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"Redistricting and the 2010 Census: Enforcing Section 5 of the VRA"

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Members of the committee, thank you for the invitation to testify before you today. I am honored to be here on behalf of the ACLU to discuss the important issue of enforcement of Section 5 of the Voting Rights Act. I am pleased to submit this written statement for the record.

The American Civil Liberties Union (ACLU) is an organization of over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide. The ACLU is a nationwide, non-partisan organization working daily in courts, Congress, state legislatures, and communities across the country to defend and preserve the civil rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU Voting Rights Project, established in 1965, has worked to protect the gains in political participation since passage of the historic Voting Rights Act (VRA) that same year. Since its inception, the Voting Rights Project has aggressively and successfully challenged efforts that dilute minority voting strength or obstruct the ability of minority communities to elect candidates of their choice. The Project has filed more than 300 lawsuits to enforce the provisions of the VRA and the U.S. Constitution.

I would like to discuss two issues. The first is a major challenge now facing the Department of Justice, i.e., the accelerating adoption of voter suppression measures, both by jurisdictions covered by Section 5 of the Voting Rights Act,[1] as well as non-covered jurisdictions. DOJ can draw lessons from its conduct of pre-2006 preclearance cases that will inform and strengthen its work going forward; my testimony will highlight some recommended best practices. The second is the recent trend of states electing to submit their redistricting maps and other proposed voting changes to federal district court instead of, or in addition to, the Department of Justice.

I. The Department of Justice's Response to Voter Suppression Measures

The Department of Justice under the prior administration objected to many voting changes submitted by Section 5 covered jurisdictions because of their failure to show that the changes had neither a discriminatory purpose or effect.[2] But it also precleared voting changes that would have a demonstrably retrogressive effect, and that evidence indicated may have been

[1] 42 U.S.C. § 1973c. A voting change has a discriminatory effect under Section 5 if it is retrogressive, or makes minorities worse off than under the preexisting rule or practice. *Beer v. United States*, 425 U.S. 130, 141 (1976).

[2] The Department, for example, objected in 2006 to a discriminatory voting change submitted by Randolph County, Georgia. The county registrar, who was white, removed a black member of the county school board from the majority black district in which he resided and placed him in a majority white district where, because of racially polarized voting, he was almost certain to be defeated in an upcoming election. The change was made despite the fact that neither the incumbent's residence nor the district lines had been changed. Although the change was covered by Section 5, the county refused to submit it until a three-judge court, in a suit brought by black county residents, enjoined its further use absent preclearance. The county then made a submission, and the Department objected because the county had not "sustained its burden of showing that the submitted change lacks a discriminatory purpose." Letter from Wan J. Kim to Tommy Coleman (Sept. 12, 2006), *available at* http://www.justice.gov/crt/voting/sec_5/ltr/l_050506.php..

adopted for racially discriminatory reasons. One example is the preclearance of Georgia's discriminatory photo ID law for in-person voting.

In 2005, the Georgia legislature, in a vote sharply divided on racial and partisan lines, passed a new voter identification bill which was one of the most restrictive in the United States.[3] To vote in person - but not by absentee ballot - a voter would have to present one of six specified forms of government issued photo ID. Those without such an ID would have to purchase one at a cost of $10 (later raised to $20). Scant justification was offered for enacting a photo ID requirement: not only were there laws already on the books that made voter fraud a crime, but proponents offered no evidence of fraudulent in-person voting.

The new requirement was also highly likely to have an adverse impact upon minorities, the elderly, the disabled, and the poor. The League of Women Voters and the American Association of Retired Persons estimated that 152,664 people over the age of 60 who voted in the 2004 presidential election did not have a Georgia driver's license and were unlikely to have other photo ID.[4] Governor Sonny Perdue estimated that approximately 300,000 voting age Georgians did not have a driver's license or ID card.[5] Getting a photo ID would be a burden to all of those individuals, and a particular hardship for those living in retirement communities, assisted living facilities, and in rural areas. The potential chilling impact was exacerbated further by the fact that there were only 56 Department of Motor Vehicle offices that issued driver's licenses or photo IDs to cover Georgia's 159 counties, none of which were located in Atlanta, the state's most populous city.[6]

According to the census, African Americans in Georgia were nearly five times more likely not to have access to a motor vehicle than whites, and would thus be less likely to have a driver's license or access to transportation to purchase a photo ID. Far from dissuading state legislators, the likely disproportionate impact of the photo ID bill on African American voters appeared to be one reason some supported the measure. Representative Sue Burmeister (R-Augusta), a chief sponsor of the photo ID bill, advised officials in the Department of Justice's Voting Section that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud."[7] Burmeister also alleged that if black people in her district "are not paid to vote, they do not go to the polls," and that if fewer African Americans voted as a result of the photo ID bill it would be because the legislation prevented voter fraud.[8]

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[3] GA. CODE ANN. § 21-2-417 (2011).

[4] *Common Cause v. Billups*, 406 F.Supp. 2d 1326, 1334 (N.D. Ga. 2005).

[5] Department of Justice, Voting Section, Section 5 Recommendation Memorandum: August 25, 2005 at 20 (on file with the ACLU Voting Rights Project) [hereinafter *GA Sec. 5 Memorandum*]. It was subsequently shown that 300,000 registered voters lacked a driver's license or state issued photo ID. *Lawyers: State misinformed voters*, ATHENS BANNER-HERALD, October 17, 2006, *available at* http://onlineathens.com/stories/101706/election_20061017043.shtml.

[6] *GA Sec. 5 Memorandum, supra* note 5, at 10. The total population of the state is approximately 8.2 million, while the population of the City of Atlanta is about half a million.

[7] *GA Sec. 5 Memorandum, supra* note 5, at 6.

[8] Bob Kemper, Sonji Jacobs, *Georgia voter ID memo stirs tension*, THE OXFORD PRESS, November 18, 2005,

Black members of the legislature were strongly opposed to the photo ID bill. During the legislative debate Senator Emmanuel Jones (D-Decatur) wore shackles to the well of the Senate, and Representative Alisha Thomas Morgan (D-Austell) brought shackles to the well of the House in protest over the bill's potential suppression of the black vote.[9]

Secretary of State Cathy Cox wrote to Governor Perdue on April 8, 2005, and urged him not to sign the photo ID bill into law. "I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls," she said.[10] In her judgment the bill "creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have driver's licenses because they are either too poor to own a car, are unable to drive [a] car, or have no need to drive a car."[11] She described the justification for the bill as a measure to combat voter fraud as "a pretext."[12] Despite his acknowledgment that hundreds of thousands of Georgians did not have a driver's license or ID card, Perdue signed the photo ID bill into law.

Georgia submitted its new photo ID bill for preclearance under Section 5, and the Department of Justice approved it on August 26, 2005, despite the near unanimous recommendation by the career staff to object. The recommendation concluded that "the state has failed to meet its burden of proof to demonstrate that [the photo ID bill] does not have the effect of retrogressing minority voting strength."[13]

One of those who played a central role in overriding the recommendation of the career staff was Hans von Spakovsky, hired by the Bush administration as special counsel to the Assistant Attorney General for Civil Rights.[14] Prior to preclearance of the Georgia photo ID bill, von Spakovsky had written an article for the Texas Review of Law & Politics, using the pseudonym "Publius," in which he strongly endorsed photo ID requirements. He rejected critics of photo IDs and dismissed the evidence of discriminatory impact against minority groups, such as African-Americans, as "merely anecdotal" and "unsubstantiated."[15] One of his recommendations was to "require all voters to present photo identification at their precinct

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available at
http://www.oxfordpress.com/news/content/shared/news/nation/stories/11/GEORGIA_VOTING_LAW_1118_COX.html.

[9]Mike Billips, *ID Bill Could Make Georgia Unique in Turn Away Voters*, THE MACON TELEGRAPH, March 19, 2005; Carlos Campos, *Firebrand 'Standing Up': Legislator Makes no Apologies for her Convictions*, THE ATLANTA JOURNAL-CONSTITUTION, March 24, 2005, at 1C.

[10]*Common Cause*, 406 F.Supp. 2d at 1333.

[11]*Id.*

[12]*Common Cause*, 406 F.Supp. 2d at 1333-34.

[13]*GA Sec. 5 Memorandum, supra* note 5, at 20.

[14]Dan Eggen, *Official's Article on Voting Law Spurs Outcry*, WASH. POST, April 13, 2005, at A19.

[15] Publius, *Securing the Integrity of American Elections: The Need for Change*, 9 TEX. REV. L. & POL. 277, 289, 300 (2005).

polling locations."[16]

Not only was there evidence that the Georgia photo ID bill had been enacted with a discriminatory purpose, i.e., to suppress the minority vote, but its effect would clearly be retrogressive within the settled meaning of Section 5. In any event, the career staff's defensible conclusion that the state had failed to carry its burden of showing the absence of a discriminatory effect was overridden. Moreover, contrary to the Department's normal practice, the staff memorandum and recommendation were not forwarded to the Assistant Attorney General for Civil Rights for consideration prior to his making the preclearance decision.[17] Indeed, the leadership of the Voting Section went so far as to adopt a new rule prohibiting the career staff from making any recommendations whether or not to object to proposed voting changes.[18] Such a rule could only serve to undermine the reliability and legitimacy of the Section 5 preclearance process.

Before the Department precleared the Georgia photo ID bill, the legislature passed another law increasing the fee for a five year photo ID card to $20, and a ten year card to $35.[19] On September 2, 2005, the ACLU wrote a letter to the Chief of the Voting Section noting that the fee increase imposed yet an additional and disparate burden upon racial and language minorities, and warranted a reconsideration of the preclearance decision.[20] The Voting Section declined to take any action and, despite the obvious impact the new law would have on minority voting rights, said in response that the amount a state charged for a driver's license was not "a change affecting voting within the meaning of [Section 5]."[21] Such logic was rejected by the Supreme Court in its 1966 decision invalidating Virginia's poll tax for state elections. The Court acknowledged that a state could charge a fee for driver's and other kinds of licenses, but rejected the argument that payment of a fee for voting could be constitutional.[22]

When the Department of Justice fails to object to a discriminatory voting change it also places the burden of enforcing voting rights upon racial and language minorities. The basic purpose of Section 5, however, was "to shift the advantage of time and inertia from the perpetrators of the evil [of discrimination in voting] to its victims."[23]

Following the Department of Justice's preclearance of the Georgia photo ID law, a

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[16] *Id.* at 300.
[17] Joseph D. Rich, Mark Posner and Robert Kengle, *The Voting Section*, *in* THE EROSION OF RIGHTS 37 (William L. Taylor, Dianne M. Piché, Crystal Rosario, and Joseph D. Rich eds., March 21, 2007).
[18] *Id*. at 38. *See also* Dan Eggen, *Staff Opinions Banned in Voting Rights Cases*, WASH. POST, December 10, 2005, at A03.
[19] GA. CODE ANN. § 40-5-103(a) (2011).
[20] Letter from Laughlin McDonald, ACLU Southern Regional Office, to John Tanner, Chief, Voting Section (September 2, 2005) (on file with the ACLU Voting Rights Project).
[21] Letter from John Tanner, Chief, Voting Section, to Laughlin McDonald, ACLU Southern Regional Office (October 11, 2005) (on file with the ACLU Voting Rights Project).
[22] *Harper v. Virginia State Bd. Of Elections*, 383 U.S. 663, 668 (1966).
[23] *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

coalition of groups filed a lawsuit challenging it on various grounds. The response to the lawsuit underscored how sharply polarizing the new law was. Former President Jimmy Carter called the law a "disgrace to democracy," and said "it is highly discriminatory and, in my personal experience, directly designed to deprive older people, African Americans and poor people of a right to vote." House Speaker Glenn Richardson (R-Hiram), however, called the lawsuit "ludicrous" and an example of "liberal special interests using unconscionable scare tactics to frighten Georgia voters."[24]

On October 18, 2005, the federal court preliminarily enjoined use of the photo ID law on the grounds that it was in the nature of a poll tax, as well as a likely violation of the equal protection clause of the Fourteenth Amendment. Underscoring the validity of the career staff's recommendation to object to the photo ID bill, and the impropriety of the decision to override it, the court expressly found the law "is most likely to prevent Georgia's elderly, poor, and African-American voters from voting."[25]

The court also noted that the Virginia poll tax invalidated by the Supreme Court was $1.50, while the fee for a photo ID for voting in Georgia was $20. The fee could be waived if a voter signed an affidavit that he or she was indigent and could not pay the $20, but the court concluded the waiver "does not reduce the burden that the Photo ID requirement imposes on the right to vote."[26]

In response to the federal court's injunction, the Georgia legislature passed a new law in January 2006, requiring the Board of Elections in each county to issue photo IDs without cost to those who needed them.[27] This law was also challenged and was preliminarily enjoined by the federal court because it would impose a "severe burden" on voters who would have to comply with it in the short time remaining before the July 2006 primary elections.[28]

Secretary of State Cathy Cox released a report in June 2006, based on a comparison of the state's files of registered voters and persons issued valid driver's licenses. The study found that nearly 700,000 Georgians lacked a driver's license, the most commonly available form of photo ID for in-person voting. The study, Cox said, "provides powerful new evidence that supports the objections I've raised against the photo ID requirement from the outset - that huge numbers of Georgians are in jeopardy of being shut out of the voting process and having their voices silenced."[29]

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[24]Carlos Campos, James Salzer, *Suit slams voter ID law*, THE ATLANTA JOURNAL-CONSTITUTION, September 20, 2005, at 1A.
[25]*Common Cause*, 406 F.Supp. 2d at 1365.
[26]*Common Cause*, 406 F.Supp. 2d at 1364.
[27]GA. CODE ANN. § 21-2-417 (2011).
[28]*Common Cause v. Billups*, 439 F.Supp. 2d 1294, 1351 (N.D. Ga. 2006). In a similar case brought in state court, the trial judge permanently enjoined the photo ID requirement as adding an additional qualification for voting in violation of the Georgia Constitution. But the state supreme court, in a brief opinion and without addressing the merits, reversed the decision after concluding the plaintiff lacked standing. *Perdue v. Lake*, 282 Ga. 348 (Ga. 2007).
[29]Press Release,Georgia Secretary of State Cathy Cox (June 19, 2006).

Following a trial, the district court, reversing its prior grant of injunctive relief, held none of the plaintiffs had standing and then dismissed the challenge to the photo ID requirement on the merits. It held the burden on plaintiffs was slight, and that the state's interest in preventing voter fraud trumped any burden on voters.[30] The court of appeals affirmed the decision on the merits.[31] In doing so, it relied upon an intervening decision by the Supreme Court in which a divided court upheld the constitutionality of a similar photo ID law enacted by Indiana.[32] Paul Clement, Solicitor General under the Bush administration, filed an amicus brief in the Supreme Court urging it to affirm the decision of the lower court.

The Department of Justice must maintain an active and principled preclearance review process to respond to the recent proliferation of state laws and policies that repress the vote. During 2011, seven states adopted photo ID requirements for in-person voting similar to the one in Georgia: Kansas, Tennessee, Alabama, Missouri, South Carolina, Texas, and Wisconsin.[33] In response, Attorney General Eric Holder, in a December 13, 2011 speech at the Lyndon Baines Johnson Presidential Library in Austin, Texas, described these laws as "a deliberate and systematic attempt to prevent millions of elderly voters, young voters, students [and] minority and low-income voters from exercising their constitutional rights to engage in the democratic process."[34] Holder also cited a law recently enacted in Florida that reduced the number of days for early voting and imposed new and onerous restrictions, including fines, upon third party voter registration organizations, such as the League of Women Voters.[35] He strongly suggested the Department of Justice would either challenge or deny preclearance to these laws.

Consistent with the tone of this speech, the Department of Justice on December 23, 2011 objected to South Carolina's new photo ID law for in-person voting. In doing so, it concluded the "absolute number of minority citizens whose exercise of the franchise could be adversely affected by the proposed requirement runs into the tens of thousands," and that the state "cannot meet its burden of proving that, when compared to the benchmark standard, the voter identification requirement . . . will not have a retrogressive effect."[36] DOJ found it unnecessary to make a determination whether the state had established that the proposed voter ID requirements "were adopted with no discriminatory purpose."[37]

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[30] *Common Cause/Georgia v. Billups*, 504 F.Supp. 2d 1333 (N.D. Ga. 2007).
[31] *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009).
[32] *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).
[33] *See* ACLU Map, 2011: Voting Rights Under Attack in State Legislatures, http://www.aclu.org/maps/2011-voting-rights-under-attack-state-legislatures (last visited Jan. 17, 2011).
[34] David G. Savage, *Atty. Gen. Holder takes aims at new state voting laws*, L. A. TIMES, December 13, 2011, *available at* http://articles.latimes.com/2011/dec/13/nation/la-na-holder-voting-rights-20111214.
[35] Florida is currently seeking judicial preclearance of these changes. See Florida v. United States, No. 1:11-cv-01428 (D. D.C.).
[36] Letter from Thomas E. Perez, Assistant U.S. Attorney General, to C. Havird Jones, Jr., Assistant S.C. Deputy Attorney General, December 23, 2011, *available at* http://s3.documentcloud.org/documents/279907/doj-south-carolina-voting.pdf.
[37] *Id.*

At a press conference on January 10, 2012, Nikki Haley, Governor of South Carolina, announced the state would seek judicial preclearance of its photo ID law. The state has also announced that it has retained former Solicitor General Paul Clement, who filed an amicus brief in the Supreme Court in support of Indiana's photo ID law, to assist in the case.

Less than a week later Attorney General Holder spoke at a rally in Columbia, South Carolina to honor the Martin Luther King, Jr. holiday, and repeated his commitment to oppose discriminatory voter ID laws. "Let me be very, very clear," he said, "the arc of American history has bent toward inclusion, not the exclusion, of more of our fellow citizens in the electoral process. We must ensure that this continues."[38]

In order to faithfully carry out its commitment to protecting and expanding the franchise, the Department of Justice must take care not to repeat practices that led to controversial preclearance decisions prior to the 2006 reauthorization of the Voting Rights Act, which in turn sparked extended litigation. As it works through a full docket of redistricting and other state voting procedure changes, the Department should:

- Fully utilize the expertise and experience of career attorneys designated to provide recommendations on preclearance cases;

- Give careful consideration to evidence of discriminatory intent and disparate impact submitted by stakeholders with intimate knowledge of the adoption and impact of voting laws; and

- As it has done in recent cases, seek additional information from states where questions remain on key issues. The Department must not rush opinions at the expense of rendering well-considered decisions.

II. The Recent Trend of States Seeking Judicial Preclearance

There has been a recent trend of Section 5 covered states electing to submit their voting changes, including redistricting plans, to the federal district court for preclearance instead of, or in addition to, the Department of Justice. In most cases, the jurisdictions have included a claim that Section 5 as amended and extended in 2006[39] is now unconstitutional.

Florida, for example, in 2011 adopted HB 1355, which contained a number of provisions

[38] *E.g.,* Jeffrey Collins, *SC rally marks MLK day with voting rights message*, Associated Press, Jan. 17, 2012, *available at* http://www.google.com/hostednews/ap/article/ALeqM5jfEdUvPU5gGKIlROikkbv6hK1YTQ?docId=bda00be34f9843d5ad7e1fed3f6fa0ee.

[39] Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 [hereinafter *Voting Rights Act 2006*].

that could have an adverse impact on racial and language minorities: (1) reducing the number of days for early voting from 14 days to eight days – beginning on the 10th day before an election and ending on the 3rd day before; (2) requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of ten days as provided by existing law, imposing a fine of $50 for each failure to comply with the deadline, and imposing fines up to $1,000 for failing to comply with other provisions; (3) disallowing voters who move from one Florida county to another to make an address change at the polls on the day of an election and vote a regular ballot, except for active military voters and their family members; and (4) shortening the shelf life of citizen petition signatures from four to two years.[40]

Jerry Holland, the Duval County Supervisor of Elections, was reported as saying: "The State Association of Election Supervisors did not support this bill; we actively opposed it."[41] And notably, every member of the Florida Conference of Black State Legislators voted against HB 1355 because it was unnecessary and would have an adverse impact on racial and language minorities. As a result of the new restrictions on third-party voter registration groups, the League of Women Voters announced that it "has halted registration in Florida."[42] Several other groups are also reconsidering their plans to conduct voter registration in Florida in 2012.

The state submitted HB 1355 to the Department of Justice for preclearance, and the ACLU, Project Vote, and other organizations filed Section 5 comment letters requesting an objection to the provisions of the bill discussed above.[43] In response, the state withdrew the submission of the four changes and filed a preclearance action in the federal district court.[44] In doing so, Secretary of State Kurt Browning stated that "[t]he purpose of filing in the federal district court is to ensure that the changes to Florida's election law are judged on their merits by eliminating the risk of a ruling impacted by outside influence."[45] The state also raised a claim that Section 5 was now unconstitutional.

It is apparent that the state was motivated by two considerations. First, it wanted to take the preclearance process out of the hands of the Department of Justice, which it feared would be influenced by civil rights organizations, which it characterized as "outside influence." Second, it was no doubt aware of the decision of the Supreme Court in a Section 5 action filed by a municipal utility district in Texas.

In the Texas case, the utility district argued that it was entitled to bailout from Section 5

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[40]Chapter 2011-40, Laws of Florida.
[41]*Voting law's Sunday punch*, THE SARASOTA HERALD-TRIBUNE, June 15, 2011, *available at* http://www.heraldtribune.com/article/20110615/OPINION/110619722.
[42]*Id.*
[43]*E.g.,* Letter from Laughlin McDonald, ACLU Voting Rights Project, to T. Christian Herren, Chief, Voting Section, Civil Rights Division, (June 20, 2011) *available at* http://www.aclufl.org/pdfs/2011-06-20-ACLUDOJLetter.pdf.
[44]*State of Florida v. United States of America*, No. 1:11-cv-01428-CKK-MG-ESH (D.D.C. filed Aug. 1, 2011).
[45]Press Release, Florida Department of State, Secretary Browning Asks Federal Court to Approve Elections Bill (July 29, 2011).

coverage, but if not that Section 5 was now unconstitutional.[46] The Supreme Court, reversing the long standing definition of jurisdictions entitled to bailout, held the utility district was eligible to bailout, and accordingly it would "avoid the unnecessary resolution of constitutional questions" involving Section 5.[47] Following remand, the three-judge court approved a consent decree allowing the utility district to bailout from coverage, and the challenge to the constitutionality of Section 5 was dismissed without prejudice.[48] Florida no doubt assumed, in light of the utility district case, that its chances of winning preclearance by the District of Columbia court would be substantially enhanced by the Court's desire to avoid deciding constitutional questions involving Section 5.

Other covered jurisdictions have followed the same route as Florida, and no doubt for the same reasons. Georgia recently sought preclearance of a database matching system for voter registration, and asserted an alternative claim that if preclearance was denied Section 5 was unconstitutional. Following preclearance of the submission by the Department of Justice, the court concluded the constitutional claim was moot.[49] Georgia had brought two other Section 5 cases, one seeking preclearance of a proof of citizenship requirement for voter registration and the other seeking preclearance of its 2011 house, senate, and congressional redistricting plans.[50] Both cases also raised claims that Section 5 was now unconstitutional. However, both submissions were precleared, rendering the constitutional claims moot.

More jurisdictions can be expected to submit their voting changes, including redistricting plans, to the federal district court instead of, or in addition to, the Department of Justice. And in most cases, the jurisdictions will likely include a claim that Section 5 as amended and extended in 2006 is now unconstitutional.

Conclusion

The harm in partisan gerrymandering, as one court has put it, is that it is "an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good."[51] A critical role of the Department of Justice during the current redistricting cycle will be combating modern day voter suppression measures that are driven in part by partisan bias. That role can be discharged through Section 5 objections, as well as litigation under Section 2 of the Voting Rights Act[52] to protect the equal rights of minorities to participate in the political process and elect candidates of their choice.

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[46] *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 129 S.Ct 2504 (2009).
[47] *Id*., 129 S.Ct at 2508.
[48] *Nw. Austin Mun. Util. Dist No. 1 v. Holder*, No. 1:06-cv-1384 (D. D.C. order approving consent decree Nov. 3, 2009).
[49] *Georgia v. Holder*, 748 F.Supp. 2d 16 (D. D.C. 2011).
[50] *Georgia v. Holder*, No. 1:10-cv-01970-EGS (D. D.C. filed Nov. 15, 2010); *Georgia v. Holder*, No. 1:11cv-01788-RBW (D. D.C. filed Oct. 6, 2011).
[51] *LULAC v. Perry*, 548 U.S. 399, 456 (2006).
[52] 42 U.S.C. § 1973 (2010).

When it extended Section 5 in 2006, Congress concluded that "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years."[53] The continued protection of Section 5 is especially critical during the unfolding 2010 census redistricting cycle. Without the safeguards of Section 5, and the requirement that covered jurisdictions show that their proposed plans are not retrogressive and do not diminish the voting strength of minorities, the undermining of minority rights predicted by Congress will almost certainly occur.

[53] *Voting Rights Act 2006, supra* note 39, at § 2(b)(9).