

Testimony of Joe Rogers
Before the Subcommittee on the Constitution
United States House of Representatives
March 8, 2006

Good afternoon, Chairman Chabot and members of the House Subcommittee on the Constitution. My name is Joe Rogers and I am the former Lieutenant Governor of Colorado. I am testifying here for the second time as a Commissioner on the National Commission on the Voting Rights Act. I'm honored to be back before you to discuss the National Commission's Report and accompanying Supplement. The supplement captures some of the most compelling testimony and facts culled from the ten hearings that the National Commission conducted throughout the United States.

Of note, our hearings and review of the records and data show dramatic gains made in decreasing the instances of discrimination and intimidation of minority voters throughout the United States since the establishment of the Voting Rights Act. Plainly, we have come a long way on our road toward racial equality and full access to the ballot for all of our citizens. However, with that said, the journey toward a colorblind society in which discrimination against minority voters no longer exists, is not yet complete. Whether the animus is hatred or power and whether the conduct is engaged by democrats or republicans, the end result – discrimination against minority voters – is the same. It is this result that is the aim and protection of the Voting Rights Act.

As my fellow Commissioner Bill Lann Lee stated, I would like to present several examples of the facts we discovered regarding voting discrimination and instances where the Voting Rights Act has either prevented or remedied discrimination in our nation between 1982 and 2005.

I'd like to begin with an example from Mississippi illustrating how Section 5 of the Act maintains gains resulting from Section 2 litigation, and an example from California showing its impact in preventing vote dilution. Second I would like to address the effectiveness and efficiency of Section 5. Third, I'd like to point out the significance of the minority language provisions. Finally I'd like to note the persistence of practices of discrimination in jurisdictions throughout the nation.

Up through 1987, Mississippi had a dual registration system where people had to register separately with both the city and the county in order to vote in all elections (Federal, State and Local). This practice was found to be racially discriminatory under Section 2 of the Voting Rights Act and Mississippi was forced to stop this practice. When Congress enacted the National Voter Registration Act in 1993, Mississippi tried to revive the dual registration system by passing legislation that restricted NVRA-registrants to voting only in federal elections. Mississippi refused to submit its new dual registration system for Section 5 preclearance until it was sued by the Department of Justice in a Section 5 enforcement action and the United States Supreme Court unanimously ordered Mississippi to submit the changes for preclearance. When Mississippi complied with the Court order and ultimately submitted its dual registration system to the Department of Justice, the department objected in 1998 and Mississippi was prevented from reinstating the discriminatory registration system.

Moreover, the Commission received testimony about how Section 5 has blocked electoral changes whose effect was to dilute minority voting strength. Specifically, for example, when the Chualar Union Elementary School District in Monterey County, California tried to change its method of election from single-member districts to at-large elections, the Department of Justice objected under Section 5 because the measure "was motivated, at least in part, by discriminatory

animus” against Latino voters and because it would have a retrogressive impact on Latino voting strength.

The Commission also found several examples of how the mere existence of Section 5 had the “deterrent” effect of stopping jurisdictions from enacting discriminatory changes. For example, Alaska’s post-1990 redistricting plans for its state house and senate were found to violate Section 5 because they reduced the voting strength of Alaska Natives. However, in the post-2000 redistricting cycle, Alaska took specific measures to ensure that it did not reduce Alaska Native voting strength in districts where Alaska Natives had a reasonable opportunity to elect candidates of their choice.

In a similar vein, in Fredericksburg, Virginia, the city council was preparing to dismantle its only majority African American district until the city attorney simply “warned” the council that doing so would violate Section 5.

With regard to the minority language provisions, the National Commission received testimony from several election administrators who testified about the need of minority language voters to have language assistance in order to vote. Conny McCormack, the County Clerk/Recorder for Los Angeles County, testified that from January to August 2005, she had received more than 135,000 multilingual voter requests. Shirlee Smith, the Voting Rights Act coordinator for Bernalillo County, New Mexico stated that because of Section 203, her position was created, and elderly Indian voters were able to vote for the first time because they were able to receive assistance in the language they speak.

The National Commission also heard examples of how the provision of language assistance enabled language minorities to elect their candidates of choice. For example, in Passaic, New Jersey, a Latino mayor was elected after a Department of Justice lawsuit compelled

Passaic County to provide language assistance to Spanish-speaking voters, and Hispanic turnout dramatically increased as a result.

There was also significant testimony about failures in providing language assistance at the polls in violation of Section 203. For example, in New York City in 2000, Chinese voters were presented with a ballot where Democratic candidates were labeled as Republicans and Republicans were labeled as Democrats. In South Dakota, a tribal official personally witnessed a situation where a husband who could not read was not allowed to get help from his wife and the election officials could not help him because they did not speak Lakota. As a result, the husband ripped his ballot in half and threw it in the trash. The unavailability of assistance violated Section 203 and the refusal to let his wife help violated Section 208.

Moreover, we heard about the impact of the Voting Rights Act's observer coverage provisions. Alabama State Senator Bobby Singleton is from Hale County, Alabama, where the Department of Justice has sent observers on more than 20 occasions. Senator Singleton stated that when the Department of Justice was not present at an election, "whites closed predominantly black polling places early." As a result of Department of Justice intervention on multiple occasions and other Voting Rights Act enforcement measures, blacks are now a majority of most elected bodies in Hale County. To this point, Joe Rich, Chief of the Voting Section of the Department of Justice from 1999-2005, testified about how the mere presence of observers usually calmed racial tensions concerning elections and served to decrease race based incidents.

Finally and unfortunately, the Commission record contains examples of instances of disparate treatment, voter dilution schemes and examples of conduct designed to intimidate and suppress the impact of minority voters. Of note, in Long and Atkinson Counties in Georgia, there were efforts to wrongfully challenge Latino voters *en masse* in the 2004 election cycle.

Similar efforts were invoked against Indian voters in Duluth, Minnesota. In recent years, racially offensive comments have been made by poll workers against Hispanic voters in Reading, Pennsylvania and against Asian voters in New York City. In 2000, poll workers required minority voters in Hamtramck, Michigan to show identification, even though identification was not required, and poll workers did not require the same of white voters.

In sum, these facts reveal that although our country has made significant progress, we have a long way to go. Racially polarized voting remains a fact of life in many areas of the country. In states like Florida, Georgia, South Carolina, and Texas, federal courts have found racially polarized voting in statewide redistricting cases in this decade. In 2000, I was one of 38 black federal or state officials elected statewide out of more than 900 such officials throughout the United States. This represents progress, but is far from the full emancipation of opportunity. In 2006, it still remains the case that most minority members of the U.S. House of Representatives and state legislatures are elected from majority-minority districts.

The examples I have mentioned today are but a few of the many facts contained in the National Commission's Report and Supplement. The data undeniably indicates that neither the Act nor the problems it was designed to combat can be dismissed as relics of the past. On the contrary, they indicate what appears to be a present and future need for its continuing protections. The testimony, records and data reveal that the temporary provisions of the Voting Rights Act have been and continue to be vital safeguards to equal access to the ballot for all Americans.