direction of the Assistant Attorney General, the Section worked hard to help States prepare for the effective date of January 1, 2006, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues. We have been, and remain, in close contact with many States in an effort to help them achieve full compliance at the earliest possible date. Where cooperative efforts prove unsuccessful, the Section enforces HAVA through litigation when authorized to do so by the Assistant Attorney General.

A major component of the Section's work to protect voting rights is its election monitoring program, which is among the most effective means of ensuring that Federal voting rights are respected on election day. Each year, the Justice Department deploys hundreds of personnel to monitor elections across the country. Last year, we deployed a record number of monitors and observers to jurisdictions across the country for a mid-term election. In total, over 800 Federal personnel monitored the polls in 69 political subdivisions in 22 States during the general election on November 7, 2006 – a record level of coverage for a mid-term election. In Calendar Year 2006, we sent over 1,500 Federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year.

The improvements to our monitoring program have increasingly resulted in enforcement actions. Lawsuits that benefited from evidence obtained in monitoring include, but are by no means limited to, those against the following jurisdictions: San Diego County, California; Osceola County, Florida; City of Boston, Massachusetts; City of Rosemead, California; Brazos County, Texas; Philadelphia, Pennsylvania; City of Walnut, California; and Cibola County, New Mexico. Our monitoring work has paid off, and we are laying the groundwork for 2008 even today.

The Voting Section remains committed to the continued enforcement of Nation's voting rights laws.

I look forward to answering any questions the Members of the Subcommittee may have.