United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, THURSDAY, JULY 30, 2009 No. 117

House of Representatives

THE NEW BLACK PANTHER PARTY CASE

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. As a strong supporter of the Voting Rights Act, I've been deeply troubled by this Department of Justice's questionable dismissal of an important voter intimidation case in Philadelphia, where I grew up, and my dad was a policeman. My commitment to voting rights is unquestioned. In 1981 I was the only member, Republican or Democrat, of the Virginia delegation in the House to vote for the Voting Rights Act, and was harshly criticized by the editorial page of the Richmond Times Dispatch.

And when I supported its reauthorization in 2006, I was again criticized by editorial pages. I have grave concerns about the Department's dismissal of this case. Congress must use its oversight to maintain the integrity of the voting system. Oversight is needed now more than ever given the disclosure today in the Washington Times that the Department's case against the New Black Panther Party was dismissed over the objections of career attorneys on the trial team as well as the chief of the Department's Appellate Division.

The politicization of the Justice Department by Eric Holder against career employees is absolutely wrong, and the Congress ought to get to the bottom of this.

Mr. Speaker, as a strong supporter of the Voting Rights Act, I have been deeply troubled by this Department of Justice's questionable dismissal of an important voter intimidation case in Philadelphia—where I grew up and my father was a policeman.

My commitment to voting rights is unquestioned. In 1981, I was the only member—Republican or Democrat—of the Virginia delegation in the House to vote for the Voting Rights Act and was harshly criticized by the editorial page of the Richmond Times Dispatch, and when I supported its reauthorization in 2006, I was criticized again by editorial pages.

I have grave concerns about the department's dismissal of this serious case. Above all, Congress must use its oversight to maintain the integrity of our voting system.

All the documents surrounding this case need to be made public and all the questions asked in my July 22 letter to Attorney General Holder should be answered. The American people deserve nothing less than full transparency.

Oversight is needed now more than ever given the disclosures in today's Washington Times that the department's voter intimidation case against the New Black Panther Party was dismissed over the objections of career attorneys on the trial team—as well as the chief of the department's Appellate Division.

The politicization of the Justice Department by Eric Holder against career employees is absolutely wrong and the Congress ought to get to the bottom of this.

Sources within the department stated that Associate Attorney General Thomas Perrelli, a political appointee, overruled career attorneys in dismissing the case.

According to the Appellate Division memos first disclosed in the Times article, Appellate Chief Diana K. Flynn said that "the appropriate action was to pursue the default judgment" and that Justice had made a "reasonable argument in favor of default relief against all defendants."

Flynn's opinion was shared by a second Appellate Division official, Marie K. McElderry, who stated, "The government's predominant interest is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote."

Given these troubling disclosures, I call on the attorney general to re-file this civil suit and allow a ruling from the judge based on the merits of the case—not political expediency.

It is imperative that we protect all Americans' right to vote, which I consider a sacrosanct and inalienable right of any democracy. The career attorneys and Appellate Division within the department sought to demonstrate the federal government's commitment to protecting this right by vigorously prosecuting any individual or group that seeks to undermine this right. I hope that the political leadership will follow their example and allow this case to go forward again.

[From the Richmond Times Dispatch—Editorial, October 15, 1981]

A MORE OFFENSIVE LAW

A recent news story from Washington reported that Tenth District Republican Rep. Frank Wolf "didn't want to talk about" his vote in favor of extending the odious federal Voting Rights Act. No wonder. There is absolutely no way that he can justify his endorsement of a measure that officially brands Virginia a second-class state and denies Virginians some of their most precious political rights. Mr. Wolf was the only Virginia congressman to support the bill when it moved through the House of Representatives last week.

Grossly unfair in its present form, the Voting Rights Act would be made even more offensive by changes the House approved. The despicable pre-clearance provision, which now is subject to periodic reconsideration, would become a permanent feature of the law. Under this provision, covered states and localities must obtain federal approval of any law, action or decision that might affect the voting rights or strength of minorities, especially blacks. The House's new version outlines a procedure by which a state might, theoretically, purify itself and gain exemption from the act, but the process is so cumbersome and vague that it is likely to prove to be worthless. One important aspect of the act that would remain unchanged in the House version is its inequitable selectivity. The law's harsh impact would continue to fall mainly on the South. Efforts to persuade the House to apply the act uniformly throughout the nation were unsuccessful.

Indeed, the House was unwilling to make even the slightest gesture toward fairness. As the bill had emerged from the House Judiciary Committee, it provided that any state or locality seeking to obtain exemption from its coverage would have to get the approval of the United States District Court in Washington. Sixth District Republican Rep. M. Caldwell Butler, one of the principal leaders of the valiant but vain fight against the act offered an eminently sensible amendment that would have permitted states and localities to sue for relief in a local federal district court. The necessity to go to Washington, he argued, would be so costly and cumbersome that many communities would be discouraged from even attempting to qualify for exemption. But the House, unmoved, rejected his proposal.

Not in many years has Virginia followed the kinds of restrictive voting practices that originally inspired the Voting Rights Act. Not in many years has Virginia attempted to abridge the right of its black citizens to vote. Yet if the House bill prevails Virginia, and most of the South, will continue to be treated as wards of the federal government and denied political rights that the rest of the nation freely exercises, and Mr. Wolf will be partly to blame. Fortunately, the House bill faces considerable opposition in the Senate. And Virginia's two representatives in that body—Senators Harry F. Byrd Jr. and John Warner—can be counted on to support, enthusiastically and aggressively, efforts to transform the Voting Rights Act from a selectively punitive measure into a fair and reasonable law.

[From the Washington Times, July 30, 2009]

JUSTICE APPOINTEE OK'D PANTHER REVERSAL—CAREER LAWYERS PUSHED FOR SANCTIONS IN CASE

(By Jerry Seper)

Associate Attorney General Thomas J. Perrelli, the No. 3 official in the Obama Justice Department, was consulted and ultimately approved a decision in May to reverse course and drop a civil complaint accusing three members of the New Black Panther Party of intimidating voters in Philadelphia during November's election, according to interviews.

The department's career lawyers in the Voting Section of the Civil Rights Division who pursued the complaint for five months had recommended that Justice seek sanctions against the party and three of its members after the government had already won a default judgment in federal court against the men.

Front-line lawyers were in the final stages of completing that work when they were unexpectedly told by their superiors in late April to seek a delay after a meeting between political appointees and career supervisors, according to federal records and interviews.

The delay was ordered by then-acting Assistant Attorney General Loretta King after she discussed with Mr. Perrelli concerns about the case during one of their regular review meetings, according to the interviews.

Ms. King, a career senior executive service official, had been named by President Obama in January to temporarily fill the vacant political position of assistant attorney general for civil rights while a permanent choice could be made.

She and other career supervisors ultimately recommended dropping the case against two of the men and the party and seeking a restraining order against the one man who wielded a nightstick at the Philadelphia polling place. Mr. Perrelli approved that plan, officials said.

Questions about how high inside the department the decision to drop the case went have persisted in Congress and in the media for weeks.

Justice Department spokeswoman Tracy Schmaler told The Washington Times that the department has an "ongoing obligation" to be sure the claims it makes are supported by the facts and the law. She said that after a "thorough review" of the complaint, top career attorneys in the Civil Rights Division determined the "facts and the law did not support pursuing the claims against three of the defendants."

"As a result, the department dismissed those claims," she said. "We are committed, to vigorous enforcement of the laws protecting anyone exercising his or her right to vote."

While the Obama administration has vowed a new era of openness, department officials have refused to answer questions from Republican members of Congress on why the case was dismissed, claiming the information was "privileged," according to congressional correspondence with the department.

Rep. Frank R Wolf, Virginia Republican and a senior member of the House Appropriations Committee who has raised questions about the case, said he also was prevented from interviewing the front-line lawyers who brought the charges.

"Why am I being prevented from meeting with the trial team on this case?" Mr. Wolf asked. "There are many questions that need to be answered. This whole thing just stinks to high heaven."

Ms. Schmaler said the department has tried to cooperate with Congress, "The Department responded to an earlier letter from Congressman Wolf in an effort to address his questions. Following that letter, the Department agreed to a meeting with Congressman Wolf and career attorneys, in which they made a good-faith effort to respond to his inquiries about this case. We will continue to try to clear up any confusion Congressman Wolf has about this case."

Ms. King and a deputy are expected to travel to Capitol Hill on Thursday to meet behind closed doors with House Judiciary Committee Chairman John Conyers Jr., Michigan Democrat, and Rep. Lamar Smith of Texas, the top Republican on the panel, to discuss continuing concerns about the case.

The department also has yet to provide any records sought by The Times under a Freedom of Information Act request filed in May seeking documents detailing the decision process. Department officials also declined to answer whether any outside groups had raised concerns about the case or pressured the department to drop it.

Kristen Clarke, director of political participation at the NAACP Legal Defense Fund in Washington, however, confirmed to The Times that she talked about the case with lawyers at the Justice Department and shared copies of the complaint with several persons. She said, however, her organization was "not involved in the decision to dismiss the civil complaint."

She said the National Association for the Advancement of Colored People has consistently argued that the department should bring more voter intimidation cases, adding that it was "disconcerting" that it did not do so.

Mr. Perrelli, a prominent private practice attorney, served previously as a counsel to Attorney General Janet Reno in the Clinton administration and was an Obama supporter who raised more than $500,000 for the Democrat candidate in the 2008 elections. He authorized a delay to give department officials more time to decide what to do, said officials familiar with the case but not authorized to discuss it publicly. He eventually approved the decision to drop charges against three of the four defendants, they said.

At issue was what, if any, punishment to seek against the New Black Panther Party for Self-Defense (NBPP) and three of its members accused in a Jan. 7 civil complaint filed in U.S. District Court in Philadelphia.

Two NBPP members, wearing black berets, black combat boots, black dress shirts and black jackets with military-style markings, were charged in a civil complaint with intimidating voters at a Philadelphia polling place, including brandishing a 2-foot-long nightstick and issuing racial threats and racial insults. Authorities said a third NBPP member "managed, directed and endorsed the behavior."

None of the NBPP members responded to the charges or made any appearance in court.

"Intimidation outside of a polling place is contrary to the democratic process," said Grace Chung Becker, a Bush administration political appointee who was the acting assistant attorney general for civil rights at the time the case was filed. "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the department takes allegations of voter intimidation seriously"

Mrs. Becker, now on a leave of absence from government work, said she personally reviewed the NBPP complaint and approved its filing in federal court. She said the complaint had been the subject of numerous reviews and discussions with the career lawyers, and she agreed with their assessment to file the case.

Mrs. Becker said Ms. King was overseeing other cases at the time and was not involved in the decision to file the original complaint.

A Justice Department memo shows that career lawyers in the case decided as early as Dec. 22 to seek a complaint against the NBPP; its chairman, Malik Zulu Shabazz, a lawyer and D.C. resident; Minister King Samir Shabazz, a resident of Philadelphia and head of the Philadelphia NBPP chapter who was accused of wielding the nightstick; and Jerry Jackson, a resident of Philadelphia and a NBPP member.

"We believe the deployment of uniformed members of a well known group with an extremely hostile racial agenda, combined with the brandishing of a weapon at the entrance to a polling place, constitutes a violation of Section 11(b) of the Voting Rights Act which prohibits types of intimidation, threats and coercion," the memo said.

The memo, sent to Mrs. Becker, was signed by Christopher Coates, chief of the Voting Section Robert Popper, deputy chief of the section; J. Christian Adams, trial attorney and lead lawyer in the case; and Spencer, R Fisher, law clerk. None of the four has made themselves available for comment.

Members of Congress continue to ask questions about the case.

"If showing a weapon, making threatening statements and wearing paramilitary uniforms in front of polling station doors does not constitutes voter intimidation, at what threshold of activity would these laws be enforceable?" Mr. Wolf asked.

Mr. Smith also complained that a July 13 response by Assistant Attorney General Ronald Welch to concerns the congressman had about the Philadelphia incident did not alleviate his concerns.

"The administration still has failed to explain why it did not pursue an obvious case of voter intimidation. Refusal to address these concerns only confirms politicization of the issue and does not reflect well on the Justice Department," Mr. Smith said.

Mr. Smith asked the department's Office on Inspector General to investigate the matter, and the request was referred to the department's Office of Professional Responsibility.

Lawmakers aren't alone in the concerns.

The U.S. Commission on Civil Rights said in a June 16 letter to Justice that the decision to drop the case caused it "great confusion," since the NBPP members were "caught on video blocking access to the polls, and physically threatening and verbally harassing voters during the Nov. 4, 2008, general election."

"Though it had basically won the case, the [Civil Rights Division] took the unusual move of voluntarily dismissing the charges . . ., "the letter said. "The division's public rationale would send the wrong message entirely—that attempts at voter suppression will be tolerated and will not be vigorously prosecuted so long as the groups or individuals who engage in them fail to respond to the charges leveled against them"

The dispute over the case and the reversal of career line attorneys highlights sensitivities that have remained inside the department since Bush administration political appointees ignored or reversed their career counterparts on some issues and some U.S. attorneys were fired for what Congress concluded were political reasons.

Mr. Welch, in his letter to the congressman, sought to dispel any notion that politics was involved. He argued that the department dropped charges against three of the four defendants "because the facts and the law did not support pursuing" them. He said the decision was made after a "careful and through review of the matter" by Ms. King.

U.S. District Judge Stewart Dalzell in Philadelphia entered default judgments against the NBPP members April 2 after ordering them to plead or otherwise defend themselves. They refused to appear in court or file motions in answer to the government's complaint. Two weeks later, the judge ordered the Justice Department to file its motions for default judgments by May 1—a ruling that showed the government had won its case.

The men also have not returned calls from The Times seeking comment.

On May 1, Justice sought an extension of time and during the tumultuous two weeks that followed the career front-line lawyers tried to persuade their bosses to proceed with the case.

The matter was even referred to the Appellate Division for a second opinion, an unusual event for a case that hadn't even reached the appeals process.

Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.

She said the complaint was, aimed at preventing the "para-military style intimidation of voters" at polling places elsewhere and Justice could make a "reasonable argument in favor of default relief against all defendants and probably should" She noted that the complaint's purpose was to "prevent the paramilitary style intimidation of voters" while leaving open "ample opportunity for political expression."

An accompanying memo by Appellate Section lawyer Marie K. McElderry said the charges not only included bringing the weapon to the polling place, but creating an intimidating atmosphere by the uniforms, the military-type stance and the threatening language used. She said the complaint appeared to be "sufficient to support" the injunctions sought by the career lawyers.

"The government's predominant interest . . . is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote," she said.

The front-line lawyers, however, lost the argument and were ordered to drop the case.

Bartle Bull, a civil rights activist who also was a poll watcher in Philadelphia, said after the complaint was dropped, he called Mr. Adams to find out why. He said he was told the decision "came as a surprise to all of us" and that the career lawyers working on the case feared that the failure to enforce the Voting Rights Act "would embolden other abuses in the future."