



Department of Justice

STATEMENT OF

**ASHEESH AGARWAL
DEPUTY ASSISTANT ATTORNEY GENERAL
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

“VOTER SUPPRESSION”

PRESENTED

FEBRUARY 8, 2008

**Statement of
Asheesh Agarwal
Deputy Assistant Attorney General
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
“Voter Suppression”**

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Thank you. Mr. Chairman, Ranking Member Franks, Members of the Subcommittee, it is a pleasure to appear before you to represent the dedicated professionals of the Voting Section of the Civil Rights Division.

I am honored to serve the people of the United States as a Deputy Assistant Attorney General for the Civil Rights Division. I am pleased to report that the Civil Rights Division remains diligent in protecting voting rights.

The right to vote is the foundation of our democratic system of government. The President and the Department strongly supported the Voting Rights Act Reauthorization and Amendments Act of 2006, named for three heroines of the Civil Rights movement, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King. During the signing ceremony at the White House, President Bush said, “My administration will vigorously enforce the provisions of this law, and we will defend it in court.” The Civil Rights Division is committed to carrying out the President’s promise. In fact, the Department currently is vigorously defending the statute’s constitutionality in federal court here in the District of Columbia. Oral argument on the cross-summary judgment motions was held on September 17, 2007.

The Civil Rights Division is responsible for enforcing several laws that protect voting rights, and I will discuss the Division’s work under each of those laws. First, however, it is worth noting that under our nation’s federal system of government, the primary responsibility for the method and manner of elections lies with the States. Article I, Section 4, of the Constitution states, “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof.” Thus, each State holds responsibility for conducting its own elections. However, Article I, Section 4, goes on to provide: “[B]ut the Congress may at any time by Law make or alter such Regulations” with respect to federal elections. The Fourteenth and Fifteenth Amendments likewise authorize congressional action in the

elections sphere. Therefore, except where Congress has expressly decided to legislate otherwise, States maintain responsibility for the conduct of elections.

Congress has passed legislation in certain distinct areas related to voting and elections. 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). The Civil Rights Division enforces the civil provisions of these laws. Pursuant to 28 C.F.R. §§ 50 and 55, the vast majority of criminal matters involving possible federal election offenses are assigned to and supervised by the Criminal Division and are prosecuted by United States Attorneys' Offices. However, a small percentage of voting-related offenses are principally assigned to the Civil Rights Division to handle or supervise.

The Voting Section is committed to enforcing vigorously each of the statutes within its jurisdiction. The 18 new lawsuits we filed in calendar year 2006 is double the average number of lawsuits filed annually in the preceding 30 years.

In 2006, the President signed the Voting Rights Act Reauthorization and Amendments Act of 2006, which renewed for another 25 years certain provisions of the Act that had been set to expire. The Voting Rights Act has proven to be one of the most successful pieces of civil rights legislation ever enacted. However, as long as all citizens do not have equal access to the polls, our work is not finished. As President Bush said, "In four decades since the Voting Rights Act was first passed, we've made progress toward equality, yet the work for a more perfect union is never ending."

Section 2 of the Voting Rights Act prohibits intentional, purposeful racial discrimination in voting as well as conduct with a racially discriminatory effect. Although most commonly used to address issues of minority vote dilution, Section 2 also has been the basis for other types of legal relief involving voter registration and election-day practices, including: the use of dual (state and municipal) voter registration systems, the refusal to recruit or hire minority poll workers, the intentional targeting of voters for challenges based on their race or ethnicity, misconduct by poll officials favoring candidates of a particular race, changes in candidate residency requirements intended to disqualify minority candidates, and actions and failures to act resulting in the denial of equal access to the political process for language minority voters, in the form of hostile poll workers and refusal to permit bilingual assistance.

In 2006, the Division's Voting Section filed and resolved a lawsuit 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. The Section also filed a Section 2 lawsuit in Ohio in 2006 that challenged the City of Euclid, Ohio'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. Although African Americans comprise nearly 30 percent of the city's electorate, and there have been eight recent African-American

candidates for the Euclid City Council, not a single African-American candidate has ever been elected to the nine-member city council or to any other city office. 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 our successes under Section 2 is the Division's 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. The court held that the at-large election system violated the rights of Hispanic voters under Section 2 and ordered the county to abandon it. In December 2006, the court adopted the remedial election system proposed by the United States and ordered a special election under that election plan that took place in April 2007.

The United States filed a complaint on December 15, 2006, alleging that Port Chester, New York's at-large system of electing its governing Board of Trustees diluted the voting strength of Port Chester's Hispanic citizens, in violation of Section 2 of the Voting Rights Act of 1965. On March 2, 2007, after an evidentiary hearing, the court enjoined the March 20 elections, holding that the United States was likely to succeed on its claim. On January 17, 2008, the court ruled that the at-large system of election used by Port Chester to elect its trustees violates the Voting Rights Act because it denies Hispanics an equal opportunity to participate in the political process. The court ordered the parties to file proposed remedial plans by February 7, 2008. According to the evidence adduced at trial, and as cited in the court's opinion, the 2000 census shows that almost half of Port Chester's residents, and 22 percent of Port Chester's citizens of voting age, were Hispanic. By July 2006, the number of Hispanic citizens of voting age had increased to about 28 percent. Despite these figures, no Hispanic has ever been elected to Port Chester's municipal legislature, the six-member Board of Trustees. Indeed, no Hispanic has ever been elected to any public office in Port Chester, despite the fact that Hispanic candidates have run for office six times – twice for the Board of Trustees and four times for the Port Chester Board of Education, which manages a school system that is overwhelmingly Hispanic.

Also in 2007, in Fremont County, Wyoming, the Division successfully defended the constitutionality of Section 2 of the Voting Rights Act, for the fourth time in this Administration. In addition, the Division filed and resolved a claim under Section 2 involving discrimination against Hispanic voters at the polls in Philadelphia and obtained additional relief in an earlier Section 2 suit on behalf of Native American voters in Cibola County, New Mexico. The actions against Philadelphia and Cibola County are noteworthy because both involve 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, the Division 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. In Philadelphia, the Division added to our original Section 203 and 208

claims additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City has agreed to remove from the rolls the names of numerous ineligible voters, including those who are deceased or have moved, and two counts under HAVA – to assure that accessible machines are available to voters with disabilities and that required signs at the polls also are posted in Spanish.

In 2007, the Section 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 Division will continue to closely investigate claims of voter discrimination and vigorously pursue actions on behalf of all Americans wherever violations of federal law are found.

In recent years, the Division has broken records with regard to enforcement of Section 208 of the Voting Rights Act. 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 the past six years, we have brought nine of the eleven such claims brought by the Department since Section 208 was enacted twenty-five years ago, including the first case ever under the Voting Rights Act to protect the rights of Haitian Americans.

Our commitment to enforcing the language minority requirements of the Voting Rights Act, reauthorized by Congress in 2006, remains strong, with nine lawsuits filed in fiscal year 2007. In September 2007, we settled the first lawsuit filed under Section 203 on behalf of Korean Americans in the City of Walnut, California. During the past 7 years, the Civil Rights Division has brought more cases under the minority language provisions than in all other years combined since 1965. Specifically, we have successfully litigated over 60 percent of all the Department's language minority cases in the history of the Voting Rights Act. These cases include the first Voting Rights Act cases in history on behalf of Filipino, Korean, and Vietnamese Americans.

Our cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of our lawsuit, Boston now employs five times more bilingual poll workers than before. As a result of our lawsuit, San Diego added over 1,000 bilingual poll workers, and Hispanic voter registration increased by over 20 percent between our settlement in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters, and Vietnamese voter registration rose 37 percent. Our lawsuits also spur voluntary compliance: after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent. In many cases, violations of Section 203 are accompanied by such overt discrimination by poll workers that Section 2 claims could have been brought as well. However, we have been able to obtain complete and comprehensive relief through our litigation and remedies under Section 203 without the added expense and delay of a Section 2 claim.

In 2006, the Voting Section processed the largest number of Section 5 submissions in its history. The Division has interposed five objections to submissions pursuant to Section 5 since January 2006, in Georgia, Texas, Alabama, North Carolina, and Michigan, and in 2006 filed a Section 5 enforcement action. Additionally, the Division is vigorously defending the constitutionality of Section 5 of the Voting Rights Act in an action brought by a Texas jurisdiction in 2006 and filed an amicus brief in a Mississippi Section 5 case in 2007. The Division also consented to four actions since 2006 brought by jurisdictions that satisfied the statutory requirements for obtaining a release, or “bailout,” from Section 5 coverage.

The Division 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 Division has continued to work diligently to protect the voting rights of our nation’s military and overseas citizens. The Division 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. Just since January 2008, we have taken legal action in two States to resolve UOCAVA violations for the February 5 federal primary elections. In Illinois, we participated as amicus curiae in a case to ensure the State adequately ensured the voting opportunities for UOCAVA voters under their truncated 2008 election calendar, and on January 30, the court approved a consent decree with Tennessee to resolve our complaint filed over the late mailing of overseas ballots in that state. 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. We also obtained permanent relief in the form of legislation in a suit originally filed against Pennsylvania in 2004. The Civil Rights Division will continue to make every effort to ensure that our citizens abroad and the brave men and women of our military are afforded a full opportunity to participate in federal elections.

Since 2001, the Voting Section has filed 10 suits alleging violations of the National Voter Registration Act. Since 2006, we filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico. Every one of these suits was resolved by agreed orders.

Aside from lawsuits, we actively investigate the practices of jurisdictions to see whether they are complying with federal law. In the past year, we sent letters to a dozen states inquiring about their list maintenance practices when we learned that there appeared to be significant imbalances between their numbers of registered voters and their citizen populations. In the past few months, we sent letters to 18 states inquiring

about their practices and procedures regarding the provision of voter registration opportunities at state offices that provide public assistance, disability, and other services.

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 the voting systems used in federal elections, among other requirements, provide accessible voting for persons with disabilities in each polling place in the nation.

The Division worked hard to help States prepare HAVA's requirements, through speeches and mailings to election officials, responses to requests for our views on various issues, and maintaining a detailed website on HAVA issues as well as cooperative discussions with States aimed at achieving voluntary compliance. A significant example of the success of the Division's cooperative approach in working with States on HAVA compliance came in California. Prior to the 2006 deadline, the Voting Section reached an important memorandum of agreement with California regarding its badly stalled database implementation. California's newly appointed Secretary of State sought the Division's help to work cooperatively on a solution, and the Division put significant time and resources into working with the State to craft a workable agreement providing for both interim and permanent solutions. The agreement has served as a model for other States in their database compliance efforts.

Where cooperative efforts prove unsuccessful, the Division enforces HAVA through litigation. Since January 2006, the Division filed lawsuits against the States of New York, Alabama, Maine, and New Jersey. In New York and Maine, the States had failed to make significant progress on both the accessible voting equipment and the statewide databases. In Alabama and New Jersey, the States had not yet implemented HAVA-compliant statewide databases for voter registration. The Division ultimately obtained a favorable judgment and remedial order in Alabama, a preliminary injunction and the entry of a remedial order in New York, and favorable consent decrees in Maine and New Jersey. The Division recently won a motion for further relief against New York for failure to achieve full compliance with HAVA's voting system requirements, and the court there has entered a supplemental remedial order to cure the continuing violations. In addition, we filed HAVA claims against Galveston County, Texas, for failing to provide provisional ballots to individuals eligible to vote, post required voting information at polling places, and provide adequate instructions for mail-in registrants and first time voters. We also filed HAVA claims against an Arizona locality for its failure to follow the voter information posting requirements of the Act, and our recent lawsuits in Cibola County, New Mexico, and Philadelphia, Pennsylvania, discussed above, also included HAVA claims to protect Native American and voters with disabilities, respectively. The Division also has defended three challenges to HAVA in a private suit involving the HAVA accessible machine requirement. A separate Pennsylvania State court judgment barring the use of accessible machines was overturned after the Division gave formal notice of its intent to file a federal lawsuit.

A major component of the Division'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. The Justice Department deploys hundreds of personnel to monitor elections across the country. In 2006, the Division deployed a record number of Department monitors and federal observers from the Office of Personnel Management to jurisdictions across the country for a mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 States during the November 7, 2006, 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.

During calendar year 2004, a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 106 jurisdictions in 29 states. This compares to the 640 federal observers and 110 Department personnel deployed during the entire 2000 presidential calendar year.

For the 2008 elections, the Civil Rights Division will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Civil Rights Division will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws.

As in prior years, the Division will monitor States' compliance with the requirements of the Voting Rights Act, the Help America Vote Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the National Voter Registration Act, instituting enforcement actions as necessary. In that regard, we will closely monitor compliance with our numerous court orders, consent decrees, and other agreements, many of which will be in effect through the 2008 election cycle. The Civil Rights Division's efforts to ensure voter access in accordance with federal law will include training a responsible official, the District Election Official (DEO), in every U.S. Attorney's Office across the country on ballot access laws.

Such extensive efforts require substantial planning. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. To that end, Department officials will meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities, as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general election. These meetings will provide a forum for discussion of State and local officials' concerns.

On election day, Department personnel here in Washington will stand ready. We will have numerous phone lines ready to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We will have personnel at the call center who are fluent in Spanish and the Division's language interpretation service to provide translators in other languages.

The Civil Rights Division will continue vigorously to protect the voting rights of all Americans.