

Testimony of

# Mr. Donald M. Wright

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SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND PROPERTY RIGHTS

VOTING RIGHTS ACT:  
POLICY PERSPECTIVES AND VIEWS FROM THE FIELD

TESTIMONY OF  
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Mr. Chairman and distinguished Members of the Subcommittee, thank you for your invitation to testify on S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("VRARA"). It is my privilege to testify as someone who works on the front-line with election officials in North Carolina who have to submit voting changes for Section 5 review.

I submit this written testimony as General Counsel of the North Carolina State Board of Elections office. Elections in North Carolina are under the jurisdiction of an independent five member bi-partisan board appointed for four years by the Governor upon the recommendation of the Democratic and Republican parties. The North Carolina State Board of Elections is an independent regulatory and quasi-judicial agency. The opinions expressed herein reflect my personal opinion based upon my extensive experience with general Voting Rights Act and specific Section 5 preclearance issues, and do not reflect the opinion or position of the North Carolina State Board of Elections. However, I can state that my opinions are shared by other senior staff of the North Carolina State Board of Elections.

## Section 5

When I was appointed General Counsel of the North Carolina State Board of Elections in September 2000, I was not sure what to expect from the United States Department of Justice, Civil Rights Division, Voting Rights Section (hereinafter referred to as the USDOJ). From my first contact with USDOJ to the present, all my dealings as to Voting Rights Act issues have been prompt, efficient, and handled in a friendly, yet professional matter by their attorneys and staff. USDOJ Attorney Chris Herren was in charge of overseeing Section 5 preclearances for North Carolina for many years until April of this year. Mr. Herren, without abandoning his watchdog role for possible violations of the Voting Rights Act, was as open as any government employee, on any level of government, who I have ever dealt with. Mr. Herren and other Department staff promptly reviewed and responded to all of my phone calls, faxes, and e-mails to make Section 5 compliance easier.

The responsibility for overseeing North Carolina Section 5 submissions has now been assumed by Attorney Yvette Rivera. Attorney Rivera was kind enough to call me in April to introduce herself and informed me of the change. I have no reason to believe that she will not continue the same excellent level of service than Mr. Herren did. In addition, I have had pleasant dealings with all USDOJ employees and staff since 2000, and I have not had any complaint from any North Carolina jurisdiction that deals with the USDOJ to the contrary. The cooperative and efficient performance by the USDOJ has facilitated the cost effective and efficient submission of voting changes under Section 5 by me and election officials from North Carolina jurisdictions.

Forty North Carolina Counties are subject to Section 5 of the Voting Rights Act. Wake County was originally included but bailed out by showing that non-citizen prisoner population was inadvertently used to calculate the County's original coverage under Section 5.

Most of the covered counties are located in the Northeastern section of North Carolina extending south from the Virginia line to the middle of the state and extending to just east of Interstate 95. In addition, there is a grouping of covered counties along the central southern border with South Carolina. There are seven Piedmont counties covered along the central northern border with Virginia, and one Mountain county (Jackson) covered under Section 4(f)(4) of the Voting Rights Act as a result of the Cherokee Indian population. Guilford County, which includes the cities of Greensboro and High Point, is the most populous covered county.

The responsibilities for making Section 5 submissions are set out by Article 6A of Chapter 120 of the North Carolina General Statutes. North Carolina has concisely described what must be included with preclearance requests, which has significantly streamlined the preclearance process by ensuring that voting changes are properly submitted the first time by following USDOJ guidelines. GS § 120-30.9B gives the North Carolina State Board of Elections responsibility for submitting voting changes codified in statewide statutes. In addition, all actions, policies, rules and procedures made or taken by the State Board of elections that are changes affecting voting are submitted by our agency. GS § 120-30.9C gives the North Carolina Administrative Offices of the Courts responsibility for submitting changes affecting voting in judicial elections and districts. GS § 120-30.9D gives the North Carolina Secretary of State responsibility for submitting changes affecting voting that may be found in constitutional amendments. GS § 120-30.9E gives to county attorneys, GS § 120-30.9F gives to municipal attorneys, and GS § 120-30.9G gives to school board attorneys the responsibility for submitting changes affecting voting in their respective jurisdictions. In addition, the North Carolina Attorney General has the authority under GS § 120-30.9I to submit a voting change not timely made or submitted by an agency or jurisdiction. By practice, this alternate submission authority of the N.C. Attorney General has been used to have that office submit Congressional and Legislative redistricting acts and issues.

In my experience, Section 5 works effectively and efficiently. Generally, any delays in preclearance fall into four areas attributable to actions by the submitting jurisdiction: local governmental units not submitting voting changes or submitting them on a tardy basis; submissions that fail to provide the information required by state law or USDOJ regulations/guidelines to facilitate the Section 5 review process; failure to identify relevant circumstances or evidence that may delay consideration of the submission; and failure to promptly communicate with USDOJ in response to a request for additional information.

Occasionally, a county, municipal, or school board attorney may fail to submit a voting change for Section 5 preclearance either because they overlook it or they do not know about the process. This is especially true for smaller jurisdictions that have infrequent voting changes. The Board of Elections has made an effort to have local county board of election directors reach out to local government counsel in their counties to remind them of their submission responsibilities. This agency has offered and continues to offer any local government counsel information and guidance to any local jurisdiction about submissions, including sending them prior submissions that they can use as a model for their own submissions. When necessary, this agency will intervene with the USDOJ on behalf of a local jurisdiction that was late in submitting its submission, and needs expedited review before the end of the usual 60 day period. We have never had a situation where the USDOJ has failed to cooperate with our agency or local government to ensure that a preclearance issue did not delay an election.

Local government counsel also may not be aware of the requirements for the contents of a submission or when a submission is required. Each year the North Carolina State Board of Elections produces a new or supplements an existing election laws book that goes to every county election director, every county board of elections board member, most county attorneys, and other interested parties. This 1500 page volume, which includes both the full text of all state and federal elections laws, including the Voting Rights Act as well as the USDOJ regulations dealing with Section 5, CFR §§ 51-1 through 67. We have found this very helpful in allowing us to direct persons to the proper area of federal law and regulations if they have a question as to Section 5. As stated above, this agency also provides previously used preclearance submissions as models to be used. There are usually four statewide training educational sessions in even number years, and three in odd number years for county election administrators. Issues pertaining to Section 5 and the Voting Rights Act have been presented at these meetings, and will continue to be addressed as needed.

Furthermore, a delay in obtaining preclearance sometimes occurs when unusual circumstances are present in a preclearance matter that requires the USDOJ to take a closer look at the submission. It is always best to disclose to the USDOJ all aspects of a matter being submitted for preclearance, including identifying persons in the community who might be opposed to preclearance. The USDOJ has developed expertise and contacts that generally allows them to independently gauge the feelings of community groups and leaders as to a matter. Sometimes local jurisdictions do not provide the "total picture" regarding a submission because of an attitude of "what I don't tell them, they will never know." Such a submission delays the USDOJ review and hurts the creditability of the submitting local jurisdiction.

It is embarrassing to admit, but sometimes local jurisdictions delay responding to requests for additional information from the USDOJ. The USDOJ is to be complimented because it facilitates submissions by following up with the jurisdictions in a regular and professional manner, often without results. If the Board of Elections learns of such a situation, we will let the non-responding jurisdiction know that they need to respond and work with them to provide all required information.

The costs of preclearance submissions are insignificant, except for redistricting submissions, which entail a large amount of detailed demographic information and election data. These redistrictings generally occur on a state, county, or municipal level once every ten years since they follow the release of the new census data. So even if they are large submissions, they are very infrequent. Any added costs for redistrictings and related submissions are justified because they have a significant impact on minority voters for the next ten years. Submissions of municipal annexations also are larger than a normal submission because of required population data, but these submissions also tend to be infrequent events. Like redistrictings, annexations have long-term consequences on minority voters that require taking a close look at them before they are implemented.

The "average" submission using the form guidelines in Subpart B of Part 51 of the CFR usually takes less than an hour to prepare and mail. The ease and cost of such submissions also improves with the use of previous submissions in an electronic format to prepare new submissions. In my experience, most submissions are routine matters that take only a few minutes to prepare using electronic submission formats readily available to me.

Many jurisdictions in North Carolina have staff counsel that prepare submissions as part of their ongoing duties, so additional costs are not incurred in those situations. The costs of submissions are significantly reduced by ensuring that they are promptly and correctly submitted the first time.

I am informed that some opponents criticize Section 5 for purportedly place a "burden" on covered jurisdictions. Their criticism is misplaced. Prior to a 2005 conference on the Voting Rights Act, I communicated with election officials in a dozen North Carolina counties about their opinions of the benefits and any burdens of Section 5 preclearance. Out of the dozen, only one county elections director stated that he desired that Section 5 not be renewed. The remainder of the directors viewed Section 5 as a manageable burden providing benefits in excess of costs and time needed for submissions. Since that time, I have occasionally discussed this issue with more affected directors, and the consensus of support for Section 5 continues to be very strong. These directors cite the following benefits:

? Section 5 can vindicate governmental units from allegations of discrimination or adverse racial effects. It provides a "seal of approval" that a voting change is not discriminatory because the USDOJ has precleared the change.

? Section 5 prevents actions that would have a discriminatory impact from going into effect, ensuring that all voters have equal opportunities to participate free of discrimination. Section 5 is much more cost effective and efficient than litigation regarding voting changes, which is expensive to both the submitting jurisdiction and the plaintiffs. In the meantime, the plaintiffs - and, in fact, all voters - suffer the discriminatory impact of the voting change during the several years it can take to bring a successful court challenge. Preventing this sort of expense, delay, and discriminatory implementation was the main reason Section 5 was enacted to begin with.

? Section 5 facilitates planning and administration of special elections. Preparation of special elections must be done well in advance. The longer an election is set prior to its running, the easier it is for the election administrator. Elections that need preclearance can be shielded from "last minute" adjustment than may burden the election administrator.

Favorable quotes from some of the North Carolina county election directors include:

? "I would hate to operate without it"

? Preclearance requirements are "routine...do not occupy exorbitant amount of time, energy, or resources"

? " I can always fall back on Section 5" as to my actions

? "It allows us an opportunity to assure the public that minority rights are being protected...and that someone is independently validating those decisions"

? "The history of \_\_\_\_\_ County causes our operations to be scrutinized and rightfully so. The first black to serve on the board of elections was 1991"

To the extent some critics argue there is a perceived "stigma" from being a Section 5 covered county, that argument does not dampen the strong overall support of the Voting Rights Act Section 5 provisions by the vast majority of our affected county election directors.

#### Minority Languages

Section 203 language assistance voting requirements only apply to one county in North Carolina. Although we have a growing Hispanic population, as of the 2000 Census the number of Hispanic voting age citizens has not grown to the extent to bring North Carolina within its coverage. North Carolina has passed a statute, GS 163-165.5A, which requires ballot instructions, not the ballots themselves, to be available in Spanish in counties that have a Hispanic population (regardless of citizenship) of 6% or more. In addition, although no counties are required to have Spanish ballot instructions, most of them volunteer to do so because it facilitates voter participation.

North Carolina has one precinct covered under Section 4(f) (4) of the Voting Rights Act, the Qualla Precinct in Jackson County. Because of the Cherokee Indian population in that precinct, a Cherokee Language translator is present at the precinct at every election. There is no written language requirement because Cherokee is a historically unwritten language. There is no added cost because the translator is also a poll worker who is paid the same as other poll workers.

#### Election Monitors

North Carolina has experienced the presence of election monitors, but has not had any negative feedback from USDOJ in recent decades as to anything they observed or found during the course of an election. They operate in a manner that does not hinder or interfere with local election operations. In the process, federal observers facilitate compliance with the Voting Rights Act, calm emotions in a heated election, and help prevent discrimination from occurring in the polls.

#### Conclusion

Although there is less voting discrimination today in North Carolina than there was when the Voting Rights Act was enacted, I feel there is no reason, based upon cost, time, and any alleged "burden," to choose not to renew the temporary provisions. The "burden" upon North Carolina and its covered forty counties is not great especially in view of the benefits I have set out in this document. Besides the tangible "burden" Congress may weight in its consideration of renewal, there are the intangible values that a renewal maintains. Regardless of one's position on renewal, there is a consensus that the temporary provisions have had the effect of moving the consideration of adverse effects on the voting rights of minorities to the "front of the bus," as opposed to the "rear of the bus" where it was for much too long. There also continue to be instances in which Section 5 prevents discriminatory voting changes from being implemented in North Carolina. To tamper with these temporary provisions may jeopardize the substantial progress minorities have made in our State. We have come too far to go back to where we started and to

send minorities back to the rear of the bus. It is too important to the legitimacy of our Democracy not to protect the right of all American citizens to participate, regardless of their race, color, creed, ethnicity, or native language.