Testimony of

Mr. Fred Gray

May 17, 2006

Testimony of Fred D. Gray
United States Senate
Committee on the Judiciary
Hearing on

"Understanding the Benefits and Costs
of Section 5 Pre-Clearance"

Dirksen Senate Office Building Room 226
May 17, 2006
9:30 a.m.

Chairman Specter, Senator Leahy, my Senator Jeff Sessions, and other members of the Committee:

My name is Fred Gray. I am highly honored today to testify in support of reauthorizing what many have called "the most important civil rights legislation" in history.

I testify before this Committee from the perspective of a civil rights lawyer who has been in the trenches practicing for over 50 years in the Deep South, particularly in Alabama. I was fortunate to have represented Mrs. Rosa Parks and Dr. Martin Luther King, Jr. in the 1955 Montgomery bus boycott. I have represented many other heroes who sought to eliminate segregation and discrimination from every social and governmental institution.

The history of this struggle is critical to Congress's consideration today of reauthorization. As South Carolina v. Katzenbach teaches, "the constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects."1

1 383 U.S. 301, 308 (1966).

2

I worked with African Americans in Alabama in efforts to obtain - and then maintain - the right to vote. Some of the people I represented, such as Dr. C.G. Gomillion, the lead plaintiff in Gomillion v. Lightfoot,2 and William P. Mitchell, were filing lawsuits as early as 1945 in an effort to obtain the right to vote for African Americans in Tuskegee, Macon County, Alabama.

The problem of African-American disenfranchisement was the subject of a hearing before the Senate Judiciary Committee's Subcommittee on Constitutional Rights in February and March of 1957. Many persons testified at that hearing. I personally submitted sworn written testimony at that hearing.

This struggle culminated in the Supreme Court's seminal opinion in Gomillion v. Lightfoot. In direct response to increased voter registration, the Alabama Legislature passed a law in 1957, changing Tuskegee's city limits from a square to 28 sides,

excluding almost all African Americans registered to vote, but leaving the white citizens. The Supreme Court unanimously held

2 364 U.S. 339 (1960).

3

that the boundary change violated the Fifteenth Amendment. Gomillion demonstrates that the Supreme Court will infer discriminatory intent from circumstantial evidence, including evidence of severely disproportionate impact.3 Section 5, of course, encompasses both intent and effect.4

The Voting Rights Act, passed in 1965, was the direct result of the Selma-To-Montgomery March. The first attempt to march was aborted on Bloody Sunday, March 8, 1965, when now-Congressman John Lewis and others were beaten after they crossed the Edmund Pettus Bridge in Selma, Alabama. Within twenty-four hours I filed the case, Williams v. Wallace,5 to compel the State of Alabama to protect the marchers.

As a civil rights lawyer practicing both before and after enactment of the Voting Rights Act, I can, and do, attest to its

3 The Court repeated this point in Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 266 (1977).

4 The Court's analysis in Gomillion is a predecessor of the "retrogression" standard of Section 5, where the baseline for comparison is the existing status of the minority community before a voting change is implemented.

5 240 F. Supp. 100 (M.D. Ala. 1965).

4

profound impact on the full participation of African Americans in our society. On a more personal note, it was enforcement of the Voting Rights Act in redistricting cases that allowed me in 1970 to become one of the first two African Americans to serve in the Alabama Legislature since Reconstruction.

I understand the question has been asked whether there is still a need for Section 5. Let me answer that question with a resounding, "Yes."

We all recognize the substantial improvements that have occurred because of the Voting Rights Act. African American registration in Alabama is indeed much higher than it was. I knew the time when Alabama had no Black Elected Officials; now we have approximately 870.

But these successes that are directly attributable to a civil rights law should not - and cannot - provide the very foundation for eliminating protection under that law. If the law was necessary in order to obtain these rights, certainly it is equally important, or

5

more important, that the law continue in effect so these great successes will continue.

Unfortunately, Alabama still suffers from severe racially polarized voting.6 Only two African Americans have ever been elected to statewide office: the late Oscar Adams and Ralph Cook to the Alabama Supreme Court. Currently, no African American holds statewide office. All but one of our 35 Black Elected Officials in the Statehouse were elected from majority African-American districts, and even in that one instance, the House District is 48% African-American.

Racial discrimination in voting has persisted in Alabama since the reauthorization of the Act. Even in Selma - the birthplace of the Voting Rights Act - the Department of Justice has objected to redistricting plans as purposefully preventing African

Americans from electing candidates of choice to a majority of the
6 See, e.g., Dillard v. Baldwin County Commission, 222 F. Supp.2d 1283, 1290 (M.D. Ala. 2002), aff'd, 376 F.3d 1260 (11th Cir. 2004).

seats on the city council and county board of education.7 The Department objected to the Alabama Legislature's 1992 congressional redistricting plan on the ground that fragmentation of black populations was evidence of a "predisposition on the part of the state political leadership to limit black voting potential to a single district."8 In 1998, the Department objected to a redistricting plan for Tallapoosa County commissioners on the ground that it impaired the ability of black voters to elect a candidate of choice in order to protect a white incumbent.9 In 2000, the Department objected to annexations by the City of Alabaster, which would have eliminated the only majority black district, demonstrating that the boundary manipulations of Gomillion are not a relic of the past.10
7 DOJ Section 5 Objection letter from John Dunne, Nov. 12, 1992; DOJ Section 5 Objection letter from James Turner, March 15, 1993; DOJ Section 5 Objection letters from John Dunne, May 1, 1992; July 21, 1992; and Dec. 24, 1992.
8 DOJ Section 5 Objection letter from John Dunne, March 27, 1992.
9 DOJ Section 5 Objection letter from Bill Lann Lee, Feb. 6, 1998.
10 DOJ Section 5 Objection letter from Bill Lann Lee, Aug. 16, 2000.

Since 1982, federal courts have found violations of the Voting Rights Act across Alabama's electoral structures. Dillard v. Crenshaw County led to changes from at-large to single-member districts for dozens of county commissions, school boards and municipalities. In the initial Dillard decision, the court concluded: "From the late 1800's through the present, the state erected barriers to keep black persons from full and equal participation in the social, economic and political life of the state."11 In Jefferson County, officials refused to place black workers in white election precincts on the ground that white voters would not listen to black poll officials. The court stated: "That public officials today would practice open and intentional discrimination of the kind now evidenced before the court is lawless and inexcusable."12 In North Johns, Alabama, a court found that the mayor intentionally withheld candidacy forms from two African-American candidates, fully aware they were running under a new single-member district
11 Dillard v. Crenshaw Co., 640 F. Supp. 1347, 1360 (M.D. Ala. 1986).
12 Harris v. Graddick, 601 F. Supp. 70, 74 (M.D. Ala. 1984).

plan and that their election would result in a majority black council.13 The consent decree entered in Dillard v. City of Foley,14 demonstrates the persistence of intentional discrimination in the annexation context.

Finally, Section 5 provides a powerful deterrent force in preventing discrimination. As a civil rights practitioner and one of Alabama's first African-American state legislators, I have worked with countless state office-holders and officials, city councils, county commissions, and their counsel. Based on these experiences, I strongly believe that continued Section 5 coverage in Alabama is not only necessary but imperative to prevent the backsliding that history has demonstrated will occur when it comes to full enfranchisement of African Americans. Simply put, Senators, we have come too far to affirmatively invite retreat by

changing and weakening the protections of the Voting Rights Act.
13 Dillard v. Town of North Johns, 717 F. Supp. 1471, 1476 (M.D. Ala. 1989).
14 926 F. Supp. 1053 (M.D. Ala. 1995).

Today marks the 52nd anniversary of the decision in Brown v. Board of Education. Even with such a groundbreaking rule of law, we are keenly aware that acceptance, compliance, and institutional change takes time, even decades. I implore the Senate not to interfere with the progress we have achieved for all our citizens when it comes to exercise of the franchise. There is simply too much at stake.
Thank you very much. I will be happy to answer questions.