



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 14, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find attached responses to questions arising from the May 10, 2006, appearance of Assistant Attorney General Wan Kim before the Committee concerning modern enforcement of the Voting Rights Act. We hope that this information is useful to the Committee.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William E. Moschella
Assistant Attorney General

Attachment

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Chairman Specter

- 1) How many times have covered States or jurisdictions failed to submit pre-clearance changes?

We have attached a list of instances where the Department has written to State and local authorities to request that they submit an unprecleared voting change for Section 5 review. This list, of course, may not be comprehensive of every covered State's or jurisdiction's failure to submit changes for preclearance under Section 5 of the Voting Rights Act.

- 2) Before Congress may enact preventive legislation under the Fourteenth and Fifteenth Amendments, it must establish a record of State misconduct that violates the Constitution. See *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997); *Fla. Prepaid Postsecondary Education Expense Bd. v. College Savings Bank*, 527 U.S. 627, 644-46 (1999); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 64-65 (2000). Please provide all instances in which the Department of Justice found that a State or covered jurisdiction acted unconstitutionally?

We have attached a list of the cases in which the Voting Section of the Civil Rights Division has participated since 1976, as well as a disk containing copies of selected complaints and final orders in cases brought by the Voting Section under Sections 2 and 208 of the Voting Rights Act. This list includes many cases in which the Department did not allege intentional discrimination, and cases in which courts ultimately found that the State or covered jurisdiction had acted constitutionally.

In a number of the cases under Section 2 of the Voting Rights Act, the Department has alleged that States or covered jurisdictions have engaged in intentional discrimination in a manner that could violate the Fifteenth Amendment. Examples include the following:

<i>U.S. v. Conecuh County</i>	<i>S.D. Ala.</i>	<i>10/21/83</i>
<i>U.S. v. City of Bessemer</i>	<i>N.D. Ala.</i>	<i>04/10/84</i>
<i>U.S. v. Pike County</i>	<i>M.D. Ala.</i>	<i>05/11/84</i>
<i>U.S. v. Tallapoosa County</i>	<i>M.D. Ala.</i>	<i>11/12/93</i>
<i>U.S. v. City of Newport News</i>	<i>E.D. Va.</i>	<i>10/26/94</i>
<i>U.S. v. City of Baton Rouge</i>	<i>M.D. La.</i>	<i>01/24/96</i>
<i>U.S. v. City of Cambridge</i>	<i>D. Md.</i>	<i>12/05/84</i>
<i>U.S. v. Los Angeles County</i>	<i>C.D. Cal.</i>	<i>09/08/88</i>
<i>U.S. v. City of Memphis</i>	<i>W.D. Tenn.</i>	<i>02/15/91</i>
<i>U.S. v. City of Baton Rouge</i>	<i>M.D. La.</i>	<i>01/24/96</i>
<i>U.S. v. Day County and Enemy Swim Sanitary Dist.</i>	<i>D.S.D.</i>	<i>05/10/99</i>
<i>U.S. v. Town of Cicero</i>	<i>N.D. Ill.</i>	<i>03/13/00</i>

The failure to allege intentional discrimination of course does not necessarily mean that such intentional discrimination was not present. In some instances, additional information may become available after filing that establishes that the discrimination was intentional.

A number of cases filed under under Section 203 of the Voting Rights Act also have been brought in circumstances involving a allegations of intentional discrimination. These include:

<i>U.S. v. State of New Mexico and Sandoval County, NM</i>	<i>D.N.M.</i>	<i>12/5/88</i>
<i>U.S. v. Cibola County</i>	<i>D.N.M.</i>	<i>09/27/93</i>
<i>U.S. v. Socorro County</i>	<i>D.N.M.</i>	<i>10/22/93</i>
<i>U.S. v. Alameda County</i>	<i>N.D. Cal.</i>	<i>04/13/95</i>
<i>US v. Passaic County, NJ</i>	<i>D.N.J.</i>	<i>06/02/99</i>

Other Section 203 cases, while not including such allegations of intentional discrimination, have involved conduct that violates the Constitution. See, e.g., United States v. City of Boston, (D.Mass.2005); United States v. Berks County, (E.D. Pa. 2003). We have attached a disk containing letters to local election officials that describe more fully the nature of conduct documented by the United States in its Section 203 investigations.

3) On May 10, 2006, I had the following exchange with you:

Chairman Specter: Mr. Kim, as you know, Federal regulations require that jurisdictions covered under Section 203 provide bilingual materials to all voters or to develop "an effective targeting system" to identify "persons who are likely to need them." Recently, the House Subcommittee on the Constitution found that an elected official from Orange County, California, claimed that the Department of Justice requires States to send bilingual materials to any voter with a Spanish-sounding surname. That has an overtone of racial profiling, assuming that anyone with a foreign-sounding surname cannot speak the language, regardless of how long they have lived here. Does the Department of Justice enforce such a policy? Why doesn't the Department of Justice simply require States to send bilingual ballots to those voters the census lists as needing assistance? Or is the census adequate to pinpoint the need for that kind of assistance?

Mr. Kim. Mr. Chairman, to answer the first part of your question, no, the Department of Justice does not make such a requirement."

On May 4, 2006, however, the Department of Justice submitted testimony to the House Subcommittee on the Constitution stating:

“We fully recognize that comparing voter registration lists to the Census Bureau’s Spanish surname list, place of birth data, or other data are imperfect measures of the language need in a precinct. We use such data as a first cut to simply raise “red flags” for follow-up in our investigations. We also suggest it as a convenient starting point for local election officials in trying to determine how and where best to meet the needs of their voters. We encourage them to further refine their plans from this starting point based on their knowledge of their jurisdiction and on conversations with local minority community members.” Rena J. Comisac, Principal Deputy Assistant Attorney General of the Civil Rights Division, United States Department of Justice (May 4, 2006).

Please explain what use the Department of Justice makes of Spanish surnames in enforcing section 203’s provisions regarding bilingual election materials.

The Department of Justice did not require Orange County to send election materials in Spanish to voters with Spanish surnames. The Department did not require Orange County to send a mailing to each voter with respect to minority language materials. Nor did the Department require or support sending copies of materials to each registered voter in five languages.

Section 203(c) requires covered jurisdictions to provide election materials “in the language of the applicable minority group as well as in the English language.” To avoid burdening covered jurisdictions with the unnecessary expense of providing bilingual election materials to all voters, the Department recommends targeting minority language materials and information to those who need them in a practical, efficient and effective manner. In this regard, Spanish (and other minority) surname lists can be a useful tool. The Department supports – but does not require – using them in a careful and appropriate manner.

The Census Bureau does not identify those persons in covered jurisdictions with limited English proficiency and a consequent need for minority language materials. Rather, the Census Bureau only provides local jurisdictions with the total number of voting age citizens within the jurisdiction who are of a particular language group and who meet the statutory test of limited English proficiency. In Orange County, for example, the Census Bureau reported the following totals:

Hispanic	64,385
Vietnamese	45,730
Chinese	14,805
Korean	12,240

The Census Bureau did not tell the County where these people reside. Determining the location of these persons among the 2.8 million residents of Orange County fell to the County, and a similar task fell to other similarly situated counties.

Voter registration data at the precinct level is the best starting point for election officials; it excludes non-citizens and other non-voters, and is the fundamental building block of election administration. Registration lists also may include self-reported ethnicity data, as in Florida, and may include voters' place of birth, as in parts of California. Along with this data, surname lists offer a means of locating those precincts that are likely to include voters who speak a particular minority language and do not speak English well enough to participate in the political process. While a particular surname tells a county nothing about the language skills of a particular voter, a county that seeks to locate registered voters who speak Vietnamese logically could most effectively look among those precincts with substantial numbers of Vietnamese-surnamed voters. From that starting point, the local election officials can efficiently conduct further inquiry to determine the actual needs of the voters in those particular precincts. The surname - or ethnicity or place of birth analysis - is a tool that may help election officials comply with Sections 203 and 4(f)(4).

Surname analysis is used by many local officials. The Secretary of State for the State of Texas, for example, provides Spanish surname analysis to each county elections office in the State to assist local officials in compliance with State law, which requires a bilingual poll worker where five percent or more of registered voters have Spanish surnames

The Department of Justice uses surname lists and other data in the same manner. The Department does not rely on assumptions, but rather, upon reliable evidence that is admissible in a federal court. We fully recognize that comparing voter registration lists to the Census Bureau's Spanish surname list, place of birth data, or other data are imperfect measures of the language need in a precinct. Like local officials, we use it as a convenient starting point in trying to determine how and where best to meet the needs of their voters. Further investigation as to the language needs of a given precinct and the treatment of minority language voters in that precinct permit us to calibrate the requirements of the Voting Rights Act as necessary.

**Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Senator Sessions**

Questions for Assistant Attorney General Kim:

1. It is well known, as you testified, that nine States are covered as a whole by the section 5 preclearance requirement and seven States are covered in part. *See* 28 C.F.R. pt. 51 app. (2005). How many counties, parishes, cities, towns, and other distinct governmental units are covered in each of the States covered in whole or in part by the section 5 preclearance requirement? Please categorize your response to identify the numbers of counties, cities, towns, etc., separately for each State.

The number of jurisdictions covered by Section 5 is:

<i>Alabama</i>	<i>67 Counties</i>
<i>Alaska</i>	<i>16 Boroughs</i>
<i>Arizona</i>	<i>15 Counties</i>
<i>California</i>	<i>4 Counties</i>
<i>Florida</i>	<i>5 Counties</i>
<i>Georgia</i>	<i>159 Counties</i>
<i>Louisiana</i>	<i>64 Parishes</i>
<i>Michigan</i>	<i>2 Townships</i>
<i>Mississippi</i>	<i>82 Counties</i>
<i>New Hampshire</i>	<i>8 Towns, 1 Township, 1 Grant</i>
<i>New York</i>	<i>3 Counties</i>
<i>North Carolina</i>	<i>40 Counties</i>
<i>South Carolina</i>	<i>46 Counties</i>
<i>South Dakota</i>	<i>2 Counties</i>
<i>Texas</i>	<i>254 Counties</i>
<i>Virginia</i>	<i>87 Counties</i>
	<i>38 Independent Cities</i>

The Virginia figures account for the 8 counties and 3 independent cities that have filed successful bailout actions.

The Department does not maintain statistics on the number of cities and other political subdivisions within the covered counties. The number of such subdivisions varies considerably from State to State. This is a matter of State and local law; and in some States, may include elective special purpose districts (e.g., utility districts, fire districts, water districts, and the like) in addition to the more common municipal and school system elected bodies.

2. I am aware that certain counties and cities in Virginia have “bailed out” under section 4(a) of the Voting Rights Act, while the Commonwealth of Virginia itself remains a covered jurisdiction. So, it is correct, is it not, that a county that meets the bailout criteria can

bail out under section 4(a) although the covered State in which the county is located is not seeking bailout, and although the State itself might not qualify for bailout? Is the same true for a town within a county? In other words, could a town bail out even though the covered county in which it is located could not?

Under the Act, a county within a covered State can file a successful bailout action separate from the State. Current law, however, does not permit a city and other political subdivisions within a covered county to separately bailout of coverage. Section 4(a)(1) of the statute allows bailout by a "political subdivision" of the State, which is defined in section 14(c)(2) as a "county or parish, except where registration and voting is not conducted under the supervision of a county or parish" -- as, for example, in certain States in which counties do not have a role in election administration.

3. There has been testimony in the House of Representatives regarding "bailout" under section 4(a). In particular, there was testimony that, in most of the successful bailout proceedings so far, the jurisdiction had some voting changes that had not been precleared, and had to submit them as part of the bailout process.

It appears that the Department of Justice has, consistent with congressional intent, taken a commonsense approach to satisfying the bailout criteria by agreeing to allow cities and counties to bail out although there had been some oversights in compliance, provided those oversights were cured before bailout was granted. See S. Rep. No. 97-417, at 48 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 226 ("Courts and the Department of Justice have used, and would continue to use, common sense on changes that are really *de minimis*."). Will the Department continue to take this approach if section 4(a) is reauthorized?

The Department of Justice has approached the bailout provisions in a manner consistent with its text and congressional intent. The Department will continue to do so with respect to all provisions of the Act, including Section 4(a).

Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Senator Cornyn

1. What empirical data can you cite that indicates the ability of minorities in the covered jurisdictions to participate fully in the electoral process is substantially different from minorities outside the covered jurisdictions? Please be specific with respect to covered jurisdictions vs. non-covered jurisdictions.

(1) The Department of Justice, as a law enforcement agency, deals with specific matters on a case by case basis, with a focus on compliance or non-compliance in a particular jurisdiction based on particular facts. While we lack information regarding voting changes in non-covered jurisdictions, as compared to those submitted under Section 5 by covered jurisdictions, we have attached a list of all lawsuits in which the Voting Section of the Civil Rights Division has participated since 1976.

2. Currently, the Voting Rights Act identifies those jurisdictions subject to additional oversight by looking at voter turnout in the presidential elections of 1964, 1968, and 1972. Re-authorization of the Act in its current form would preserve these dates as the “triggers.”
 - a. Would you support updating the coverage formula to refer to the Presidential elections of 2000 and 2004, instead of 1964, 1968, and 1972? Why or why not?
 - b. Would you support adding the Presidential election of 2000 and/or 2004 as well as any political subdivisions that have been subject to section 2 litigation say, in the last 5 years, to this formula in order to pick up jurisdictions that have begun discriminating since the 1970s? Why or why not?

In *City of Boerne v. Flores*, the Supreme Court indicated that Congress may not rely on data over forty years old as a basis for legislating under the Fourteenth and Fifteenth Amendments. *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997). In striking down the Religious Freedom Restoration Act, the Court observed, “RFRA’s legislative record lacks examples of modern instances of generally applicable laws passed because of religious bigotry.”

3. Given this statement, would you support removing – at a minimum – the year 1964 from the coverage formula? Why or why not?

(2) & (3) The Department of Justice supports reauthorization of the expiring provisions of the Voting Rights Act. In this instance, the crafting of legislation and the related policy decisions are for the Congress. Ultimately, the Department of Justice’s objective is to vigorously enforce the statute as enacted.

4. While I am still reviewing the record, it seems to me the arguments thus far focus mostly on anecdotes regarding specific covered jurisdictions – yet, for the period 1996 through 2005, the

Department of Justice reviewed 54,090 Section 5 submissions and objected to 72, or 0.153 percent. What percentage of objections below 0.153 do covered jurisdictions need to achieve before Congress can let Section 5 expire? Last year, according to DOJ data, there was only 1 objection out of 4734 submissions. Is that sufficient to warrant Section 5 coverage? Why or why not?

(4) The Department of Justice supports reauthorization of the expiring provisions of the Voting Rights Act. In this instance, the crafting of legislation and the related policy decisions are for the Congress. Ultimately, the Department of Justice's objective is to vigorously enforce the statute as enacted.

5. In light of the lack of clear differentiation between covered jurisdictions and non-covered jurisdictions, would you support re-authorization for a term of 5 years instead of 25? Why or why not? 10 years? Why or why not?

(5) The Department of Justice supports reauthorization of the expiring provisions of the Voting Rights Act. Section 5 of the Voting Rights Act was originally enacted for five years; and extended for five, seven and twenty-five years in 1970, 1975 and 1982, respectively. In this instance, the crafting of legislation and the related policy decisions are for the Congress. Ultimately, the Department of Justice's objective is to vigorously enforce the statute as enacted.

6. Putting aside the constitutional questions with regard to overturning *Georgia v. Ashcroft* – I want to better understand some of the practical implications.

Assuming the new language in the re-authorization is adopted, would it be your view that even districts that are “influence” districts, with relatively low numbers of minority voters, should be protected under the plan? Why or why not?

(6) The Department of Justice will look to the final language of the statute as enacted in enforcing the Act, as well as to any relevant legislative history and judicial decisions. Ultimately, the Department of Justice's objective is to vigorously enforce the statute as enacted.

**Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Senator Coburn**

Section 5: Pre-clearance

1. On October 25, Acting AAG Brad Schlozman testified that DOJ reviews 4,000 to 6,000 pre-clearance submissions each year but objects to only a handful. For example, in 2004, your division reviewed 5,211 submissions and objected to only 3 – less than .0006%.
 - a. Do you think it might make sense for the Division to review fewer voting changes?
 - b. Do you think it would be wise to only review a voting change if a voter lodges a complaint?
 - c. Alternatively, should we create certain de minimis exceptions? For example, if a polling place is moved less than one-tenth of a mile, DOJ will not review the move unless a voter complains,

The Department of Justice supports reauthorization of the expiring provisions of the Voting Rights Act. In this instance, the crafting of legislation and the related policy decisions are for the Congress. Ultimately, the Department of Justice's objective is to vigorously enforce the statute as enacted.

2. What percentage of the DOJ objections over the past 10 years involved unconstitutional behavior by a State or jurisdiction?

We have attached a list of the cases in which the Voting Section of the Civil Rights Division has participated since 1976, as well as a disk containing copies of selected complaints and final orders in cases brought by the Voting Section under Sections 2 and 208 of the Act. This list includes many cases in which the Department did not allege intentional discrimination, and cases in which courts ultimately found that the State or covered jurisdiction had acted constitutionally.

In a number of the cases under Section 2 of the Voting Rights Act, the Department has alleged that States or covered jurisdictions have engaged in intentional discrimination in a manner that could violate the Fifteenth Amendment. Examples include the following:

U.S. v. Conecuh County	S.D. Ala.	10/21/83
U.S. v. City of Bessemer	N.D. Ala.	04/10/84
U.S. v. Pike County	M.D. Ala.	05/11/84
U.S. v. City of Cambridge	D. Md.	12/05/84
U.S. v. Tallapoosa County	M.D. Ala.	11/12/93
U.S. v. City of Newport News	E.D. Va.	10/26/94

<i>U.S. v. City of Baton Rouge</i>	<i>M.D. La.</i>	<i>01/24/96</i>
<i>U.S. v. City of Cambridge</i>	<i>D. Md.</i>	<i>12/05/84</i>
<i>U.S. v. Los Angeles County</i>	<i>C.D. Cal.</i>	<i>09/08/88</i>
<i>U.S. v. City of Memphis</i>	<i>W.D. Tenn.</i>	<i>02/15/91</i>
<i>U.S. v. City of Baton Rouge</i>	<i>M.D. La.</i>	<i>01/24/96</i>
<i>U.S. v. Day County and Enemy Swim Sanitary Dist.</i>	<i>D.S.D.</i>	<i>05/10/99</i>
<i>U.S. v. Town of Cicero</i>	<i>N.D. Ill.</i>	<i>03/13/00</i>
<i>U.S. v. City of Hamtramck</i>	<i>E.D. Mich.</i>	<i>08/04/00</i>

The failure to allege intentional discrimination of course does not necessarily mean that such intentional discrimination was not present. In some instances, additional information may become available after filing that establishes that the discrimination was intentional.

A number of cases filed under under Section 203 of the Voting Rights Act also have been brought in circumstances involving a allegations of intentional discrimination. These include:

<i>U.S. v. State of New Mexico and Sandoval County, NM</i>	<i>D.N.M.</i>	<i>12/5/88</i>
<i>U.S. v. Cibola County</i>	<i>D.N.M.</i>	<i>09/27/93</i>
<i>U.S. v. Socorro County</i>	<i>D.N.M.</i>	<i>10/22/93</i>
<i>U.S. v. Alameda County</i>	<i>N.D. Cal.</i>	<i>04/13/95</i>
<i>US v. Passaic County, NJ</i>	<i>D.N.J.</i>	<i>06/02/99</i>

Other Section 203 cases, while not including such allegations of intentional discrimination, have involved conduct that violates the Constitution. See, e.g., United States v. City of Boston, (D.Mass.2005); United States v. Berks County, (E.D. Pa. 2003). We have attached a disk containing letters to local election officials that describe more fully the nature of conduct documented by the United States in its Section 203 investigations.

Section 2: Permanent Provisions

3. How do DOJ prosecutions under Section 2 and other voting laws compare across the country? Are there significantly more in the covered jurisdictions than in the non-covered ones?

Attached is a list of all lawsuits in which the Voting Section of the Civil Rights Division has participated since 1976. The list reflects that most of the cases brought under the Voting Rights Act have been involved jurisdictions that are covered under Section 5; however, in recent years most of the cases have been brought in jurisdictions that are not covered under Section 5.

Section 203: Multi-lingual Ballots

4. Working with the Census Bureau, how do you determine how many people in a jurisdiction are of the same language minority? How do you determine that those people are also illiterate? Also, if the people do not read English well enough to vote, how do they complete the census?

The minority language determinations under the Voting Rights Act are made by the Census Bureau, and are based on its studies and its special expertise. Consistent with the plain language of the Act, the Department of Justice enforces the law based on those determinations. The Census Bureau is the best source for information on how it performs its statutory functions.

5. According to the 1986 GAO study: **46% of respondents** to the GAO's request for estimates on the use of oral minority language assistance said NO ONE used the assistance ("Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election," GAO, pp.32, 1986). Based on that information can you suggest a better way to meet the need for ballots in languages other than English?

The Department of Justice encourages jurisdictions to use channels of communication that are both effective and efficient. In our experience, a significant gap between the Census Bureau's determination of language need and the utilization of minority language materials stems from a failure to make such materials reasonably available to minority language voters.

6. What do you think would happen if ballot determinations were left to each local jurisdiction as is currently done in areas with less than 10,000 people or 5% of the population who are of the same language minority?

The Department of Justice cannot predict such matters with any certainty. While we have observed some jurisdictions that provide minority language materials even though they are not required to do so under the Voting Rights Act, we also have brought more lawsuits to enforce the language minority provisions of the Voting Rights Act in the past five years than in all previous years combined.

7. Have you received complaints of disenfranchisement because of language obstacles from jurisdictions not covered by Section 203?

*Yes. In appropriate circumstances, such a complaint may give rise to a lawsuit under Section 2 of the Voting Rights Act. See, e.g., *United States v. Osceola County, Florida* (M.D. Fl. 2002); *United States v. Berks County, Pennsylvania* (E.D. Pa. 2003); *United States v. City of Boston, Massachusetts* (D. Mass. 2005).*

8. During the May 10th hearing you told Chairman Specter that DOJ does not require surname analysis. However, on May 4th, DOJ submitted testimony to the House Judiciary Subcommittee on the Constitution recognizing that its use of surname analysis is imperfect.
- What is surname analysis used for?
 - Is it true that DOJ assumes that 25% of those with foreign surnames need voting assistance?
 - If the answer to “b” is yes, how do you determine which individuals need assistance and what type of assistance is provided?

(a) Section 203(c) requires covered jurisdictions to provide election materials “in the language of the applicable minority group as well as in the English language.” To avoid burdening covered jurisdictions with the unnecessary expense of providing bilingual election materials to all voters, the Department recommends targeting minority language materials and information to those who need them in a practical, efficient and effective manner. In this regard, Spanish (and other minority) surname lists can be a useful tool. The Department supports – but does not require – using them in a careful and appropriate manner.

The Census Bureau does not identify those persons in covered jurisdictions with limited English proficiency and a consequent need for minority language materials. Rather, the Census Bureau only provides local jurisdictions with the total number of voting age citizens within the jurisdiction who are of a particular language group and who meet the statutory test of limited English proficiency. In Orange County, for example, the Census Bureau reported the following totals:

<i>Hispanic</i>	<i>64,385</i>
<i>Vietnamese</i>	<i>45,730</i>
<i>Chinese</i>	<i>14,805</i>
<i>Korean</i>	<i>12,240</i>

The Census Bureau did not tell the County where these people reside. Determining the location of these persons among the 2.8 million residents of Orange County fell to the County, and a similar task fell to other similarly situated counties.

Voter registration data at the precinct level is the best starting point for election officials; it excludes non-citizens and other non-voters, and is the fundamental building block of election administration. Registration lists also may include self-reported ethnicity data, as in Florida, and may include voters’ place of birth, as in parts of California. Along with this data, surname lists offer a means of locating those precincts that are likely to include voters who speak a particular minority language and do not speak English well enough to participate in the political process. While a particular surname tells a county nothing about the language skills of a particular voter, a county that seeks to locate registered voters who speak Vietnamese logically could most effectively look among those precincts with substantial numbers of Vietnamese-surnamed voters. From that starting point, the local election officials can efficiently conduct further inquiry to

determine the actual needs of the voters in those particular precincts. The surname - or ethnicity or place of birth analysis - is a tool that may help election officials comply with Sections 203 and 4(f)(4).

Surname analysis is used by many local officials. The Secretary of State for the State of Texas, for example, provides Spanish surname analysis to each county elections office in the State to assist local officials in compliance with State law, which requires a bilingual poll worker where five percent or more of registered voters have Spanish surnames

The Department of Justice uses surname lists and other data in the same manner. The Department does not rely on assumptions, but rather, upon reliable evidence that is admissible in a federal court. We fully recognize that comparing voter registration lists to the Census Bureau's Spanish surname list, place of birth data, or other data are imperfect measures of the language need in a precinct. Like local officials, we use it as a convenient starting point in trying to determine how and where best to meet the needs of their voters. Further investigation as to the language needs of a given precinct and the treatment of minority language voters in that precinct permit us to calibrate the requirements of the Voting Rights Act as necessary.

(b) The Department does not assume that 25 percent of those with surnames indicating their membership in a covered language minority group need assistance in their native language to participate in the political process. The proportion of citizens who lack limited English proficiency varies considerably from jurisdiction to jurisdiction and among the various minority language populations.

9. How many covered jurisdictions have successfully "opted out" of the multilingual election requirements of the Voting Rights Act under Section 203(d)?
 - a. What were reasons for denying applicants?
 - b. How many jurisdictions have applied to be removed from Section 203 coverage?
 - c. Why might a jurisdiction not apply, even if their multi-lingual services are rarely used?

*One jurisdiction has successfully "opted out" of the minority language requirements of the Act under Section 203(d). In *Doi v. Bell*, 449 F. Supp. 267 (D. Hawaii 1978), the State of Hawaii conducted its own population survey in 1976 and was able to show, and the United States conceded, that the illiteracy rate of Japanese Americans in Maui County was lower than the national illiteracy rate. In its declaratory judgment action, Hawaii had sought bailout from Section 203 requirements for all coverage, but was able to satisfy the bailout standard only with respect to Japanese Americans in Maui County.*

Three jurisdictions -- Roosevelt County, Montana in 1976; Passamaquoddy Pleasant Point Indian Reservation, Maine in 1977; and Placer County, California in 1980 -- were unsuccessful in their bailout efforts because they were unable to prove that the illiteracy

rate of the covered group was equal to or lower than the national illiteracy rate. None of the jurisdictions is covered under the current statutory formula.

The Department of Justice is not in a position to speculate as to why a jurisdiction may not be seeking to bailout of coverage under Section 203(d).

Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Senator Leahy

1. You testified on May 10, 2006 before the Senate Judiciary Committee about the Justice Department's increased outreach to jurisdictions covered by the sections protecting language minorities.
 - a. Have those covered jurisdictions been responsive to your outreach and are all jurisdictions covered by Sections 203 and 4(f)(4) complying with the Voting Rights Act?
 - b. The Senate Judiciary Committee heard testimony on May 10, 2006 that Section 203 has never been enforced in Alaska. Has the Department of Justice reached out to Alaska to help them comply with Section 203? Has Section 203 been enforced in Alaska?

(a) Many jurisdictions covered under Sections 203 and 4(f)(4) have been very responsive to the Department of Justice's outreach efforts. There has been a dramatic increase in these jurisdictions' voluntary compliance with the requirements that election information be made available through practical means, as well as the technical assistance offered by the Civil Rights Division's Voting Section. Following outreach by the Division, for example, the County of Los Angeles voluntarily added over 2,200 bilingual poll workers, for a 62 percent increase in their bilingual election-day staffing. In Texas, to cite another example, the Secretary of State was particularly helpful in providing a forum for the Department's outreach to election officials and voters in that State.

Not all covered jurisdictions, however, have been as responsive. Having placed every jurisdiction on direct and formal notice of its obligations under Sections 203 and 4(f)(4), the Department has still brought a record number of lawsuits since 2002 to obtain full compliance with these sections of the Voting Rights Act. The Department also has a number of active investigations, and continues both outreach and enforcement at unprecedented levels.

(b) The Department of Justice contacted election officials and members of minority language communities in the State of Alaska with respect to Section 203 both in the period immediately after the July 26, 2002 Census determinations of Section 203 coverage, as well as in other communications. The Civil Rights Division also monitored elections in one subdivision of the State of Alaska in November of 2004. To date, the Department has not brought a formal Section 203 enforcement action in that State. We remain vigilant to investigating, and where appropriate prosecuting, Section 203 violations wherever they are found to exist.

2. We have received testimony that only about a dozen jurisdictions have taken advantage of the "bail out" provisions in Section 4. It is interesting to note that

not one of the jurisdictions that have applied for bail out has been rejected. I understand that the Justice Department has issued guidelines and works closely with covered jurisdictions to help them comply with the pre-clearance process.

- a. Can you please describe what outreach, if any, the Department has conducted to inform jurisdictions about the mechanics and procedures for seeking bail out?
- b. Has the Justice Department considered issuing regulations to clarify how jurisdictions can bail out from coverage to make that process more user-friendly? Please explain why or why not.

(a) Since the Voting Rights Act was enacted in 1965, the Department of Justice's principal focus has been to enforce its requirements, and to work with state and local officials to make compliance as easy as possible. The Department of Justice has not conducted any coordinated outreach program targeted to inform local authorities of their option to seek a bailout.

(b) The Department of Justice has worked closely with each individual jurisdiction that has expressed an interest in obtaining a bailout. Our assistance has focused on helping the jurisdiction to fully develop a factual record on which a bailout could be based. As the Act vests responsibility upon the movant jurisdiction to seek and obtain a declaratory judgment from a federal court, and sets forth the requirements for a bailout, the Department has never issued regulations or advisory guidelines on that bailout procedure.

**Hearing Before the Senate Committee on the Judiciary
Modern Enforcement of the Voting Rights Act
Questions from Senator Kennedy**

Assistant Attorney General Wan Kim

1. Has the Supreme Court decision in Reno v. Bossier Parish School Board (Bossier II), which held that the Justice Department should not object to voting changes that have a discriminatory purpose, unless that purpose was an intent to “retrogress,” had an impact on the number of Justice Department objections raised since 2000?

The Supreme Court’s 2000 decision in Bossier II narrowed the grounds on which the Attorney General could interpose an objection to a voting change under Section 5. After Bossier II, the Attorney General could not interpose an objection to a voting change having no retrogressive effect and a non-retrogressive purpose. The Department of Justice has never maintained statistics on whether a different Section 5 preclearance determination would have been made under an alternative legal standard.

Index

- Tab 1 Requests for Submission of Unprecleared Voting Changes - January 1, 2001, through May 2006 by State
- Tab 2 Voting Section Cases in which the United States' Participation began since October 1, 1976
- Tab 3 Complete Listing of Objections Pursuant to Sections 3(c) and 5 of the Voting Rights Act of 1965