

# ALASKA FEDERATION OF NATIVES MONTHLY PRESIDENT'S REPORT



JUNE/JULY 2014  
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## DEAR AFN CO-CHAIRS, BOARD MEMBERS & MEMBERSHIP,

The end of June and the first week of July were dedicated to advancing voting rights for our rural and remote communities. Working closely with the ANCSA Regional Association, Get Out the Native Vote (GOTNV), the State of Alaska, Division of Elections, we established an incredible 128 new absentee, in-person and early voting sites where they are needed most -- across Alaska's rural communities. Our collective efforts made headlines all over Alaska and in the Lower 48. Read the latest from Indian Country Today (published July, 15th) at: <http://bit.ly/1mYCrng>. The US Department of Justice is following our progress closely and will step in, if needed.

A lot of news was generated by the willingness of rural Alaskans to stand up for their communities and line up new options for their people in voting. For most of urban Alaska, absentee and early voting has been expected and easy to do – for rural Alaska, it took serious and concentrated efforts to make this happen. This took place in the midst of the federal court trial in the case *Toyuk v Treadwell* – on language access to voting materials in which the Native community was pitted against the State of Alaska. We are still waiting for the federal district court decision and expect it shortly. (see insert on page 2).

We thank all of the villages and tribal governments that agreed to take on absentee, in-person and early voting duties, and the individuals who have agreed to serve as absentee polling site workers. This achievement will improve Alaska Natives' voter access. I have included a full list of the new absentee and early voting sites and more about our activities related to voting rights on page five of this report.

Now that we have early voting, let's get out the vote! Please remember to vote in the upcoming Primary Election on August 19th. See page 5 for further details.

Thank you for your ongoing work for our communities.

Sincerely,

Julie Kitka, President | Alaska Federation of Natives

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## UPCOMING

### COMMITTEE MEETINGS

#### SUBSISTENCE

AUGUST 1, 2014

#### CAAN

AUGUST 1, 2014

#### CONVENTION COMMITTEE

AUGUST 19, 2014

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## TOYUKUK V. TREADWELL ATTORNEY: NATALIE LANDRETH & ERIN DOUGHERTY

### Case Update

On July 19, 2013, the Native American Rights Fund (NARF) and national law firm Wilson Elser, acting on behalf of two tribal councils and two Alaska Native voters, filed suit in federal court charging state elections officials with ongoing violations of the federal Voting Rights Act and the United States Constitution. The suit claims state officials have failed to provide oral language assistance to citizens whose first language is Yup'ik, the primary language of many Alaska Natives in the Dillingham and Wade Hampton regions.

Lead plaintiff Mike Toyukuk of Manokotak Village explained through a translator that he needed to receive voting information in Yup'ik so “[he] would be able to understand what [he’s] voting for.”

Plaintiff Fred Augustine of the Village of Alakanuk elaborated, saying through a translator, “Sometimes I wonder if my votes count. Poll workers speak to me in English, but I don’t understand. I didn’t understand any of the ballots but I still voted. We go to vote and vote, but we don’t know what to do and how to vote.”

In the complaint, filed in federal district court in Anchorage, Mr. Toyukuk of Manokotak, Mr. Augustine of Alakanuk, the Native Village of Hooper Bay, and the Traditional Village of Togiak asked the court to order state election officials to comply with the language assistance provisions of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution.

The relief they requested includes implementing procedures in the Dillingham and Wade Hampton areas similar to those secured by Alaska Natives in the Bethel area in the Nick, et al. v. Bethel, et al. litigation, requiring state election officials to obtain approval from the federal court or the Attorney General of the United States for any changes in those procedures, and to appoint federal observers to oversee future elections in the two regions. “Language assistance” requires translating ballots and other election materials and information into Yup'ik and providing trained bilingual staff to register voters and to help voters at the polls through complete, accurate, and uniform translations.

Natalie Landreth, Senior Staff Attorney with the Native American Rights Fund, said: “The law requires state elections officials to provide oral language assistance to voters in Yup'ik and all of its dialects in all covered regions of Alaska, including Dillingham and Wade Hampton. Without complete, accurate, and uniform translations, the right to register and to vote is rendered meaningless for many Native voters.” *Source NARF website.*

**As this report goes out, we are waiting for the Federal Court to rule. Please stay tuned for further updates.**

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## CONVENTION UPDATE

### Planning and Fundraising

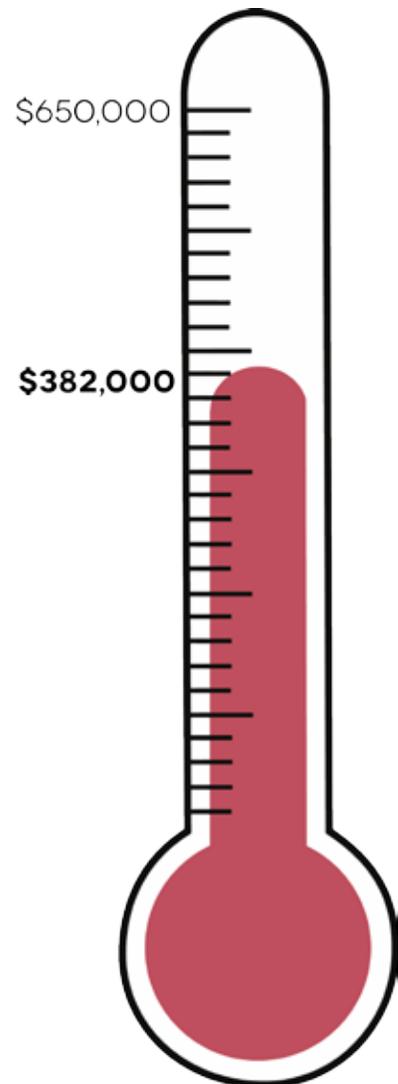
The Convention Committee's private fundraising goal is \$650,000. Thanks to you, we have now raised \$382,000 toward that goal!



Special thanks to our top three Denali sponsors:



ANCHORAGE CONVENTION  
& VISITORS BUREAU



Every year, our sponsors help us gather the nations largest convening of Native leaders, national and international observers, invited guests, speakers and attendees. And every year we show our sponsors love.

AFN sponsors are provided with media acknowledgment, outreach, branding, and exhibiting depending on level of sponsorship. Please contact our office at 907-274-3611 or visit [nativefederation.org](http://nativefederation.org) to discuss the benefits of becoming an AFN Sponsor.

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## TAKE ACTION

### CALL FOR DANCE GROUPS

WE INVITE DANCE GROUPS TO  
FILL OUT OUR INTEREST FORM  
AT:

[WWW.NATIVEFEDERATION.  
ORG/ANNUAL-CONVENTION/  
QUYANA/](http://WWW.NATIVEFEDERATION.ORG/ANNUAL-CONVENTION/QUYANA/)

### REMINDER: DELEGATE PRE- REGISTRATION IS OPEN NOW

REGISTER ONLINE AT: [HTTP://  
WWW.NATIVEFEDERATION.  
ORG/ANNUAL-CONVENTION/  
DELEGATES/](http://WWW.NATIVEFEDERATION.ORG/ANNUAL-CONVENTION/DELEGATES/)



*Thanks to Sheri Buretta for providing great leadership as the Chair of AFN's 2014 Convention Committee! The Committee will meet again in early August, so stay tuned for more exciting updates in the next report!*

## CONVENTION UPDATE

### Thank You to Our Growing List of Sponsors:

GCI

Visit Anchorage

ExxonMobil

Alaska Airlines

Shell Exploration & Production Company

Arctic Slope Regional Corporation

Chugach Alaska Corporation

Alaska Seafood Marketing Institute

Afognak Native Corporation

Alaska Native Tribal Health Consortium

Donlin Gold

Ilisagvik College

KeyBank

Bristol Bay Native Corporation

Lynden

Sam's Club

Bristol Bay Native Association

Chenega Corporation

BDO USA, LLP

Fairbanks Convention & Visitors Bureau

Alaska Travel Industry Association

Aleutian Pribilof Island Community Development Association

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## NATIVE VOTE

### Greater Involvement from DOJ as Result of AFN Requests

AFN Co-Chairs Ana Hoffman, and Tara Sweeney, Julie Kitka, AFN President, and other Board Members have been engaged with the US Department of Justice over the last few months on a number of critical areas affecting Alaska Natives. One issue, which was raised with DOJ officials in Washington DC meetings in May, included voting rights. AFN urged the DOJ to support federal legislation including Alaska Natives in light of the roll-back of protections in the US Supreme Court decision in *Shelby County v Holder*.

As a result of AFN's meetings, an internal conversation started within the DOJ of what they could do within the resources and options available. Unexpectedly, AFN's concerns got the attention of the top DOJ official, Attorney General Eric Holder. With the active assistance of Assistant Attorney General Tony West and his legal colleagues, AG Holder made a surprise announcement on June 9th, to coincide with NCAI's Mid-Year Conference in Anchorage:

**“At every level of our nation’s Department of Justice, my colleagues and I are firmly committed to protecting the voting rights of every eligible American. Unfortunately, when it comes to exercising this fundamental right, many individuals and communities face significant obstacles. And this is particularly true among American Indian and Alaska Native populations. As Attorney General, I support taking whatever steps are necessary to guarantee that voters have access to polling places on Indian reservations and in Alaska Native villages.”**

The Department of Justice will hold consultations to discuss with Tribal leaders whether the Department should recommend to Congress new legislation that would require any state or local election administrator whose territory includes part of all of an Indian reservation, an Alaska Native village, or other tribal lands to locate at least one polling place in a venue selected by each tribal government. A PDF of the Attorney General's announcement accompanies this report.

**AFN is urging the DOJ to hold its first consultation in Alaska because of our stake in Shelby County v Holder.** Consultation dates and locations are expected to be announced before the end of July. More details will follow in the next report.

### Call to Action

2014 PRIMARY ELECTION DAY  
TUESDAY, AUGUST 19TH

NEED HELP FINDING YOUR POLLING  
PLACE? VISIT:

[WWW.ELECTIONS.ALASKA.GOV](http://WWW.ELECTIONS.ALASKA.GOV)

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## NATIVE VOTE

### Federal Legislation

We are greatly encouraged by U.S. Attorney General Eric Holder's recent announcement.

The Department of Justice's interest and recent announcement have attracted attention from the Senate and our Alaska Delegation.

Common sense legislative solutions will be helpful in Alaska and elsewhere in the US. AFN looks forward to working with NARF, the Leadership Conference on Civil and Human Rights, and other organizations representing Asian Americans, Latinos, and other communities that have suffered and continue to suffer discrimination. We will be requesting help from our Congressional Delegation.

In May, U.S. Senator Mark Begich introduced a bill to protect Alaska Native voters from discrimination. Senator Begich's bill, "Native Voting Rights Act of 2014," (S. 2399), would require close scrutiny of the closure of polling places and voter registration in Native communities, mandate acceptance by election officials of identification cards issued by federally recognized tribes and Native corporations, and provide increased protections for Native voters who cannot understand complex voting materials written in English. AFN supports Senator Begich's legislation and is working with Senator Patrick Leahy's staff on improvements to their bill.



*LEFT: Preparing remarks before the Senate Democratic Steering Committee on Voting Rights, July 16 (Right to left) April Ferguson, BBNC and AFN Board, Natalie Landreth, NARF, Nicole Borremeo, AFN*

## TAKE ACTION

### SUMMER VISITORS

**JULY 19-21 – TOM PEREZ, SECRETARY OF LABOR**

Will participate in the Fairbanks Golden Days Parade on July 19 and a visit with AFN to the Palmer Jobs Corps Center is planned for July 20. The focus of his trip is to promote veterans' hiring and the minimum wage increase.

**AUG. 16-18 – ERNEST MONIZ, SECRETARY OF ENERGY**

Will attend the annual Energy Fair at Chena Hot Springs on Aug. 17. Itinerary is still in development. He will split time between Sen. Murkowski and Sen. Begich hosted activities.

**WEEK OF AUG. 20 – MICHAEL O'REILLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION.**

Itinerary in development.

### AUGUST VISITS PENDING CONFIRMATION

**MARIA CONTRERAS-SWEET, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION**

**ANTHONY FOX, SECRETARY OF TRANSPORTATION**

**PENNY PRITZKER, SECRETARY OF COMMERCE**

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## NATIVE VOTE

### Commentary on Voting Rights Published by Alaska Dispatch - *Excerpt*

In an important Alaskan voting rights case being tried in U.S. District Court this month, the state has asserted that it isn't required by law to translate all election materials into Native languages and that in general its language program is adequate. U.S. District Judge Sharon Gleason overruled the state, saying the constitutional right to vote requires Alaska to translate all election materials into Native languages.

AFN has long endeavored to protect the rights of Alaskans to vote. While the state has been slow to recognize the challenges facing Alaska Native voters, the federal government – including our Alaska Congressional Delegation and the Department of Justice – has been quickening its pace.

We are greatly encouraged by U.S. Attorney General Eric Holder's recent announcement suggesting a proposal to boost voting access for American Indians and Alaska Natives. The basic idea would be to require jurisdictions that include tribal lands and villages to locate at least one polling place in a venue selected by the tribal government. Associate Attorney General Tony West, in Anchorage this week, said in the Department of Justice's announcement, "We take this step because voting is a legal right we guarantee to our citizens. We do it because it is right." AFN's only caution on this new idea is that we don't want Alaska to be left out of comprehensive reform legislation on voting rights, which are pending in both the US Senate and the US House of Representatives.

U.S. Senator Lisa Murkowski applauded the plan in a written statement. "Through better communication, obstacles to casting a ballot can be identified and addressed." Senate Judiciary Committee Chairman Senator Patrick Leahy also applauded the plan. "I welcome Attorney General Holder's comments about starting a conversation with sovereign tribes to address the very real obstacles that the American Indian and Alaska Native populations have in casting their vote," he said in a written statement. "The issue of voting rights is foundational to our democracy, and it is one that requires our commitment and our action." AFN looks forward to working with both Senators Murkowski and Begich and enacting legislation this Congress...

*Read more in the full text of my opinion editorial, included with this report as a PDF. A version of this oped was published by Alaska Dispatch on June 11th: <http://www.adn.com/article/20140611/protecting-native-alaskans-right-vote-no-matter-what-language-they-speak-critical>*

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## NATIVE VOTE

### AFN Media and Elections Committee Update

AFN's Media and Elections Committee, under the leadership of Richard Peterson of Central Council of the Tlingit & Haida Indian Tribes of Alaska, has set the following priorities:

- 1) Organizing a Native Voter election guide for distribution at this year's AFN Convention in October.
- 2) Organizing two candidates forums, one for gubernatorial and one for senatorial candidates, both of which will take place during Convention week on Friday, October 24th at the Dena'ina Center. Both forums will be broadcast live for thousands of viewers across the state of Alaska and online via our livestream at [nativefederation.org](http://nativefederation.org).
- 3) Preparing an Elections Report on the committee's recommendations and progress for delivery during the main plenary session at Convention. This too will be broadcast live for thousands of viewers across the state of Alaska and online via our livestream at [nativefederation.org](http://nativefederation.org).

### New Voting Sites

Consistent with the priorities set by our Media and Elections Committee, our Native leadership team working to establish new absentee in-person and early voting sites has completed its work and released the final list of new sites. An astonishing 128 villages were added in 11 business days.

The team, with representatives from the Alaska Federation of Natives (AFN), the ANCSA Regional Association, and Get Out The Native Vote (GOTNV), agreed on June 19 to partner with the Division of Elections in establishing absentee in-person voting sites in villages that either did not have one or needed to reestablish themselves officially with the state. A full list of the new absentee and early voting sites follows on page 9.

## TAKE ACTION

### CELEBRATE OUR VOTE

AUGUST 19TH  
SHARE A SELFIE ON ELECTION  
DAY TO CELEBRATE OUR VOTE!  
#AKNVOTE

### LEARN MORE ABOUT VOTING DISCRIMINATION

A RECENT LEADERSHIP  
CONFERENCE REPORT ON THE  
"PERSISTENT CHALLENGE OF  
VOTING DISCRIMINATION" IS  
INCLUDED WITH THIS REPORT.



*Special thanks to our Media and  
Elections Committee Chair, Richard  
Peterson. We've made incredible progress  
on voting rights this summer and our  
drive will only intensify as election day  
draws near.*

# ALASKA FEDERATION OF NATIVES MONTHLY PRESIDENT'S REPORT



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## NATIVE VOTE

### New Absentee and Early Voting Sites

If you see your village or community on this list and you are not sure how or where to vote, or if you do not see your community and would like to know how you can help, please contact AFN at [afninfo@nativefederation.org](mailto:afninfo@nativefederation.org) or call 907-274-3611.

|                       |                  |                 |                     |               |                    |                   |
|-----------------------|------------------|-----------------|---------------------|---------------|--------------------|-------------------|
| Adak                  | Chefornek        | Fort Yukon      | Kivalina            | Napaskiak     | Point Hope         | Stebbins          |
| Akiachak              | Chevak           | Gakona          | Kobuk               | Newhalen      | Point Lay          | Stony River       |
| Akiak                 | Chignik Bay      | Gambell         | Kokhanok            | New Stuyahok  | Port Heiden        | Takotna           |
| Akutan                | Chistochina      | Golovin         | Koliganek           | Newtok        | Port Lions         | Tanana            |
| Alakanuk<br>Allakaket | Chitina          | Goodnews<br>Bay | Kongiganak          | Nightmute     | Quinhagak          | Tatitlek          |
| Aleknagik             | Chuathbaluk      | Grayling        | Kotlik              | Nikolai       | Ruby               | Tazlina           |
| Ambler                | Circle           | Gulkana         | Koyuk               | Nikolski      | Russian<br>Mission | Teller            |
| Anaktuvuk<br>Pass     | Clark's Point    | Holy Cross      | Kwethluk            | Nondalton     | Savoonga           | Togiak            |
| Anvik                 | Copper<br>Center | Hooper Bay      | Kwigillingok        | Noatak        | Scammon Bay        | Toksook Bay       |
| Arctic Village        | Crooked<br>Creek | Hughes          | Larsen Bay          | Noorvik       | Selawik            | Tuluksak          |
| Atmautluak            | Deering          | Huslia          | Levelock            | Northway      | Shageluk           | Tununak           |
| Atqasuk               | Diomedea         | Kaktovik        | Lower<br>Kalskag    | Nuiqsut       | Shaktoolik         | Tuntutuliak       |
| Beaver                | Eagle            | Kaltag          | Manokotak           | Nunam Iqua    | Shishmaref         | Tyonek            |
| Bettles               | Eek              | Kasigluk        | Marshall            | Nunapitchuk   | Shungnak           | Upper<br>Kalskag  |
| Birch Creek           | Egegik           | Kiana           | Mekoryuk            | Oscarville    | Sleetmute          | Venetie           |
| Brevig<br>Mission     | Ekwok            | King Cove       | Mentasta            | Ouzinkie      | St. George         | Wainwright        |
| Buckland              | Elim             | King Salmon     | Mountain<br>Village | Pedro Bay     | St. Michael        | Wales             |
| Cantwell              | Emmonak          | Kipnuk          | Napakiak            | Perryville    | South Naknek       | White<br>Mountain |
|                       |                  |                 |                     | Pilot Station |                    |                   |

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## SUBSISTENCE

### AFN Subsistence Committee Update

AFN staff and board members met with Department of Interior Deputy Secretary Mike Connor on July 9th at AFN. We briefed him on administrative actions that could be taken now to protect subsistence (including adopting the FSB recommendations simplifying the rural determination process for subsistence priority), co-management projects, amendments to the Migratory Bird Treaty Act, the consultation process with Alaska Native corporations, clean-up of contaminated sites transferred under ANCSA, the changing arctic, and National Defense Authorization Act section 811 contracting provisions. Some of the issues were ones we had brought up in the earlier meetings with him and Secretary Jewell, so we asked for updates on any progress that was made.

The meeting went well; he was receptive to working with us and setting up meetings to further our priorities. We also invited him to speak at the AFN Convention this fall.

The Convention Committee will meet again on August 1st. The committee will focus on:

- 1) Updating their Strategic Action Plan
- 2) Reviewing progress and setting new goals related to the Subsistence Defense Fund.

Look for an update on the committee's current activities and plans in the next report.

*BELOW: AFN staff and board members met with Department of Interior Deputy Secretary Mike Connor on the 9th*

*AFN Subsistence Committee  
Co-chair Dr. Rosita Worl at this year's  
Leadership Retreat on Subsistence.*



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## SUPPORTING OUR ALLIES & OUR YOUTH

### Recognition for Native Hawaiians

The Secretary of the Interior is considering whether to propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community, to more effectively implement the special political and trust relationship that Congress has established between that community and the United States. DOI issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments on whether and how the Department should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. A PDF of the full ANPRM accompanies this report.

**Call to Action**  
SHARE YOUR SUPPORT FOR  
FULL RECOGNITION OF NATIVE  
HAWAIIANS AT:  
[HTTP://WWW.REGULATIONS.GOV](http://www.regulations.gov)

### My Brother's Keeper

Two Alaskan's attended this week's My Brother's Keeper event at the White House, from Elim and Anchorage (*see image below, right*). President Obama announced Monday that charities and corporations will contribute an additional \$91 million on top of \$200 million over five years already pledged to support this White House effort to help young boys and men of color. The foundations joining President Obama include The Annie E. Casey Foundation, The Atlantic Philanthropies, Bloomberg Philanthropies, The California Endowment, The Ford Foundation, The John S. and James L. Knight Foundation, The Open Society Foundations, The Robert Wood Johnson Foundation, The W.K. Kellogg Foundation, and The Kapor Center for Social Impact. Many of the foundations are members of the Executives' Alliance to Expand Opportunities for Boys and Men of Color – a coalition of philanthropic institutions leveraging philanthropy's role in improving life outcomes for boys and men of color. Learn more and get involved at [WH.gov/mybrotherskeeper](http://WH.gov/mybrotherskeeper).



## ALASKA FEDERATION OF NATIVES

1577 C Street, Suite 300 | Anchorage, Alaska | 99501 | 907.274.3611 | [afninfo@nativefederation.org](mailto:afninfo@nativefederation.org)



## U.S. Department of Justice

Office of Tribal Justice

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*Room 2318, RFK Main Justice Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001*

*(202) 514-8812  
FAX (202) 514-9078*

June 9, 2014

Dear Tribal Leader:

To address some of the unique and persistent challenges that American Indian and Alaska Native voters face, the Attorney General would like to initiate formal consultation between officials of federally recognized Indian tribes and Department of Justice officials to discuss whether the Department of Justice should recommend to Congress new legislation that would require any state or local election administrator whose territory includes part or all of an Indian reservation, an Alaska Native village, or other tribal lands to locate at least one polling place in a venue selected by each tribal government.

The attached framing paper outlines the Department of Justice's intent to hold consultations on this matter and raises several questions and issues for your consideration. The consultation schedule will be circulated within the next 30 days.

If you have questions in the meantime, please contact the Office of Tribal Justice at (202) 514-8812 (not a toll-free number) or [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov). We look forward to consulting with you on this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tracy Toulou".

Tracy Toulou  
Director, Office of Tribal Justice  
U.S. Department of Justice

# **TRIBAL CONSULTATION ON WHETHER TO PROPOSE FEDERAL LEGISLATION TO SAFEGUARD NATIVE AMERICAN VOTING RIGHTS**

The Department of Justice places a high priority on protecting the voting rights of American Indians and Alaska Natives. The Department plans to consult with tribes to determine whether this effort might be significantly advanced by new federal legislation and is providing this framing paper to facilitate the consultation and frame the discussion with the tribes. The framing paper begins by presenting some background on the problem, and then focuses on whether federal legislation to guarantee that American Indian and Alaska Native voters have access to polling places on Indian reservations and in Alaska Native villages can contribute to solving that problem.

Tribal recommendations in these areas, and others, are of course most welcome. This framing paper is designed merely to raise questions about options for tribal leaders to consider. It is not intended to be, nor should it be construed as, a statement of Department policy.

## **BACKGROUND ON VOTING BY AMERICAN INDIANS AND ALASKA NATIVES AND GAPS IN CURRENT LAW**

American Indians and Alaska Natives have faced a distinctive history of discrimination affecting their right to vote. Even after Reconstruction had dramatically expanded the franchise, the U.S. Supreme Court held that Indians living on reservations could not invoke the protections of the Fourteenth and Fifteenth Amendments. *See Elk v. Wilkins*, 112 U.S. 94, 101-03 (1884). And although the Indian Citizenship Act of 1924 conferred U.S. citizenship on all American Indians born within the United States, many states continued to disenfranchise Indians, either by refusing to treat them as state residents or by imposing literacy tests that American Indians and Alaska Natives with limited English proficiency — often the result of the state's failure to provide adequate education — were unable to pass. As recently as 1948, Indians, including veterans who recently had returned from the battlefields of World War II, were barred from voting in Arizona and New Mexico.

In 1975, recognizing the barriers to full participation that American Indians and Alaska Natives continued to confront, Congress not only permanently prohibited literacy tests throughout the United States but also expressly included American Indians and Alaska Natives within the special protections of the Voting Rights Act. As a result, certain jurisdictions with large American Indian or Alaska Native populations were

placed under the preclearance regime of Sections 4 and 5 of the Act and were prohibited from making any changes to their voting laws until they could prove to the Department of Justice or to a three-judge federal court that the change neither had a discriminatory purpose nor would have a retrogressive effect. A number of other jurisdictions with large Native American populations were also covered by Section 203 of the Voting Rights Act, which requires bilingual election materials and assistance in areas with large numbers of citizens with limited English proficiency.

Despite these reforms, participation rates among American Indians and Alaska Natives continue to lag far behind turnout rates among non-Native voters. Estimates suggest that nationwide, while nearly 64% of non-Native adult citizens cast a ballot in the 2008 presidential election, less than 48% of Native American adult citizens voted. Part of that gap is attributable to differences in registration rates; but even among registered voters, the turnout among American Indians and Alaska Natives nationwide falls 5 to 14 percentage points below that of other racial and ethnic groups. And the gap with respect to Alaska Natives is especially large: Turnout among Alaska Natives often falls 15 to 20 or more percentage points below the non-Native turnout rate.

The causes of these disparities are complex. Lingering effects of prior overt discrimination play a role, as do socioeconomic conditions: Among all Americans, political participation is positively correlated with income and education, and Native communities are disproportionately poor. But two factors stand out. The first is that many American Indians and Alaska Natives live far from established polling places. The second is that, in some tribal communities, Native American voters have significant rates of limited English language proficiency. These two factors, alone and in combination, create special barriers to effective political participation by citizens living on Indian reservations and in Native villages.

There are myriad examples of the problems American Indian and Alaska Native voters have faced getting to the polls. Residents of the Cheyenne River Sioux Reservation in South Dakota had to travel up to 150 miles roundtrip to vote until a federal court ordered the establishment of polling places on the reservation. There is ongoing litigation in Montana over several counties' refusal to set up satellite early-voting sites on reservations far from the county seat. And in Alaska, polling places to which Alaska Natives have been assigned are sometimes located across a river or other body of water or across a mountain range that is impassable on Election Day. The Alaska Division of Elections has assigned some Native villages to polling places that are 75 miles away and accessible only by air or boat.

Moreover, although jurisdictions with large numbers of limited English proficiency voters are often covered by Section 203, many jurisdictions with large numbers of American Indian or Alaska Native citizens have failed to provide those materials or adequate assistance at the polls. In Cibola County, New Mexico — the

subject of a decade's worth of enforcement litigation by the Department of Justice — the Department was again required to intervene earlier this year to prevent the county's planned elimination of voting-rights coordinators to train poll-workers and provide election information to Navajo- and Keres-speaking voters.

For some potential voters, the inaccessibility of polling places poses only a minor barrier, since they can instead vote absentee. But that option is far less manageable for American Indian or Alaska Native voters with limited English proficiency, because they receive little or no assistance in navigating the bureaucratic process for obtaining and casting an absentee ballot. In Alaska, for example, the state has designated dozens of Yup'ik-speaking Native villages as "permanent absentee voting" sites where voters must fill out an English-language application to vote absentee in each election.

Currently, federal law does not specifically address the location of polling places, leaving the decision essentially in the hands of each state. States often devolve that responsibility to local jurisdictions, giving counties or municipalities discretion to choose how many polling places to have and where to locate them. While Section 2 of the Voting Rights Act prohibits states from using election procedures, including poll-siting, that deny minority voters an equal opportunity to participate in the political process, *see, e.g., Spirit Lake Tribe v. Benson County*, 2010 WL 4226614 (D.N.D. 2010), Section 2 cases can be complex and costly to litigate.

Until the Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), which held invalid the formula used to place jurisdictions under the obligation to preclear their voting changes, the Department of Justice used Section 5 to prevent covered jurisdictions (which included Alaska, Arizona, and two counties in South Dakota with large Indian populations) from making changes in polling places that could have a discriminatory impact on Native American voters. In Arizona, the Department of Justice used Section 5 to prevent a series of efforts by Apache County to close polling places located in the Navajo Nation. Similarly, in 2008, Alaska ultimately withdrew a request to change a number of polling places to which Native villages had been assigned after the Department of Justice issued a "more information" request, asking the state to explain why the changes would not disadvantage Alaska Native voters. Since the Supreme Court's decision last year in *Shelby County*, Alaska has apparently eliminated in-person voting for more than a dozen Native villages, forcing their residents into "permanent absentee voting."

Given the continued difficulties faced by American Indian and Alaska Native voters, the Department of Justice is consulting with the tribes about possible federal legislation to fill gaps in federal election laws to better safeguard Native Americans' voting rights.

## TRIBAL DESIGNATION OF POLLING PLACES FOR FEDERAL ELECTIONS

The Central Question: Should the Department of Justice recommend to Congress legislation that would require any state or local election administrator whose territory includes part or all of an Indian reservation, an Alaska Native village, or other tribal lands to locate at least one polling place in a venue selected by each tribal government?

Background: The Constitution grants Congress “plenary” power “to legislate in respect to Indian tribes.” *United States v. Lara*, 541 U.S. 193, 200 (2004). Congress’s “unique obligation” toward Indians — in particular, its responsibility to ensure that they are included fully within the “modern body politic” — gives Congress the power to require fair treatment for American Indian and Alaska Native voters. *See Morton v. Mancari*, 417 U.S. 535, 552 (1974).

Moreover, under the Elections Clause of Article I, Section 4 of the Constitution, Congress has additional power to regulate any election conducted at least in part to select Members of Congress. That clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations ....”

The Elections Clause has traditionally been interpreted to give Congress virtually plenary power over a wide range of aspects relating to congressional elections. In *Cook v. Gralike*, 531 U.S. 510 (2001), the Court stated that the term “Manner of holding Elections” “encompasses matters like ‘notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.’” *Id.* at 523 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). The list of practices that the Supreme Court and the lower federal courts have found within the scope of Congress’s Elections Clause power is broad indeed. *See, e.g., Roudebush v. Hartke*, 405 U.S. 15, 24-25 (1972) (authority to regulate recount of elections); *United States v. Gradwell*, 243 U.S. 476, 483 (1917) (full authority over federal election process, from registration to certification of results); *In re Coy*, 127 U.S. 731, 752 (1888) (authority to regulate conduct at any election coinciding with a federal contest).

Taken together, the Indian powers and the Elections Clause authorize Congress to enact legislation to safeguard the voting rights of Native American voters, particularly in elections conducted in whole or in part to elect Members of Congress. Here, long experience with inaccessible polling places and failures to provide sufficient assistance to American Indian and Alaska Native voters support the conclusion that Congress might rationally impose affirmative obligations on state and local election authorities to enable these citizens to cast their ballots.

The Department of Justice would welcome feedback on the following questions, which may be relevant to both policy considerations and constitutional analysis.

Selection of Polling Places: Should Congress require that states permit tribes to designate a polling place on tribal land if the tribe concludes that such a location would help provide tribal members a fair and equal opportunity to participate in the political process? Should tribes be permitted to designate such polling places for voting only on Election Day itself, or should they be permitted also to designate early-voting sites in jurisdictions that permit early voting (sometimes referred to as “in-person absentee voting”)?

Should there be any requirements tied to the number of potential voters? For example, should tribes with large numbers of voters or dispersed populations be entitled to request more than one polling place? Conversely, should there be a minimum potential voter population to trigger the requirement?

Actual Operation of the Polling Place: For any polling place the location of which is determined by the tribe, how should the polling place be operated? Obviously, the state or local election administrator would be required to equip the polling place with as many ballots and voting machines (on a per-registered-voter basis) as are provided to similar polling places in non-Native communities. But should staff for the polling place be supplied by the tribe, with proper training to be supplied by the state or local election administrator? Such a proposal could help ensure that poll-workers are sensitive to the distinctive needs of tribal voters with respect to assistance in voting, and would accommodate state and local administrators’ concerns about the costs of the proposal.

Scope of the Requirement: Should the requirement apply only to elections held in whole or in part to select candidates for federal office? Or should the requirement apply to all elections for public office or in which ballot propositions are involved?

Voter Registration: Should Congress also require state or local election administrators to designate, upon the request of a federally recognized Indian tribe, a tribal office or agency as a site for voter registration? If so, what procedures should apply to this requirement?

# Alaska Dispatch News

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[Home](#) > AFN announces plan to expand village polls as closing arguments delivered in voting rights trial

Richard Mauer <sup>[1]</sup>

July 3, 2014

As closing arguments were delivered in the Native voting rights lawsuit in federal court, the Alaska Federation of Natives announced Thursday it was leading an effort to bring in-person absentee voting to nearly every village in the state.

The double-barreled effort by Native rights advocates comes a year after the U.S. Supreme Court weakened U.S. Voting Rights Act protections for minorities, including those in Alaska, in a case brought by Shelby County, Ala. The state of Alaska filed a brief in support of Shelby County while AFN filed in opposition.

The 5-4 decision in the Shelby case ended Justice Department oversight of Alaska elections and those of eight other states, mainly in the South. But most of the Voting Rights Act remained intact and four Alaska Native tribal groups and two elders sued the state, alleging it failed to provide election material in the Yup'ik and Gwich'in languages, as the law requires.

The lawsuit was taken under advisement in Anchorage on Thursday by U.S. District Judge Sharon Gleason. She will have to decide whether the state Elections Division broke the law in three Yup'ik- and Gwich'in-speaking regions of Alaska and, if so, what remedial action it should be compelled to take.

Gleason didn't set a deadline for herself, but with 2014 shaping up as a big election year in Alaska, she'll have to work fast if she wants her decision to have impact, especially if she directs the state to change the way it runs elections in the Bush.

"It's my intent to work diligently and do my best to issue a decision in the near term," she said from the bench.

In her closing argument, plaintiff attorney Natalie Landreth from the nonprofit Native American Rights Fund said the Elections Division failed its duty to Native speakers with limited skills in English. During the two-week trial, those voters were described mainly as elders who grew up before Alaska was compelled in another lawsuit to establish secondary schools throughout the Bush.

"These problems should have been solved in the 1970s -- it should have been handled in the Ford administration," Landreth said.

Before the villagers filed the lawsuit last year, she said, the only material available to limited English speakers in the Dillingham and Wade Hampton census areas in Southwest Alaska were "a Yup'ik 'I have voted' sticker, a glossary of election terms, and a sample ballot in a different dialect of Yup'ik" from what the villagers spoke.

Then, looking around the courtroom where about 30 spectators, some from Native corporations, had come to hear the closings, Landreth added: "There can no argument that this is equivalent to what the English speakers in this room receive."

Landreth said state surveys of the need for language assistance, and the state's reliance on bilingual poll and outreach workers with limited training in language assistance, didn't at all match the wealth of material provided to voters in English and, to a lesser extent, in Spanish and Tagalog, spoken by Filipinos.

"No other communities are surveyed in this way," she said, describing the state's effort as a minimalist "opt-in" language program rather than one that reaches out to Natives.

"It's as if your civil rights spring into being when you make a specific request for them," she said.

In the state's closing argument, assistant attorney general Margaret Paton-Walsh said the Elections Division didn't have to provide a perfect language program, just an effective one. The court shouldn't allow any plaintiff with an idea about how to implement language access to "micro-manage" a state program that is legal, reasonable and working, she said.

Gleason interrupted Paton-Walsh to ask what weight to give in her decision to the state's practices from 2008 to 2013 -- the period from an earlier language lawsuit that the state settled in favor of Natives through the U.S. Supreme Court decision.

"I think your honor should give increasing importance" to the more recent elections, and the most to its 2014 plan, Paton-Walsh replied. She said the division has continuously improved its Yup'ik and Gwich'in language programs since 2008.

"The most importance has to be given to the division's plans post-Shelby County," she said. The decision freed the state from spending time seeking Justice Department approval for even minor changes to its election procedures, she said.

The Elections Division reserves the most difficult translation jobs, such as ballot measures, for its Yup'ik Translation Panel, a group of experts that includes university staff. Poll workers can adequately deal with translating candidate and judicial statements published in English in the official election pamphlet, she said. She characterized those statements as "I was born in Alaska and I like to hunt and fish."

"Anyone who is bilingual can manage this kind of language," Paton-Walsh said.

As for Yup'ik dialects, there's no need to provide translations in each one, because one dialect, Central Yup'ik, is understood in other regions.

"It's like the difference between Birmingham, England, and Birmingham, Ala.," said Paton-Walsh, who was born in Surrey in the United Kingdom.

After Elections Division director Gail Fenumiai testified Wednesday that she could recall no serious complaints from the Alaska Federation of Natives, the organization filed a statement in the case saying it has long believed the state's language efforts to be inadequate.

In the statement, AFN President Julie Kitka said that as recently as June 19, she urged Lt. Gov. Mead Treadwell, the state's top elections official, and Fenumiai to settle the lawsuit "and stop fighting their own voters." She added that after reviewing the deposition of elections officials in the

case, she and other AFN staff found their approach "disturbing."

"It is unclear what purpose it serves to oppose elderly, limited-English-proficient voters who merely want access to election materials they can understand," Kitka said.

For three years, Kitka said, the Elections Division had been unresponsive to her request that it provide early, in-person absentee voting in villages as it does in urban areas.

"Desperate to have these early voting locations in place by 2014, AFN staff and the CEOs (of Alaska's regional Native corporations) offered to gather all necessary information and we have succeeded in adding new early voting locations in rural Alaska," Kitka wrote. "The (Division of Elections) did not do this -- we did."

In a separate announcement, AFN said it expects that 176 villages will have absentee in-person voting sites for the 2014 primary and general elections. The AFN was joined in the effort by the ANCSA Regional Association and Get Out the Native Vote.

In an interview, Kitka said the AFN and the regional association contacted individuals in villages who agreed to be responsible for ballot security and other procedures demanded by the state.

"It would be really good state policy to do everything they can to ensure everyone can vote," she said. But the state isn't doing that, which is why it has faced lawsuits and other challenges, Kitka said.

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**Links:**

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***The Persistent Challenge of  
Voting Discrimination:  
A Study of Recent Voting Rights Violations by State***

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## Introduction



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In *Shelby County v. Holder*, the U.S. Supreme Court held that Section 4(b), the part of the Voting Rights Act (VRA) that determined which states and localities would be subject to federal review of all of their proposed voting changes, was unconstitutional. While Chief Justice John Roberts, writing for the 5-4 majority, stated that “no one doubts” that voting discrimination still exists, he held that the statute needed to be updated to ensure that the enforcement provisions were responding to “current needs.”<sup>1</sup>

The impact of the decision went well beyond invalidating the preclearance coverage formula in Section 4(b). It also essentially eliminated the requirements under Section 5 of the VRA, including the requirement that certain states, counties and other jurisdictions provide notice to their communities regarding new voting changes, and the ability for potentially discriminatory voting changes to be put “on hold” pending a federal determination of whether the proposed change is discriminatory. It also functionally invalidated the federal observer program, which has been an important tool to protect all voters from racial intimidation at the polls.

The decision left the work of modernizing the VRA to Congress to ensure that the law is sufficient to guard against the persistent threat of racial discrimination in voting.

**The Voting Rights Amendment Act (VRAA) (H.R. 3899/S. 1945)**, introduced with bipartisan support in January 2014, is a direct response to the Court’s opinion in *Shelby*. It is a flexible, modern, nationwide solution to the problem of discrimination in voting. The legislation includes a new coverage formula for federal preclearance that is both narrow and nationwide, provides new tools to get ahead of voting discrimination before it occurs, and ensures that proposed election changes are transparent.

While the VRA has been enormously successful in eliminating some of the most egregious forms of discrimination, the reality is that discrimination in voting remains real and immediate. This report is a comprehensive description of each documented violation of the anti-discrimination provisions of the VRA since 2000: 148 separate instances. Notably, the report provides details on 10 additional voting law changes that have been put in place since the *Shelby* decision. The violations outlined in this report come both from states previously covered by Section 4(b) as well as states that did not fall under the previous coverage formula.<sup>2</sup>

In assessing the impact of racial discrimination in voting in the last 15 years, it is vital to recognize that since each voting rights violation often impacts thousands, tens of thousands, and sometimes hundreds of thousands of voters, the magnitude of the impact of racial discrimination in voting is much more profound than the total number of documented violations may suggest.

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1. *Shelby Co. v. Holder*, 133 S.Ct. 2612, 2619, 2631 (2013)

2. Even with the deterrent effect of Section 5 in place in many of these states for almost 50 years, there are still a disproportionate number of successful Section 2 lawsuits in states previously covered by Section 5 (in addition to the examples of Section 5 objections in those states). This underscores the fact that racial discrimination is more acute and entrenched in some places than in others.

## Key Findings

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***Racial discrimination in voting remains a significant problem in our democracy.*** Nearly 50 years after the enactment of the VRA, racial discrimination in voting remains a persistent problem in many places around the country. The 148 separate instances of voting violations since 2000 documented in this report illustrate that while we as a nation have made progress in our efforts to stop racial discrimination in voting, our work is not done. And given that this set of examples is drawn only from documented and reported cases of discrimination, the actual extent of racial discrimination in voting is likely much more extensive than this list may suggest.

***The problem of racial discrimination in voting is not limited to one region of the country.*** The examples outlined in this report document instances of voting discrimination from 30 states, representing every region of the country. Racial discrimination in voting remains concentrated in states that were previously covered under the VRA's preclearance requirement, but is also present in other states and jurisdictions that have not had the same history of discrimination.

***Voting discrimination occurs most often in local elections.*** As is evident throughout this document, the vast majority of instances of racial discrimination since 2000 have occurred at the local level. They often concern the election of city, county or other local elected officials, where many of the contests are nonpartisan.

***Discrimination in voting manifests itself in many ways, and new methods continue to emerge.*** Voting discrimination occurs today in both overt and subtle forms. The examples in this document range from an instance in Kilmi-chael, Mississippi, when the town cancelled a general election for the office of mayor and board of alderman after Black people had become a majority of the registered voters, to the closure of polling places in heavily minority areas.

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## Overview of Voting Rights Violations

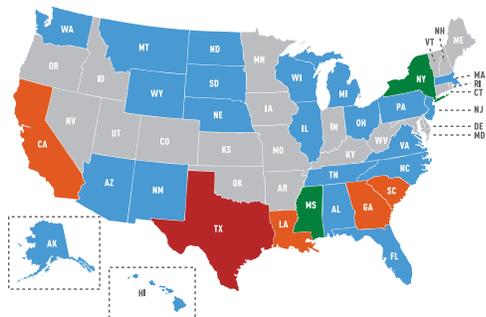
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This document lists 148 separate instances of racial discrimination in voting since 2000. Each case, by its nature, impacts hundreds, thousands, or tens of thousands of voters.

The examples are drawn from multiple public sources, including the U.S. Department of Justice (DOJ) website and published judicial opinions. Each example detailed in this document is a violation of one of the provisions of the VRA and falls into one of the following categories:

- **Section 2 Cases:** Section 2 prohibits voting practices that have the purpose or result of discriminating against members of a racial or language minority group, including, for example, redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures. Either private citizens or DOJ may sue election authorities for violating this provision.
- **Section 5 Cases and Objections:** Section 5 was enacted to freeze proposed changes in election practices or procedures in covered jurisdictions until the new procedures have been determined – either after administrative review by the attorney general, or after a lawsuit before the U.S. District Court for the District of Columbia – to have neither a discriminatory purpose nor effect. The objections listed below are those submissions in which the jurisdiction was unable to prove that the proposed voting change did not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Voting changes that are subject to preclearance include such practices as polling place or precinct changes, changes in candidate qualifications, changes in methods of election, and changes in voting equipment. Moreover, if a covered jurisdiction fails to submit a voting change, a Section 5 “enforcement action” may be brought to stop the implementation of the change until it is precleared.
- **Language Minority Provisions:** Under Sections 4(f)(4) and 203, certain jurisdictions must provide language assistance to Hispanic, Asian American and American Indian/Alaska Native voters.
- **Section 11(b) Anti-intimidation Provision:** Section 11(b) states that, “No person, whether acting under the color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person.”

## Section 5 Objections and Other Voting Rights Act Violations by State: 2000-June 2013



Between 2000 and June 2013, there were 148 Section 5 objections or other Voting Rights Act violations recorded across 29 states. Texas had the most with 30.

- States with 1 - 5 violations
- States with 6 - 10 violations
- States with 11 - 15 violations
- States with 16+ violations

### Alabama

#### *Section 5 Objections:*

- ***United States v. City of Calera, Ala (2008)*** – Despite the fact that it was under Section 5 preclearance review obligations, for 13 years, the city of Calera failed to submit their adopted annexations for Section 5 review. Under the existing arrangement, the district had elected an African-American candidate for 20 years prior, but annexations and redistricting plans submitted in 2008 would have eliminated the city’s sole majority African-American district.
- ***Riley v. Kennedy (2008)*** – Mobile County, Alabama, proposed to change its method of selection for filling vacancies on the Mobile County Commission from special election to gubernatorial appointment. The change would have transferred electoral power to a state official elected by a statewide constituency whose racial make-up and electoral choices regularly differ from those of the voters of the district. DOJ analysis found that the transfer of electoral power would diminish the opportunity of minority voters to elect a representative of their choice to the Mobile County Commission. Because the Supreme Court found, on narrow technical grounds, that this law was not a change affecting voting within the meaning of Section 5, it did not address whether the law had a discriminatory effect.
- ***Singer v. City of Alabaster (2001)*** – The city proposed annexations, which the DOJ found would have seriously threatened, if not eliminated, the only opportunity minority voters had to elect candidates of their choice to city of fice. Moreover, the analysis indicated that there were options available to and considered by the city which would have avoided the retrogressive effects of the proposed Ward 1 annexations.

#### *Other Voting Rights Act Violations*

- ***City of Evergreen (2014)*** – In January 2014, a federal court “bailed-in” the city of Evergreen under Section 3(c) for intentionally discriminating against Black voters. The court found that the city council had failed to submit for preclearance the 2001 and 2012 municipal redistricting plans, and a 2012 change in the method of determining voter eligibility. The court ruled in favor of the plaintiffs’ Section 2 and 14th and 15th Amendment claims based on the evidence presented of the city’s long history of discrimination in voting. The city council must submit all redistricting plans and changes in voter eligibility for preclearance until December 2020.

### Alaska

- ***State of Alaska (2008)*** – In 2008, the state submitted for Section 5 preclearance a plan to eliminate polling places in several Native villages:
  - To realign the voting precincts in a way that would join Tatitlek, a community in which about 85 percent

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of the residents are Alaska Native, to the predominately White community Cordova, located over 33 miles away and not connected by road;

- To consolidate Pedro Bay, where a majority of residents are Alaska Native, with Iliamna and Newhalen, which are located approximately 28 miles away, are not connected by road, and were the subject of a critical initiative on the August 2008 ballot; and
- To consolidate Levelock, in which about 95 percent of residents are Alaska Native, with Kokhanok, which is approximately 77 miles apart and not connected by road.

DOJ responded with a More Information Request (MIR) regarding reasons for the voting changes, distances between the polling places, and their accessibility to Alaska Native voters, as well as steps the state was taking to implement an unsubmitted voting change designating “specified voting precincts” as “permanent absentee by-mail precincts.” Rather than responding and submitting the additional voting changes for Section 5 review, Alaska withdrew the submission two weeks later.<sup>2</sup>

- **Nick et al. v. Bethel et al. (2008).** In this case, a federal court issued a preliminary injunction and specific relief finding that the Bethel Census Area of Alaska had not complied with its obligations under Section 203 of the VRA since 1975.

## Arizona

### *Section 5 Objections:*

- **Coconino County Special District (2003)** – The district proposed replacing their single-member district plan with an alternative election system. After review and analysis, DOJ concluded that such a change would have reduced the ability of Native American voters to elect their candidates of choice to the local boards.
- **State of Arizona (2002)** – In 2002, DOJ objected to the 2001 legislative redistricting plan submitted by the state, concluding that the plan discriminated against Latino voters by reducing the number of districts where Latino voters had an opportunity to elect candidates of choice from eight to five.

### *Other Voting Rights Act Violations:*

- **United States v. Cochise County, AZ (2006)** – On June 16, 2006, DOJ filed a complaint against Cochise County, AZ for violations of Section 203 and Section 302 of the Help America Vote Act (HAVA) of 2002. The complaint alleged that Cochise County violated Section 203 requirements by failing to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on Election Day and by failing to publicize effectively election information in Spanish. On October 12, 2006, the court entered a consent decree which requires the county to translate all its election related materials into Spanish and hire an adequate number of poll workers and which authorizes the assignment of federal observers to monitor elections in the county.

## California

### *Section 5 Objections:*

- **Chualar School District (2002)** – The school district proposed a change in the method of electing school trustees from districts to an at-large method. The evidence demonstrated that the change would have had a retrogressive effect on the ability of Latino voters to elect candidates of choice.

### *Other Voting Rights Act Violations:*

- **United States v. Alameda County, CA (2011)** – In June 2011, DOJ filed a complaint alleging that Alameda County violated Section 203 by having failed to provide effective access to the electoral process for Spanish- and Chinese-speaking citizens who needed language assistance and translated materials and information to cast an informed ballot. Alameda County has been continuously covered under Section 203 for Spanish and Chinese languages since 1992. On October 19, 2011, the District Court for the District of Columbia entered a consent decree requir-

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ing the county to provide bilingual language assistance at the polls and election-related materials and information in Spanish and Chinese and newly covered languages as determined by the Census Bureau. The parties agreed that federal observers may monitor Election Day activities in polling places in Alameda County.

- ***United States v. Riverside County, CA (2010)*** – On February 12, 2010, DOJ filed a complaint, along with a memorandum of agreement, against Riverside County, California. The complaint alleged that the county violated the language minority requirements of Section 203 by failing to implement an effective bilingual election program for Spanish-speaking voters. On April 30, 2010, the three-judge panel of the court entered an order granting the parties’ joint motion for extension of time for the defendants to answer the United States’ complaint and to authorize federal observers under Section 3(a) to monitor Riverside County elections through March 31, 2013.
- ***United States v. City of Walnut, CA (2007)*** – On April 12, 2007, DOJ filed a complaint against the city of Walnut, CA under Section 203 alleging that the city failed to translate election materials and provide assistance for limited-English proficient Chinese and Korean voters. On November 9, 2007, the court entered a consent decree to ensure that the city translate election materials and provide assistance for limited-English proficient Chinese and Korean voters and ordering the appointment of federal observers until December 31, 2010.
- ***United States v. City of Azusa, CA (2005)*** – On July 14, 2005, DOJ filed a complaint and proposed consent decree alleging that the city of Azusa violated Section 203. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the VRA. The consent decree, approved on August 26 by a three-judge panel of the court, required the city to establish an effective Spanish-language program and authorized the use of federal observers to monitor the city’s elections.
- ***United States v. City of Paramount, CA (2005)*** – On July 14, 2005, DOJ filed a complaint and proposed consent decree alleging that the city of Paramount violated Section 203. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the VRA. The consent decree, which was approved on August 23, required the city to establish an effective Spanish-language program and authorizes the use of federal observers to monitor the city’s elections.
- ***United States v. City of Rosemead, CA (2005)*** – On July 14, 2005, DOJ filed a complaint and proposed consent decree alleging that the city of Rosemead violated Section 203. The complaint claimed that the city failed to translate most of its election-related information into Spanish, Chinese, and Vietnamese or to provide bilingual assistance at polling sites in those languages, as required by the VRA. The consent decree was approved by a three-judge panel of the court, and required the city to establish effective Spanish-, Chinese-, and Vietnamese-language election programs, and authorized the use of federal observers to monitor the city’s elections.
- ***United States v. Ventura County, CA (2004)*** – DOJ claimed that the county violated Section 203. The complaint alleged that the county did not have sufficient bilingual poll officials and did not translate all election-related information into Spanish, as required by the VRA. On September 2, 2004, the court entered a consent decree, which required the county to establish an effective Spanish-language election program.
- ***United States v. San Diego County, CA (2004)*** – DOJ’s complaint alleged that the county’s practices and procedures concerning Spanish heritage and Filipino voters violated Section 203. The United States and the county agreed to a memorandum of agreement and a stipulated order, both of which were filed on June 23, 2004. The agreement provided for Spanish and Tagalog (Filipino) language election programs, and also a complete Vietnamese-language program to serve a minority language group that narrowly missed the threshold for Section 203 coverage. The court signed the order, including an interlocutory order providing for the appointment of federal examiners and observers pursuant to Section 3 on July 7, 2004.
- ***United States v. San Benito County, CA (2004)*** – In this action, DOJ alleged that the county violated both Section 203 by failing to have an effective Spanish language election program and Section 302 of HAVA by failing to post the information required by that section in polling places and by failing to provide the requisite written information regarding the process of casting a provisional ballot. The court entered a consent decree, requiring the county to provide a Spanish-language election program.

- ***Common Cause S. Christian Leadership Conference of LA v. Jones (2002)*** – The question before the court was whether the permission granted by California’s secretary of state to counties to adopt either punch-card voting procedures or more reliable voting procedures violated Section 2 because the counties which chose the punch-card system have high racial minority populations in comparison with counties using other voting systems. The court concluded that racial minorities were disproportionately denied the right to vote because their votes were uncounted in disproportionate numbers as a result of the voting mechanism they are supplied. The court entered a consent decree requiring the nine California counties using the pre-scored punch card voting systems to convert to other certified voting equipment by March 2004.
- ***United States v. Upper San Gabriel Valley Municipal Water District (2000)*** – On July 21, 2000, DOJ filed a complaint against the Upper San Gabriel Valley Municipal Water District in Los Angeles County, California, challenging the districting plan for the five election divisions from which the Water District Board of Directors was elected. The complaint alleged that the districting plan fragmented the Hispanic population concentration primarily by dividing predominantly Hispanic areas and placing them in separate divisions, resulting in Hispanic citizens being denied an equal opportunity to participate in the electoral process and to elect candidates of their choice, in violation of Section 2. While Hispanic persons comprised 46.49 percent of the population of the Water District according to the 1990 Census and nine Hispanic candidates had run for positions on the board of directors, no Hispanic person had ever been elected to the board in its 40-year history. During the pendency of the lawsuit, the water district adopted a new districting plan which did not dilute Hispanic voting strength and under which elections were held in 2002.

## Florida

### *Section 5 Objections:*

- ***State of Florida (2002)*** – In 2002, the state proposed a new redistricting plan for the Florida House of Representatives that eliminated the one majority Latino district in Collier County. DOJ objected to the plan, concluding that given the context of electoral behavior in the district and the availability of alternative plans, the state had not met its burden to establish that the reduction would not result in retrogression in Latino voters’ effective exercise of their electoral franchise.

### *Other Voting Rights Act Violations:*

- ***U.S. v. Town of Lake Park (2009)*** – On March 31, 2009, DOJ filed a complaint against the town of Lake Park in Palm Beach County, FL for violations of Section 2. The complaint alleged that the town’s at-large system of electing its commissioners denied Black voters an equal opportunity to elect representatives of their choice. Although Black voting age citizens composed 38 percent of Lake Park’s total citizen voting age population, no Black candidate had been elected to office since the town’s founding in 1923. On October 26, 2009, the court entered a consent judgment and decree replacing the at-large method of election with a limited voting plan providing for the election of four commissioners with concurrent terms.
- ***U.S. v. The School Board of Osceola County (2008)*** – On April 16, 2008, DOJ filed a complaint alleging that the boundaries of the school board’s single-member districts diluted Latino voting strength by dividing the largest Latino population concentration between two districts such that none of the five districts was majority Latino in eligible voters. The consent judgment and decree, in which the parties stipulated that the existing districts violated Section 2, provided for a new plan which includes one district with a Latino voter registration majority.
- ***U.S. v. Osceola County (2006)*** – DOJ filed a complaint against the county and its supervisor of elections alleging violations of Section 2. Although the county required commissioner candidates to live in residency districts, they were elected at large by all of the county’s voters. Beginning in 1992, a change to a single-member district voting system to give voting parity to the county’s burgeoning Latino population was repeatedly proposed and rejected, both in committee and by referendum. In 2002, the county signed a consent decree with the U.S. to remedy the problem, but voting inequities continued. After issuing a preliminary injunction, holding an evidentiary hearing, and ordering post-trial briefing, the court found as a matter of law that, under the totality of the circumstances, the county’s at-large voting system caused an unlawful dilution of the Latino vote.

- ***United States v. Orange County, FL (2002)*** – On June 28, 2002, DOJ filed a complaint against Orange County, Florida, alleging violations of Sections 203 and 208 of the Voting Rights Act. The complaint alleged that the county failed to provide an adequate number of bilingual workers to serve its Spanish-speaking voters, and that its poll workers interfered with the ability of voters to receive assistance from the persons of their choice. A consent decree, signed by a three-judge panel of the court on October 8, 2002, required the city to increase the number of bilingual poll workers and to permit voters their assistants of choice consistent with Section 208.

## Georgia

### *Section 5 Objections:*

- **State of Georgia (2012)** – In 2012, the state of Georgia passed statewide legislation that had the sole effect of changing the date for the non-partisan mayoral and commissioner elections for the consolidated government of Augusta-Richmond from November to July, a veiled effort to dilute minority voting strength. After analyzing the proposed plan under Section 5, DOJ concluded that moving Augusta-Richmond’s mayoral and commissioner elections from November to July would disproportionately impact the turnout of African-American voters. DOJ also concluded that there was evidence that Georgia’s actions in adopting this legislation were driven, in part, by a racially discriminatory purpose. In the wake of the *Shelby* decision, the Georgia secretary of state has announced that the 2014 election for Augusta-Richmond County will be held at the time of the primary rather than the November general election. (See page 28)
- **Long County and Long County School District (2012)** – The county proposed redistricting plans for the board of commissioners and the board of education under which the Black voting age population of District 3 decreased by 6.7 percentage points, from 47.2 percent to 40.5 percent. DOJ determined that the plan would have caused African-American voters to experience an avoidable retrogression of their ability to elect candidates of their choice.
- **Greene County and Greene County School District (2012)** – The county proposed redistricting plans for the board of commissioners and the board of education that would have eliminated the ability of African-American voters to elect candidates of choice in two single-member districts.
- **State of Georgia (2009)** – The state proposed to establish a voter verification program for voter registration application data, including citizenship status, and changes to the voter registration application. However, the state’s procedures for verifying voter registration information did not produce accurate and reliable information and thousands of citizens who would be eligible to vote under Georgia law were flagged. The flawed system frequently subjected a disproportionate number of African-American, Asian, and/or Latino voters to additional and erroneous burdens on the right to register to vote. DOJ subsequently precleared a modified version of the program that resolved a Section 5 declaratory judgment action brought by Georgia in the U.S. District Court for the District of Columbia.
- **Lowndes County (2009)** – The proposed redistricting plan for the county commission would have added two single-member commissioner districts. Under the existing plan, African-American voters had the ability to elect a candidate of their choice in one of the three single-member districts in the county. Under the proposed plan, African Americans would have had the ability to elect a candidate of choice in only one out of five single-member districts. The plan, therefore, would have placed Black voters in a worse electoral position than under the benchmark plan.
- **Randolph County (2006)** – In January 2006, the three-member Randolph County Board of Registrars held a special meeting for the sole purpose of determining anew the proper voter registration location of Henry Cook, an African-American candidate for office from District 5. The all-White board of registrars voted unanimously to change the voter registration status of Cook and his family members from District 5, where more than 70 percent of the voters are African-American, to District 4, where more than 70 percent of the voters are White. In addition to the sequence of events being procedurally and substantively unusual, the board resurrected an issue that had been settled three years earlier by a judge in the Superior Court of Tift County, who ruled that Cook was eligible to vote and run for office in District 5. DOJ objected to this change.

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- **Marion County School District (2002)** – The county proposed a redistricting plan that would have decreased the number of viable minority districts by one and, moreover, reduced the ability of Black voters to elect candidates of choice in an additional district. Due to the drop in the Black population, the proposed 2002 redistricting plan contained only two districts (as opposed to three in the benchmark plan) in which Black people were a majority of the voting age population. In one of the two remaining Black majority districts, the Black voting age population dropped to 50.7 percent. Given the pattern of racially polarized voting, the significant reduction in Black voting strength would have necessarily entailed a material reduction in the ability of Black voters to elect candidates of choice under the proposed plan.
  - **City of Albany (2002)** – The city proposed a redistricting plan in which the Black population in Ward 4 would be reduced to 31 percent in spite of having steadily increased over the past two decades. In the 2000 Census, the ward’s Black population increased to nearly 51 percent only to be reduced by the proposed plan in order to forestall creation of a Black district. The reduction in the Black population was neither inevitable nor required by any constitutional legal imperative.
  - **Putnam County and Putnam County School District (2002)** – The proposed redistricting plans for the Putnam County School District and the board of commissioners contained only one district in which Black persons would have been a majority of the voting age population. However, given the data from the 2000 Census, there were two districts under the 1982 benchmark plan in which Black people were at the time a majority of the voting age population. The Black percentage of the voting age population in proposed District 1 was cut almost in half by the proposed plan, while the Black percentage of the voting age population in proposed District 2 dropped slightly.
  - **City of Ashburn (2001)** – The city proposed changes regarding the adoption of numbered posts for city councilmembers and majority-vote requirement for the election of city officers. The numbered posts method has the effect of frustrating single-shot voting; single-shot voting has often been used by Black voters to overcome the refusal of White voters to support candidates that the minority community supports. A majority-vote requirement also creates head-to-head contests between minority and White candidates; the imposition of such a requirement would have resulted in a runoff in which the White vote controlled the outcome of the election.
  - **City of Tignall (2000)** – The city proposed to amend the city charter to change the method of election for the city council to numbered posts with staggered terms and a majority vote requirement. The proposed system would have eliminated the opportunity that minority voters had under the existing system to boost the effectiveness of their vote for their preferred candidate through single-shot voting. The imposition of numbered posts and a majority-vote requirement made more likely head-to-head contests between minority and White candidates where minority candidates would be more likely to lose than under the existing system with concurrent terms and a plurality voting requirement.
  - **Webster County School District (2000)** – The process of developing a new redistricting plan was initiated after the school district elected a majority Black school board for the first time in 1996. The county proposed a redistricting plan for the Board of Education of Webster County that would have reduced the minority population in the three majority Black districts. Given that the voting patterns in Webster County appeared to be racially polarized, the reductions in minority voting strength raised serious doubt about whether minorities would continue to have an equal opportunity to elect candidates of choice in the districts with the reduced Black populations.

*Other Voting Rights Act Violations:*

- **Georgia State Conference of the NAACP, et al. v. Fayette County Board of Commissioners, et al. (2013)** – In 2013, a federal court struck down, as violative of Section 2, Fayette County’s at-large method of electing members to the county board of commissioners and board of education. The court found that although Black residents comprise 20 percent of Fayette County, are geographically concentrated in the county, and consistently vote together for board of commissioners and board of education candidates, no Black candidate has ever been elected to either of these boards in the county’s 191-year history. As a remedy for the violation, the court ordered that future elections be conducted under a district voting plan.
- **United States v. Long County, GA (2006)** – On February 8, 2006, the United States filed a complaint against Long County, Georgia under Section 2. The complaint alleged that Long County officials required 45 Latino residents

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whose right to vote had been challenged on the grounds that they were not U.S. citizens to attend a hearing and prove their citizenship, even though there was no evidence calling into question their citizenship and even though similarly situated non-Latinos were not required to do so. According to the complaint, the defendants' conduct had the effect of denying Latino voters an equal opportunity to participate in the political process and to elect candidates of their choice. On February 10, 2006, the district court entered a consent decree that requires defendants to train their election officials and poll workers on federal law, to maintain uniform procedures for responding to voter challenges, and to notify Latino voters who were challenged that no evidence was presented to support the challenges against them and that they are free to vote.

## Hawaii

### *Other Voting Rights Act Violations:*

- ***Arakaki v. Hawaii (2002)*** – Hawaii's election law required candidates for trustees of the Office of Hawaiian Affairs (OHA) to be Hawaiian. The court held that the trustee qualification is a clear violation of § 2 because it disqualifies all non-Hawaiians from running for the office of OHA trustee on the basis of their race alone.

## Illinois

### *Other Voting Rights Act Violations:*

- ***United States v. Kane County, IL (2007)*** – On September 26, 2007, DOJ filed a complaint against Kane County alleging violations of Section 203. On November 7, the court entered an order granting the joint motion for extension of time for the defendants to answer the United States' complaint and ordering the appointment of federal observers until December 31, 2010. The joint motion was submitted as part of a memorandum of agreement between the United States and Kane County to ensure compliance with Sections 203 and 208.
- ***U.S. v. Town of Cicero (2000)*** – On March 14, 2000, the United States obtained a temporary restraining order enjoining the town of Cicero from placing a referendum on the ballot to alter the residency requirements to run for mayor. In its complaint, the United States alleged that defendants sought the referendum with a discriminatory purpose of excluding two Latino candidates from running for mayor in the 2001 municipal elections, in violation of Section 2. On October 23, 2000, the court entered a stipulated order authorizing the appointment of federal observers to monitor town elections through 2005.

## Louisiana

### *Section 5 Objections:*

- ***East Feliciana Parish, Louisiana (2011)*** – The parish proposed a redistricting plan that included the creation, realignment, and renumbering of voting precincts. In this plan, District 5 is an ability-to-elect district for African Americans. DOJ concluded that the significant reduction in the percentage of Black people in the total population, the voting age population, and the number of registered voters in the district would mean that Black voters in the proposed district would no longer have the ability to elect a candidate of choice to office. Therefore, the department blocked the implementation of this change.
- ***State of Louisiana (2009)*** – The state proposed a change to the period during which parish officials would be prohibited from changing precinct boundaries. The proposed change would have been a sharp departure from prior law and practice in that it would have frozen precinct boundaries for a longer period of time and would not provide exceptions or a window of opportunity similar to those available to elected officials in prior decades. Under the proposed change, local officials would have been hindered in their ability to comply with the VRA because the state had not taken steps to ensure that they would be able to adjust voting precinct boundaries to fairly recognize minority voting strength.
- ***Town of Delhi (2005)*** – The proposed redistricting plan for the town of Delhi eliminated one of the four wards in which Black voters had the ability to elect candidates of their choice. The elimination of the ward was not necessary, and the town previously rejected a less-retrogressive alternative.

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- **City of Ville Platte (2004)** – DOJ objected to the proposed redistricting plan for the city of Ville Platte, in which the city’s Black population percentage had increased both consistently and considerably. The proposed 2003 redistricting plan eliminated the Black population majority in District F by reducing it to 38.1 percent.
  - **City of Plaquemine (2003)** – The proposed redistricting plan for the city of Plaquemine amended the benchmark plan, which contained three Black-majority districts with an ability to elect candidate of choice to a plan that retains only two such districts. In the third district, the Black voting age population was reduced from 51.1 percent to 48.5 percent, which called into question the ability of Black voters to elect their candidate of choice due to the racial polarization in voting for the city’s board of selectmen and other citywide elections.
  - **Tangipahoa Parish (2003)** – The proposed redistricting plan reduced the number of districts where the African-American community had the ability to elect their candidate of choice from three to two, thus violating Section 5.
  - **Richland Parish School District (2003)** – In the proposed redistricting plan for the school district, Black voters had an ability to elect candidates of their choice in two out of nine districts as opposed to three of nine in the 1993 benchmark plan. Moreover, Black voters had consistently elected candidates of choice in these three districts.
  - **DeSoto Parish School District (2002)** – The proposed redistricting plan for the school district would have preserved only four of five districts in which Black voters had the ability to elect their candidates of choice. In the benchmark plan, five of the eleven districts in the benchmark plan had a total population that is majority Black and which had elected the candidate of choice of Black voters.
  - **Pointe Coupee Parish School District (2002)** – The school district proposed a redistricting plan for an eight-member board in which members would be elected from single-member districts. Under the benchmark plan, there were three districts in which Black people were a majority of the voting age population and had elected candidates of choice on the basis of strong, cohesive Black support. In contrast, the proposed 2002 redistricting plan contained only two such districts.
  - **Town of Minden (2002)** – Under the benchmark plan, three of the five districts in Minden had both total and voting-age populations that were majority Black and which in fact had been electing the candidate of choice of Black voters to the council. The proposed plan would have maintained the ability-to-elect candidates of choice for Black voters in only two of these three districts.

*Other Voting Rights Act Violations:*

- ***St. Bernard Citizens for Better Government v. St. Bernard Parish School Board (2002)*** – In January 2002, voters approved a plan that reduced the size of the Parish School Board from 11 members elected from single-member districts to seven members, including five elected from single-member districts and two elected at-large. The federal court found that the plan violated the plaintiff class’ rights under Section 2 insofar as the plan reduced the size of the Board and diluted Black voting strength.
- ***United States v. Morgan City, LA (2000)*** – In this complaint filed June 27, 2000, DOJ alleged that the at-large method of electing city councilmembers in Morgan City, LA violated Section 2 by diluting the voting strength of Black voters. On August 16, 2000, the court entered a consent decree, which provided for a change in the method of election from at-large to five single member districts, one of which provided Black voters with an opportunity to elect a representative of choice.
- ***Greig v. City of St. Martinville (2000)*** – On June 2, 2000, DOJ filed a cross-claim against the city of St. Martinville that alleged a violation of Section 2. This action was initiated by private plaintiffs against the city of St. Martinville and the United States over the city’s failure to conduct two consecutive city council elections. The United States alleged that the city’s action and inaction with respect to its redistricting process in the 1990s (its adoption of three retrogressive plans and the council members’ holding over in office) denied or abridged Black voters’ right to vote on account of race. The case was resolved when the city adopted a new redistricting plan prepared by the court’s special master, which received Section 5 preclearance and scheduled elections pursuant to the precleared plan. On July 19, 2001, the suit was voluntarily dismissed.

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## Massachusetts

### *Other Voting Rights Act Violations:*

- ***United States v. City of Springfield, MA (2006)*** – On August 2, 2006, DOJ filed a complaint against the city of Springfield, Massachusetts, alleging violations of Sections 203 and 208. The complaint alleged that the city failed to provide an adequate pool of bilingual workers to serve its Spanish-speaking voters, and that its poll workers interfered with the ability of voters to receive assistance from the persons of their choice. On September 15, 2006, a settlement agreement was entered that allowed DOJ to monitor future elections in the city of Springfield and required the city to increase the number of bilingual poll workers, employ a bilingual coordinator, and establish a bilingual advisory group.
- ***United States v. City of Boston, MA (2005)*** – On July 29, 2005, the United States filed a complaint against the city of Boston under Sections 2 and 203 alleging that the city’s election practices and procedures discriminate against persons of Spanish, Chinese, and Vietnamese heritage, in violation of Section 2. The suit also alleged that the city had violated Section 203 by failing to make all election information available in Spanish to voters who needed it. The complaint alleged that in conducting elections in Boston, defendants treated limited-English proficient Latino and Asian American voters disrespectfully, improperly influenced, coerced or ignored the ballot choices of limited-English proficient Latino and Asian American voters, and refused or failed to provide provisional ballots to limited-English proficient Latino and Asian American voters. On October 18, 2005, the three-judge panel of the court issued an order authorizing federal examiners through December 31, 2008; retaining the court’s jurisdiction through expiration of the federal examiner designation and the agreement, both to occur on December 31, 2008; and providing that either DOJ or the city may petition to the court to resolve any disputes during the life of the agreement.
- ***Black Political Task Force v. Galvin (2004)*** – The court held that the redistricting plan for the state legislature diluted the voting power of African-American voters so that they could not elect the candidate of their choice. The court held that the plan deprived African-American voters of the rights guaranteed to them by Section 2. The redistricting plan, in delineating the 17 House districts at issue, diluted the voting power of African-American voters and denied them equal opportunity to participate in the political process and to elect representatives of their choice.

## Michigan

### *Section 5 Objections:*

- ***Buena Vista Township, Saginaw County (2007)*** – In 2007, Buena Vista Township closed the secretary of state’s branch office. The Buena Vista office closure would have impaired the ability of minorities to register to vote. At the time of the objection, the Buena Vista office was the only branch office in a majority-minority township in the county and would have significantly lowered minority registration. Moreover, the closure of the office would have made it more difficult for minorities to comply with the state’s photo ID requirement by reducing the opportunities to obtain Michigan IDs. These factors established that the state had failed to sustain its burden of showing that the closure of the Buena Vista office would not have had a retrogressive effect on minority electoral participation.

### *Other Voting Rights Act Violations:*

- ***United States v. City of Hamtramck, MI (2000)*** – In this complaint, the United States alleged that the city violated 42 U.S.C. 1971 and Section 2 by implementing discriminatory, race-based challenges at the polls directed at Arab Americans. The facts showed that in the general election of November 2, 1999, city election officials required Arab-American voters to take an oath as a condition to voting, without requiring a factual basis for the challenges. On August 7, 2000, the court approved a consent order and decree, which required the city to train election officials and poll workers on the proper application of federal and state laws, including nondiscriminatory challenge procedures, to appoint Arabic- and Bengali-speaking election inspectors, and certified the city for the assignment of federal observers through December 31, 2003.

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## Mississippi

### *Section 5 Objections:*

- **City of Clinton, Mississippi (2012)** – In 2011, the city of Clinton, Mississippi, proposed a districting plan for its six-member council that, like the existing plan, did not include a single ward where African-American voters had the power to elect their candidate of choice, despite the fact that 34 percent of the city’s population was African-American. After careful review under Section 5, DOJ found reliable evidence that the city of Clinton acted with a racially discriminatory purpose in its decision not to create an ability-to-elect ward for African-American voters. In the wake of DOJ’s objection, the city redrew the council district lines, creating, for the first time, a ward where African-American voters would have the ability to elect their preferred candidate.
- **City of Natchez, Mississippi (2012)** – In 2011, the city of Natchez, Mississippi, proposed a redistricting plan that reduced the percentage of African-American voters in one ward (Ward 5) by 6 percent and placed these voters into the three wards that were already majority African-American. This change decreased the Black voting-age population in the impacted ward from almost 53 percent to under 47 percent, thus eliminating the ability of African Americans in that ward to elect their preferred candidate. After careful review, DOJ concluded that the city’s efforts to reduce the African-American population in Ward 5 were done with a discriminatory purpose.
- **Amite County (2011)** – The proposed redistricting plan for the board of supervisors and election commissioner districts reduced the Black population levels in District 3 to the extent that the existing ability to elect in the benchmark plan had been eliminated. While the county contended that an ability to elect would exist in proposed District 5, DOJ found that District 5 turnout among Black voters was low, and they exhibited lower levels of electoral cohesiveness than was present in the benchmark District 3. The relatively lower turnout and cohesion would have had a negative impact on the ability of minority voters to participate effectively in the political process in the county as a whole.
- **State of Mississippi (2010)** – The state proposed a change that would require candidates for county boards of education, the board of trustees of certain municipalities, and special municipal separate school districts embracing an entire county to be elected by a majority of the votes cast in an election. The change would require a run-off election three weeks after the election if no candidate received a majority of the votes. After several requests from DOJ, the state failed to provide the critical information necessary to determine if the change met Section 5 standards.
- **Town of Kilmichael (2001)** – The town cancelled a general election for the office of mayor and five-member board of aldermen only after Black people had become a majority of the registered voters and the release of census data indicating that Black people were now a majority of the population in the town. Moreover, the town sought to cancel the election in order to develop a single-member ward system for electing officials only after the qualification period for the election had closed, and it became evident that there were several Black candidates for office, wherein the minority community had very strong potential to win a majority of municipal offices (under the existing at-large electoral method) for the first time in the town’s history.

### *Other Voting Rights Act Violations:*

- **United States v. Brown (2009)** – A federal court found in 2009 that the defendants violated the rights of White voters during the 2003 primary and subsequent runoff elections in Noxubee County. White votes were diluted by the defendants’ involvement in (1) obtaining large numbers of defective absentee ballots from Black voters; (2) facilitating the improper counting of absentee ballots in order to ensure that the defective ballots were counted; and (3) permitting the improper assistance of Black voters.

## Montana

### *Other Voting Rights Act Violations:*

- **U.S. v. Blaine County (2004)** – In its complaint, DOJ alleged that the at-large method of election for the Blaine County Commission violated Section 2 because it denied Native American residents an equal opportunity to

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participate in the political process and elect candidates of their choice. The district court first issued an opinion rejecting the county's challenge to the constitutionality of Section 2. Following trial, the court issued a decision holding that the plan violated Section 2 and ordered the county to adopt a remedial plan. The county appealed the district court's decisions on the constitutionality of Section 2 as well as its finding that the at-large election method violated federal law to the U.S. Court of Appeals for the Ninth Circuit. The court of appeals decision affirmed both findings.

- ***United States v. Roosevelt County, MT (2000)*** – On March 24, 2000, the United States filed a complaint against Roosevelt County, Montana, alleging that the at-large method of election for the Roosevelt County Commission diluted the voting strength of American Indian voters in violation of Section 2. Simultaneously with the filing of the complaint the court approved the parties' consent decree which provided for the election of the three county commissioners from three single-member districts, one of which is majority-Indian.

## Nebraska

### *Other Voting Rights Act Violations:*

- ***United States v. Colfax County, NE (2012)*** – In February 2012, DOJ filed a complaint alleging violations of Section 203 by failing to provide all election materials, information and assistance in Spanish that are already provided in English. On March 2, 2012, the court entered a consent order as well as the authorization of federal observers until March 30, 2015.

## New Jersey

### *Other Voting Rights Act Violations:*

- ***U.S. v. Salem County and the Borough of Penns Grove, NJ, et al. (2008)*** – On July 28, 2008, DOJ simultaneously filed a complaint and proposed consent decree against Salem County and the Borough of Penns Grove, New Jersey, alleging that the defendants had violated the VRA against Latino voters with disparate treatment, lack of Spanish-language materials and the denial to voters of the right to choose their assistor of choice. In particular, the complaint alleged that in conducting elections in Penns Grove, the defendants directed hostile or discriminatory remarks at, or otherwise acted in a hostile manner toward, Latino voters, which in many instances made them feel unwelcome at the polls and failed to protect Latino voters from unfounded or discriminatory challenges, and that political campaigns in Penns Grove, including 2006 and 2007 campaigns for mayor and city council, had been characterized by racial appeals as well as attempts to intimidate Latino voters. On July 29, the court entered the settlement agreement. While not admitting the allegations of the complaint, the defendants committed to implementation procedures that will protect the rights of Latinos to fully participate in the electoral process in compliance with the VRA, for all future elections.

## New Mexico

### *Other Voting Rights Act Violations:*

- ***U.S. v. Sandoval County (2007)*** – On November 28, 2007, a three-judge court entered an order and amended joint stipulation, modifying and extending the existing consent decree until January 31, 2009. The United States had earlier filed a complaint alleging that the state of New Mexico and Sandoval County had violated Sections 2 and 203 by failing to provide voting and election information in Keres and Navajo, American Indian languages that are historically unwritten. The parties initially resolved this case in 1990 through a settlement agreement that required the state and county to implement a Native American Election Information Program (NAEIP). Pursuant to the agreement, the case was dismissed against the state defendants on December 31, 1990. On September 9, 1994, the court entered a consent decree proposed by the county and the United States, which modified the original NAEIP and extended the modified program through September 9, 2004. On November 8, 2004, the court entered an order approving a joint stipulation between the county and the United States, which further modified the NAEIP and extended its provisions through January 15, 2007. On April 3, 2007, the United States and the county filed a joint motion seeking the extension through 2009.

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## New York

### *Other Voting Rights Act Violations:*

- ***Alliance of South Asian American Labor et al v. Board of Elections of the City of New York (2013)*** – The plaintiffs sued the NYC Board of Elections for failing to comply with the language assistance provisions of the VRA. At the time the suit was filed, four elections had passed since the Census Bureau announced that Queens County was covered under Section 203 for Asian Indian language assistance, but the board had not complied with the law. The case was settled in March of 2014, with the board agreeing to provide language assistance to the Asian Indian voters in Queens.
- ***United States v. Orange County, NY (2012)*** – DOJ filed a complaint in April 2012 alleging that Orange County failed to comply with the requirements of Section 4(e) by not providing critical election-related information and language assistance in Spanish to thousands of limited-English proficient Puerto Rican voters. On April 19, the court entered the parties’ proposed consent decree. Under the agreement, the county must implement a comprehensive bilingual elections program, including providing bilingual ballots countywide and hiring and training more bilingual workers to offer effective language assistance at the polls.
- ***U.S. v. Village of Port Chester (2010)*** – The court determined that the at-large voting system for election members of the board of trustees prevented Latino voters from participating equally in the political process in the village and entered an order finding a Section 2 violation and adopting the village’s proposed remedial plan which included a cumulative voting system.
- ***United States v. Westchester County, NY (2005)*** – In this action, DOJ alleged in its complaint that the county had violated both Section 203 by failing to have an effective Spanish language election program and Section 302 of HAVA by failing to post the information required by the section to be posted in polling places. On July 19, 2005, a consent decree resolving both claims was approved by a three-judge court. The decree required the county to provide a Spanish-language election program and to assure compliance with HAVA. On January 3, 2008, the consent decree was extended through December 31, 2008.
- ***United States v. Suffolk County, NY (2004)*** – DOJ alleged in its complaint that the county violated Section 203 by not having sufficient bilingual election officials, not translating all election-related information into Spanish, as required by the VRA, and by failing to adequately train its election officials to prevent hostile treatment of Latino voters, who are limited-English proficient. On October 4, 2004, the court entered a consent decree that required the county to establish an effective Spanish-language election program. The consent decree also permitted the assignment of federal observers to monitor county elections.
- ***United States v. Brentwood Union Free School District, NY (2003)*** – DOJ alleged in its complaint that the Brentwood School District had violated Section 203 because it did not have sufficient bilingual election officials, did not translate all election-related information into Spanish, as required by the VRA, and failed to adequately train its election officials to prevent hostile treatment of Latino voters who are limited-English proficient. On July 14, 2003, the court entered a consent decree that required the county to establish an effective Spanish language election program. The consent decree also permitted the assignment of federal observers to monitor school district elections.
- ***Arbor Hill Concerned Citizens Neighborhood Ass’n. v. County of Albany (2003)*** – Plaintiffs sued the county and its elections board alleging that the county’s redistricting plan diluted minority voting strength in violation of Section 2. A magistrate judge issued a preliminary injunction to prevent the county from implementing the new redistricting plan for county elections. The court agreed with the magistrate judge and the defendants were enjoined from conducting the scheduled 2003 election of Albany County legislators pending adoption of a new redistricting plan that was compliant with the VRA.
- ***New Rochelle Voter Defense Fund v. City of New Rochelle (2003)*** – The plaintiffs claimed that the city violated Section 2 by creating a new district during reapportionment that diluted the vote of African Americans. The court held that the city had no legitimate reason for doing this and ordered that the city revert back to its previous plan.

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## North Carolina

### *Section 5 Objections:*

- **Pitt County (2012)** – Session Law 2011-174 reduced the number of school board members from 12 to seven, changed the method of election, and reduced the terms of office from six years to four years. The benchmark plan provided Black voters with the ability to elect candidates of their choice to two of 12 seats. The change in the number of school board members in conjunction with the method of election would have decreased minority-preferred officials on the school board from two of 12 to one of seven and was, therefore, found to be retrogressive.
- **City of Kinston (2009)** – The city proposed a change to nonpartisan elections, with a plurality-vote requirement. Although Black people comprise a majority of the city’s registered voters, in three of the four previous general municipal elections, African Americans comprised a minority of the electorate on Election Day and had had limited success in electing candidates of choice during recent municipal elections. The small amount of White crossover votes resulted from the party affiliation of Black-preferred candidates. DOJ analysis found that the elimination of party affiliation on the ballot would have likely reduced the ability of Black voters to elect their candidates of choice. The objection was subsequently withdrawn based on new evidence.
- **City of Fayetteville (2007)** – The city proposed a change to the method of election from nine single-member districts to six single-member districts, with three other positions filled by the top three vote recipients in an at-large election. Under the existing system, African-American voters had elected candidates of their choice to four of the nine positions on the council in all instances. However, under the proposed plan, it was unlikely that African-American voters would have had a comparable ability to elect candidates of their choice to the same proportion of positions on the council.
- **Harnett County and Harnett County School District (2002)** – The redistricting plans for the Board of Commissioners and the Board of Education contained no district in which Black people were a majority in either total or voting age population. However, in the benchmark plan, Black people did constitute a majority in both total and voting age populations in one district. The county did not establish that this reduction would not have resulted in retrogression in the ability of minority voters to exercise their electoral franchise.

## North Dakota

### *Other Voting Rights Act Violations:*

- ***Spirit Lake Tribe v. Benson County (2010)*** – The Spirit Lake Tribe filed a suit against Benson County Board of Commissioners asking a federal court to stop the county from closing polling places on the Spirit Lake Reservation during the November 2010 general election. The court granted in part and denied in part the motion for a preliminary injunction, ordering two of the voting places to remain open for the 2010 election.

## Ohio

### *Other Voting Rights Act Violations:*

- ***United States v. Lorain County, OH (2011)*** – In October 2011, DOJ filed a complaint alleging that the county violated the requirements of Section 4(e) by not providing critical election-related information and assistance in Spanish to LEP Puerto Rican voters. A federal district court judge granted the proposed order in October 2011, under which the county agreed to provide a bilingual machine ballot and hire more bilingual workers starting with the November 8, 2011 election. The county also agreed to take additional steps to create a compliant bilingual election program beginning with elections held in 2012.
- ***United States v. Cuyahoga County, Ohio (2010)*** – In September 2010, DOJ filed a complaint alleging that the county did not provide critical election-related information in Spanish to limited-English proficient Puerto Rican voters, including the ballot, and failed to provide an adequate number of bilingual poll officials trained to assist Spanish-speaking voters on Election Day. On September 3, 2010, the court entered an agreed judgment and order.

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- ***U.S. v. City of Euclid (2008)*** – DOJ filed a complaint against the city of Euclid, which alleged that the mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens. In the course of the investigation, it was found that while African-Americans composed nearly 30 percent of Euclid’s electorate, and although there had been eight recent African-American candidacies for the Euclid City Council, not a single African-American candidate had ever been elected to that body. Further, in seven recent elections for Euclid City Council, African Americans voted cohesively and White voters voted sufficiently as a bloc to defeat the African-American voters’ candidates of choice. The board of elections and the city implemented an approved remedial plan.
  - ***U.S. v. Euclid City School Board (2009)*** – In Euclid, Ohio, board members were elected on an at-large basis. At that time, no African American had ever been elected to serve as mayor, council member, or board member in the city of Euclid. The board conceded that its method of elections denied minorities the opportunity to participate meaningfully in the political process, in violation of Section 2. This stipulation was based in part on the conclusions reached by the court during the *United States v. City of Euclid* lawsuit. In July 2009, the district court ordered the board and the Cuyahoga County Board of Elections to implement the proposed remedy.

## Pennsylvania

### *Other Voting Rights Act Violations:*

- ***English v. Chester County (2010)*** – Civil liberties groups, including the ACLU of Pennsylvania, the ACLU Voting Rights Project, and the Public Interest Law Center of Philadelphia, filed a federal lawsuit on January 20, 2010, on behalf of African-American residents and Lincoln University students in Chester County, asserting that the Chester County Board of Elections and Department of Voter Services deprived African Americans in Lower Oxford East Township of their right to vote by assigning them to inconvenient and inadequate polling facilities. The suit asked the court to order Chester County to return the Lower Oxford East polling place to the Lincoln University campus, authorize federal elections monitors, and award damages to residents who faced extreme difficulties or were prevented from voting in the 2008 general election. A settlement was reached in August 2010.
- ***United States v. New Black Panther Party (2009)*** – On January 7, 2009, DOJ filed a lawsuit against the New Black Panther Party in the Eastern District of Pennsylvania alleging violations of Section 11(b). The lawsuit alleged multiple causes of action under Section 11(b), including intimidation of voters and those aiding voters. A settlement with the principle defendant resolved the suit.
- ***U.S. v. City of Philadelphia (2007)*** – On October 13, 2006, the United States filed a complaint against the city of Philadelphia, PA, under Sections 203 and 208 for failing to establish an effective Spanish bilingual program and for denying limited-English proficient voters their assistor of choice. On April 26, 2007, the United States filed an amended complaint, contemporaneously with the signing of a settlement agreement. The amended complaint further alleged violations of Section 2 as the election system and procedures denied minority voters equal access to the election process, and Section 4(e) for its failure to provide election information to citizens educated in Spanish in American flag schools in Puerto Rico; violations of HAVA for failing to provide alternative-language information; and a violation of Section 8 of the National Voter Registration Act of 1993 for failing to remove deceased voters from the rolls. The settlement agreement, among other things, required the defendants to establish an effective bilingual program, including bilingual interpreters and alternative-language information; to allow limited-English proficient voters to utilize assistors of choice; to provide alternative-language information; and to undertake a program of voter list maintenance. On June 4, 2007, the U.S. District Court for the Eastern District of Pennsylvania entered an order retaining jurisdiction to enforce the terms of the settlement agreement until July 1, 2009.
- ***U.S. v. Berks County (2003)*** – DOJ alleged in its complaint that the county violated several sections of the VRA. The facts showed that the county discriminated against Latino individuals, primarily Puerto Rican voters, through hostile treatment at the polls, failure to provide adequate language assistance, and by not permitting Latino voters to bring assistors of their choice into the polling place. These actions resulted in violations of Sections 2, 4(e), and 208. The court granted a preliminary injunction on March 18, 2003, and permanent relief on August 20, 2003. Both decisions resulted in increased protection for Latino voters. Since the court entered its decision, DOJ has

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monitored elections, utilizing federal observers pursuant to a provision of the order, to ensure compliance with the court's order.

## South Carolina

### *Section 5 Objections:*

- **Fairfield County School District (2010)** – Act R136 provided for the temporary appointment of two seats on the board of trustees by the legislative delegation for the Fairfield County School District. The information available at the time indicated that neither member of the legislative delegation would have been a candidate of choice of minority voters. Thus, DOJ found that the sole impact of the decision would have been to reduce the level of electoral influence that African-American voters had on the board.
- **Richland-Lexington School District #5 (2004)** – The proposed change, Act No. 326 (2002), adopted numbered posts and a majority vote requirement. The benchmark election system consisted of seven board members elected at large to staggered, four-year terms. The elections for membership on the school board were marked by a pattern of racially polarized voting. Within the context of racially polarizing voting patterns, the electoral changes would have operated to prevent Black voters from using single-shot voting to elect candidates of their choice.
- **Charleston County School District (2004)** – The objection concerned a change in the method of election for the Board of Trustees for the Charleston County School District from nonpartisan to partisan elections. The change, enacted despite the existence of a non-retrogressive alternative, would have significantly impaired the ability of minority voters to elect candidates of choice to the school board and to participate fully in the political process. The proposed change would have imposed a de facto majority-vote requirement that would have made it extremely difficult for minority-preferred candidates to win.
- **Town of North, Orangeburg County, South Carolina (2003)** – In September 2003, the town of North in Orangeburg County, South Carolina, proposed to annex a small population of Whites. However, because South Carolina is covered by Section 5, DOJ performed an investigation to determine whether this change would discriminate against minority voters. DOJ concluded that the annexation could not go forward because “race appears to be an overriding factor in how the town responds to annexation requests.” The letter denying the town approval to proceed with the annexation indicated that in the early 1990s, a large number of Blacks who reside to the southeast of the town petitioned for annexation and were denied with no explanation from the town. The DOJ letter notes that the granting of the petition by this group of Blacks “would have resulted in Black persons becoming a majority of the town’s population.” Based on its investigation, DOJ concluded that the county did not provide equal access to the annexation process for Black and Whites. DOJ blocked the proposed annexation from taking effect.
- **Cherokee County School District 1 (2003)** – The proposed change would have decreased the number of school board members from nine to seven. Under the proposed change, the size of the board would have been reduced to seven with Black people constituting a majority of the total population in only one of the seven districts. The benchmark plan had provided Black voters with the ability to elect candidates of choice in two of the nine districts.
- **City of Clinton (2002)** – DOJ objected to the designation of annexations to Ward 1 of the city of Clinton. The effect of the designation of the annexations to Ward 1 significantly reduced the level of Black voting strength in that district and eliminated the ability that Black voters previously had to elect a candidate of their choice in that district. The elimination of Ward 1 as a district in which Black voters could elect a candidate of choice reduced the level of minority voting strength in the expanded city from three out of seven to two out of seven members of the city council, while their relative share of the citywide electorate had dropped no more than a percentage point to approximately 37 percent.
- **Union County School District (2002)** – Act R. 192 provided a redistricting plan for the board of trustees. The proposed plan would have dropped the Black share of the total and voting age population in two districts, both of which were the majority Black districts. DOJ found that the drop in Black voting age population was neither inevitable nor required by any constitutional imperative.

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- **Sumter County (2002)** – Four of the seven districts in the benchmark plan had both total and voting-age populations that were majority Black. Under the new plan, in three of these four, Black voters would continue to have had the ability to elect candidates of their choice under the proposed 2001 plan. However, in the fourth district, Black voters would not have had the ability to elect a candidate of choice due to a decrease in the Black voting age population. Due to the pattern of racially polarized voting in the county, the implementation of the proposed plan would have resulted in retrogression in the minority voters’ effective exercise of their electoral franchise.
  - **City of Greer (2001)** – In 2001, the city proposed a redistricting plan, which, in conjunction with a pattern of racially polarized voting in the city, would have prevented minority voters from electing candidates of choice in the sole remaining majority-minority district. The city had rejected less retrogressive alternative redistricting plans supported by the minority community.
  - **City of Charleston (2001)** – The city submitted a redistricting plan in 2001 that would have decreased the number of majority-minority districts from six to five, which was necessary and unavoidable. However, the city also combined District 2 with District 4. The information available on demographic changes and the presence of racially polarized voting in city elections indicated that in a few years, proposed District 4 would no longer be a district in which minority voters would be able to elect a candidate of their choice. Such retrogression in minority voting strength in District 4 was neither required nor inevitable.

*Other Voting Rights Act Violations:*

- **State of South Carolina v. United States (2012)** – South Carolina sought approval of its proposed voter ID law, Act R54, in the U.S. District Court for the District of Columbia after DOJ blocked the law when it was submitted for preclearance. DOJ noted that registered minority voters in South Carolina are nearly 20 percent less likely than their White counterparts to have a DMV-issued photo ID that would satisfy the requirements of the proposed law. The court rejected South Carolina’s request to implement the photo identification measure ahead of the November 2012 election, citing the short timeframe for implementation of the procedure and education of voters prior to the election. However, during the course of the litigation, the state substantially improved the procedures used to implement the law to satisfy the court’s requirements and the court allowed South Carolina to implement the law in 2013, provided that state election officials allow voters who lack photo ID to cast ballots as long as they provide sufficient reasons for not having obtained one.
- **United States v. Georgetown County School District, et. al. (2008)** – On March 14, 2008, the United States filed a complaint alleging violations of Section 2 that the at-large method of electing the board diluted the voting strength of African-American citizens. On March 21, 2008, the Court entered a consent decree to remedy the violation.
- **United States v. Charleston County (2004)** – The United States brought suit alleging that the county’s at-large system for electing its council diluted minority voting strength in violation of Section 2. The federal court concluded that the county’s system violated Section 2.

## South Dakota

*Section 5 Objections:*

- **Charles Mix County (2008)** – The county proposed to increase the number of county commissioners from three to five. The proposed change appeared to have a greater impact on Native Americans because, under the proposed plan, Native American voters would have had an ability to elect their candidate of choice in only one of five districts, as opposed to one in three districts under the benchmark plan.

*Other Voting Rights Act Violations:*

- **Bone Shirt v. Hazeltine (2006)** – The court found that the legislative redistricting plan diluted the voting power of Native American voters thereby violating Section 2. The court of appeals affirmed the finding that the legislators’ plan violated Section 2 and that the voters’ remedial plan, as adopted by the court, was an appropriate remedy.
- **United States v. State of South Dakota (2000)** – DOJ filed a complaint on March 31, 2000, alleging that the at-large method of electing members for the South Dakota House of Representatives from District 28 had the intent

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and the result of diluting American Indian voting strength in violation of Section 2. In 1991, the state had created two single-member districts in House District 28, designated as District No. 28A and District 28B. House District 28A had a majority-Indian total and voting-age population. In 1996, after electoral successes by American Indian candidates in the 1994 primary elections, the state legislature eliminated the majority-Indian House district and created an at-large, dual-member method of election for House District 28. Private interveners alleged both Section 2 claims and a state law claim based on the contention that a provision of the South Dakota Constitution prohibited redistricting during the middle of a decade. The federal district court certified this state law question to the South Dakota Supreme Court, and that court ruled that mid-decade redistricting was not allowed under the State Constitution. The case then returned to the federal district court which ordered a remedy that divided House District 28 into two districts, one of which was majority-Indian. In the first election under this remedial plan, an American Indian candidate was elected from the majority-Indian district.

## Tennessee

### *Other Voting Rights Act Violations:*

- ***Rural W. Tenn. African-American Affairs Council v. Sundquist (2000)*** – African-American plaintiffs sued under Section 2, concerning legislation that reapportioned state legislative districts. Whites voted as a bloc to usually defeat African-American voters' candidates of choice. No African-American candidate had ever won an interracial legislative contest in the six-county area, despite many candidacies. The court concluded that the legislation diluted African-American electoral strength and denied African Americans the opportunity to elect candidates of their choice. African Americans made up 31 percent of the voting-age population but none of the districts contained a Black-voter majority.

## Texas

### *Section 5 Objections:*

- **Beaumont Independent School District (2013)** – The school district proposed to shorten the terms of four incumbents from four years to two years and to treat the candidate qualification period as having closed, with the effect that in three benchmark districts that provided Black voters with the ability-to-elect candidates of choice, the Black-preferred incumbent trustees would have been removed from their offices and replaced with the candidates they defeated in the last election.
- **Beaumont Independent School District (2012)** – The school district proposed to alter the method of election from seven single-member districts to five single-member districts with two at-large positions. This change would have reduced African-American voters' ability to elect members of the school board from four to three. For Black voters to maintain their level of voting strength under the new configuration, they would have to elect a candidate of choice from one at-large position. The evidence suggested that they would not be able to do so.
- **Galveston County (2012)** – The county's 2011 redistricting plan for justice of the peace/constable precincts relocated a largely White area from one precinct to another, reducing the overall minority share of the electorate in the latter district. DOJ also objected to the reduction in the number of election precincts for the justices of the peace and constable. In the benchmark plan, minority voters possessed the ability to elect candidates of choice in Precincts 2, 3, and 5 for the justice of the peace and constable districts, but the ability to elect was reduced to one precinct under the proposed plan.
- **Nueces County (2012)** – In late 2011, the county commission in Nueces County, Texas, enacted a redistricting plan that diminished the voice of Hispanic voters at the polls by swapping Hispanic and White voters between election precincts. After careful review of the 2011 plan, DOJ concluded that the county's actions "appear to have been undertaken to have an adverse impact on Hispanic voters." DOJ also noted that the county offered "no plausible non-discriminatory justification" for these voter swaps, and instead offered "shifting explanations" for the changes.
- **Runnels County (2010)** – The county reduced its bilingual election assistance without seeking preclearance. Despite an almost 50 percent increase in the county's Latino population percentage since 1984, at least half of the

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county voting precincts did not have a bilingual poll worker in 2008 (general election) and no voting precincts had a bilingual poll worker in 2009 (constitutional amendment election). In these elections the county offered only on-call bilingual assistance by phone.

- **Gonzales County (2010)** – The county proposed a change to the Spanish-language election procedures, in which the county would use internet website translation services for the initial translation of county-produced election materials after which the county would send the materials to the Texas secretary of state and to the local League of United Latin American Citizens (LULAC) chapter to confirm its accuracy. However, because there is no evidence that the county has an agreement with the state to review the translation, the sole responsibility rests with the local LULAC chapter, and the county has not provided sufficient information to establish this measure would ensure adequate review of county-produced election materials. The county did not establish that the proposed procedure for translation would not have a retrogressive effect when compared to the benchmark of engaging a third-party translator.
- **Gonzales County (2009)** – The county implemented bilingual procedures that diverged from the benchmark practices on three separate occasions and did not seek preclearance. In regard to the county’s provision of election-related materials to voters, a significant number of the county’s election notices and other documents containing election-related information were made available only in English. Moreover, the Spanish language translations of two notices from the 2008 and 2006 elections contained numerous errors that adversely affected their comprehensibility, including portions that were not translated, missing polling place names and addresses, incorrect word choices with confusing or misleading results, misspelled words, and wrong conjugations. Lastly, the county fell short of the benchmark procedures for the assignment of bilingual poll workers even in light of an almost one-third increase in the county’s Latino population percentage since the initial plan was implemented.
- **State of Texas (2008)** – The state proposed a change to the candidate qualification requirements for the position of supervisor of a fresh water supply district. If the proposed candidate qualifications were implemented, Latino supervisors who were known to be non-landowning residents of their district would have been unable to run for reelection. Further statistical evidence demonstrated that the proposed change might have a future retrogressive effect due to the significant disparity in home and agricultural land ownership rates between Whites and minorities in Texas.
- **State of Texas (2006)** – Following the 2000 census, the state enacted a congressional redistricting plan that diluted Latino voting strength in South Texas in violation of Section 2. In *LULAC v. Perry*, 548 U.S. 399 (2006), the U.S. Supreme Court concluded that Latino plaintiffs had established that Latinos in Texas were sufficiently numerous to comprise the majority of a district in South Texas, that Latinos vote cohesively, and that Whites vote as a bloc normally to defeat the Latino-preferred candidate. The Court further found that under the totality of circumstances, the state had violated Section 2. The Court noted that, in removing Latino population from a Latino-majority district, “[i]n essence the State took away the Latinos’ opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation.”
- **North Harris Montgomery Community College District (2006)** – The proposed change altered election procedures so that district elections would be held separately from independent school district elections. Due to the change, voters would have to travel to two separate polling places in order to cast their ballots. Moreover, instead of 84 polling places, there would be 12 polling places, in which the assignment of voters was remarkably uneven. The site with the smallest proportion of minority voters would serve 6,500 voters, while the most heavily minority site would serve over 67,000 voters.
- **Freeport (2002)** – The proposed change would have altered the method of election for city council members from single-member districts to at-large with numbered positions. Under the benchmark system, minority voters had demonstrated the ability to elect candidates of their choice in at least two districts. Given that city elections were marked by a pattern of racially polarized voting, the proposal to institute an at-large method of election would have had a retrogressive effect on the ability of minority voters to elect a candidate of their choice.
- **Waller County (2002)** – The county proposed redistricting plans for the commissioners court, justice of the peace, and constable districts. Under the benchmark plan, there were two districts in which minority persons were

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a majority of the voting age population. In contrast, the proposed redistricting plans contained only one district in which minority persons were a majority of the voting age population. Given the patterns of electoral behavior in the county, the proposed reduction in the minority voting age percentage in Precinct 1 cast substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan.

- **State of Texas (2001)** – The 2000 census indicated that the Latino share of the state’s population had increased significantly from 1990. DOJ found that the proposed redistricting plan for the Texas House of Representatives would lead to a prohibited retrogression in the position of minorities by causing a net loss of three districts in which the minority community would have had the opportunity to elect its candidates of choice. Although there was an increase in the number of districts in which Latinos would have been a majority of the voting age population, the number of districts in which the level of Spanish surnamed registration would have been more than 50 percent decreased by two (when compared with the benchmark plan). In two additional districts, the level of Spanish surname registration was reduced to the extent that the minority population in those districts would no longer be able to elect candidates of choice.
- **Haskell Consolidated Independent School District (2001)** – The proposed change would have altered the method of election from single-member districts to an at-large system employing cumulative voting. Under the benchmark method of election, Latino voters were able to elect candidates of their choice to office in at least one (of seven) districts. The school district conceded that it would be virtually impossible for minority voters to elect at least one candidate of their choice under the board’s proposed method without non-Latino crossover voting, and candidates favored by the Latino community had not consistently received significant non-Latino crossover voting. Therefore, the proposed change had the ability to significantly reduce the ability of minority voters to elect candidates of their choice to the school board.
- **Sealy Independent School District (2000)** – Since 1990, the school district experienced growth in the minority share of its population. The school district sought to add to its at-large electoral system a numbered post requirement that, in effect, would convert each election for a seat on the board into a separate election contest, increasing the likelihood that minority-supported candidates would be pitted against White incumbents or challenged in “head-to-head” contests. Given the evidence of racially polarized voting, minority-supported candidates were unlikely to garner a majority of the votes in a bid for a single seat.

*Other Voting Rights Act Violations:*

- **Texas v. Holder (2012) (vacated on appeal in light of Shelby Co. v. Holder)** – Following DOJ’s objection to S.B. 14, a newly-enacted law requiring in-person voters to present a photo ID, Texas sought a declaratory judgment from the U.S. District Court for the District of Columbia that the law did not violate Section 5. However, the court found that S.B. 14 violated Section 5 because the implicit costs of obtaining S.B. 14-qualifying ID would have fallen most heavily on the poor and a disproportionately high percentage of African Americans and Latinos in Texas live in poverty. The court concluded that the evidence demonstrated that, if implemented, S.B. 14 would have likely led to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.
- **Texas v. United States (2012) (vacated on appeal in light of Shelby Co. v. Holder)** – Following DOJ’s objection to its newly enacted redistricting plans for the U.S. House of Representatives, the Texas House of Representatives, and the Texas Senate, the state of Texas filed a complaint seeking a declaratory judgment from the U.S. District Court for the District of Columbia that the plans complied with Section 5. However, the court found the congressional plan to be retrogressive and intentionally discriminatory against minority voters, the Texas Senate plan to be intentionally discriminatory against minority voters, and the Texas House plan to be retrogressive and indicated that there was strong evidence of having been developed with intent to discriminate against minority voters.
- **Fabela v. City of Farmers Branch (2012)** – The plaintiffs challenged the city’s method of election for city council, which consisted of six members, a mayor and five council members, who were elected at-large, but ran for specific seats. The Farmers Branch electoral system required runoff elections when no candidate receives a majority of the vote for a particular seat. The plaintiffs argued that Farmers Branch’s at-large system denied Hispanic voters the opportunity to participate meaningfully in the electoral process and to elect representatives of their

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choice. At the time, no Hispanic had been elected as a member of the city council or mayor under that system. The court concluded that the city's at-large electoral system diluted Latino voting strength in violation of Section 2. The city submitted a new plan to the court, which they were ordered to implement. The new plan consists of five single-member districts, each represented by one city council member.

- ***Benavidez v. City of Irving (2009)*** – The plaintiffs argued that Irving's existing at-large method of electing the mayor and members of its city council diluted the voting power of Irving's Hispanic voters, thereby denying them the opportunity to elect representatives of their choice. Hispanic voters in Irving are politically cohesive, and the White majority in Irving votes cohesively to defeat Hispanic preferred candidates. Irving's electoral system also has in place a number of mechanisms that enhance vote dilution, such as staggered elections, a majority vote requirement, and numbered places. The court found that the at-large electoral system weighed heavily against the ability of Hispanics to elect their preferred candidates in violation of Section 2. The Irving City Council decided to settle the case rather than appeal, and the parties agreed to a new election plan that divided the city into six districts with a 6-2-1 voting system with six members elected from single-member districts, two elected at-large and the mayor elected citywide.
- ***United States v. Fort Bend County, TX (2009)*** – On April 9, 2009, DOJ filed a complaint against Fort Bend County, TX alleging that the county failed to implement an effective bilingual election program for Spanish-speaking voters in violation of Section 4(f)(4) and failed to allow eligible voters to receive assistance from the persons of their choice in violation of Section 208. The complaint also alleged that the county failed to offer provisional ballots to eligible voters in federal elections, and it failed to provide required information to provisional voters, in violation of HAVA. On April 13, 2009, the court entered the consent decree.
- ***United States v. Littlefield ISD, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against the Littlefield ISD alleging violations of Section 203 with respect to Latino voters. On September 4, 2007, the court entered a consent decree.
- ***United States v. Post ISD, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against the Post ISD alleging violations of Section 203 with respect to Latino voters. On September 4, 2007, the court entered a consent decree.
- ***United States v. Seagraves ISD, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against the Seagraves ISD alleging violations of Section 203 with respect to Latino voters. On September 4, 2007, the court entered a consent decree.
- ***United States v. Smyer ISD, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against the Smyer ISD alleging violations of Section 203 with respect to Latino voters. On September 4, 2007, the court entered a consent decree.
- ***United States v. City of Earth, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against the city of Earth alleging violations of Section 203 with respect to Latino voters. On September 4, 2007, the court entered a consent decree.
- ***United States v. Galveston County, TX (2007)*** – On July 16, 2007, DOJ filed a complaint against Galveston County under Section 4(f)(4). The complaint alleged that the county failed to translate election materials and provide assistance for limited-English proficient Spanish speaking voters. On July 20, 2007, the court entered the consent decree.
- ***United States v. Brazos County, TX (2006)*** – On June 28, 2006, DOJ filed a complaint against Brazos County, Texas alleging violations of Sections 4(f)(4) and 208. Specifically, the United States alleged that Brazos County had violated Section 4(f)(4) by failing to translate all election-related material into Spanish and by failing to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day. A consent decree, entered by the court on June 29, 2006, required, among other things, that the county increases the number of bilingual poll workers, translate all election-related material in Spanish, and permit voters their assistor of choice consistent with Section 208.
- ***United States v. Hale County, TX (2006)*** – On February 27, 2006, DOJ filed a complaint alleging that Hale County, Texas violated Section 203 by failing to provide for an adequate number of bilingual poll workers trained

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to assist Spanish-speaking voters on Election Day and by failing to publicize effectively election information in Spanish. On April 27, 2006, a consent decree was entered which allowed the department to monitor future elections in Hale County and require the county to increase the number of bilingual poll workers, employ a bilingual coordinator, and establish a bilingual advisory group.

- ***United States v. Ector County, TX (2005)*** – On August 23, 2005, DOJ filed a complaint alleging that Ector County violated Section 4(f)(4). The complaint alleged that the county failed to provide an adequate number of bilingual workers to serve the county’s Spanish-speaking population and failed to effectively publicize information to the Spanish-speaking community. The consent decree, which was approved by a federal district judge on August 26, required the county to establish an effective Spanish-language program and authorizes the use of federal observers to monitor the county’s elections.
- ***LULAC v. City of Seguin (2002)*** – Following the 2000 census, Seguin’s redistricting plan fractured the city’s Latino population to preserve the incumbency of a White councilmember and thus maintain a majority of White members on the city council. When the DOJ refused to preclear the redistricting plan, Seguin corrected the violation but then closed its candidate filing period so that the incumbent would run for office unopposed. Latino plaintiffs sued and secured an injunction under Section 5. The parties settled after negotiating a new election date, and a Latino majority was eventually elected to the Seguin City Council.

## Virginia

### *Section 5 Objections:*

- ***Northampton County (2003)*** – In 2003, the county proposed a redistricting plan and the realignment of voting precincts. The benchmark plan contained two Black majority districts in which Black voters had been able to elect candidates of their choice. However, the proposed plan had only one such district while eliminating the ability of Black voters to elect their candidates of choice in the other district. DOJ concluded that minority voting strength was unnecessarily reduced in the county.
- ***Northampton County (2003)*** – In 2002, the county proposed a redistricting plan for the board of supervisors and the realignment of voting precincts. Under the benchmark plan, Black voters had been able to elect candidates of choice in three districts. The proposed plan had no district in which Black persons would have constituted a majority of the voting-age population. In the 10 years prior to 2003, no Black-preferred candidate had won in a district in which Whites were a majority of the voting-age population. The analysis of electoral behavior indicated that a reduction in the Black voting-age population had the potential for a significant difference in the ability of Black voters to elect a candidate of choice.
- ***Cumberland County (2002)*** – The county proposed a new redistricting plan for the Board of Supervisors. At the time, District 3 was the only district in which Black people constituted a majority of the total population. However, under the proposed plan, the Black population and the Black voting-age population in that district would be reduced and the areas that were moved out of the district were the areas from which the Black-preferred candidate in District 3 drew substantial support in the 1995 and 1999 elections. DOJ objected to the plan, finding that the county did not meet the burden of proving the plan was drawn with a lack of discriminatory purpose or retrogressive intent.
- ***Pittsylvania County and Pittsylvania County School District (2002)*** – The 2001 redistricting plan for the board of supervisors and the board of education would have reduced the Black population in the only district in which Black persons were a majority of the population to below 50 percent. DOJ analysis showed that the level of racial polarization in the county was extreme, such that any reduction would have called into question the continued ability of Black voters to elect their candidates of choice.
- ***Northampton County (2001)*** – The county proposed to change the method of election for the board of supervisors from six single-member districts to three double-member districts, as well as a new redistricting plan for the board of supervisors, and the realignment of voting precincts. Under the existing method of election, Black voters had been able to elect candidates of their choice to office in three districts. The proposed plan did not contain any

districts in which minorities constituted a majority of the voting age population. DOJ determined that minority voters would not have had the same opportunity under the proposed plan that they had under the existing plan to elect even two candidates of choice.

## Washington

*Other Voting Rights Act Violations:*

- ***United States v. Yakima County, WA (2004)*** – In its complaint, DOJ alleged that the county had violated Section 203 by not providing effective election-related materials, information, and/or assistance in Spanish to those persons who were limited English proficient. The United States and the county were able to resolve the matter with a consent decree that required the county to establish an effective Spanish-language election program.

## Wisconsin

*Other Voting Rights Act Violations:*

- ***Frank v. Walker (2014)*** – On April 29, 2014, a federal district court in Wisconsin concluded that Wisconsin’s voter ID law, Act 23, violated the 14th Amendment and Section 2.

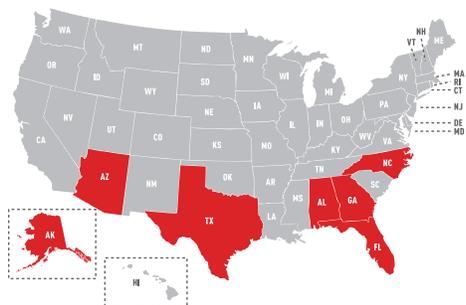
## Wyoming

*Other Voting Rights Act Violations:*

- ***Large v. Fremont County (2010)*** – The plaintiffs challenged the elections for the county commission on the basis that the method diluted Indian voting strength in violation of Section 2. The court found that the at-large election scheme diluted the Native American vote by preventing the politically cohesive Native American community from electing a candidate of its choice due to racially polarized White-bloc voting.

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## Examples of post-*Shelby* Voting Changes of Concern



Since the U.S. Supreme Court ruled in *Shelby County v. Holder* on June 25, 2013, 10 voting changes in seven states have raised concerns about voting discrimination.

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Because voting discrimination typically comes to light near major elections or right after the decennial census, we are only beginning to see examples of potentially discriminatory voting changes post-*Shelby*. The following is a list of potentially discriminatory voting changes enacted since June 2013:

- **Decatur, Alabama** – In 2011, Decatur requested Section 5 preclearance for a change in the method of election from five single-member districts to three single-member districts and two at-large seats for the city council. The city withdrew the submission after a request for more information. After the *Shelby* decision, the city implemented the change.
- ***Toyukak et al. v. Treadwell et al.*** – Private plaintiffs have brought a lawsuit alleging that three adjoining census areas in Alaska have deliberately withheld language assistance from these areas. Trial is scheduled to commence on June 23, 2014.
- **State of Arizona** – Arizona’s H.B. 2261 was initially submitted for Section 5 preclearance pre-*Shelby*, and DOJ requested additional information. The law requires the addition of two at-large seats to the Governing Board of the Maricopa Community College District. Since Arizona no longer has to comply with DOJ preclearance, the state is now proceeding to fill the two new seats in the November 2014 election. A state court lawsuit challenging the law is now on appeal.
- **Manatee County, Florida** – Supervisor of Elections Mike Bennett proposed reducing the number of precincts, citing decreased Election Day turnout, as more voters switch to in-person early voting and vote-by-mail options. In Manatee County, almost one-third of polling sites would be eliminated and half of the polling places in the heavily minority District 2 would be eliminated. Representatives of the local NAACP and Southern Christian Leadership Council are concerned that the elimination will decrease voter turnout because voters would have to travel further to a polling place, especially among the elderly and people without cars, and note that the cuts disproportionately affected minority-heavy precincts.
- **State of Florida** – Prior to the 2012 federal election, Florida used a highly inaccurate matching program to conduct a systematic purge of alleged noncitizen voters from the voter registration database. The purged voters were disproportionately from minority communities. The process was halted pre-Election 2012 after three federal lawsuits were filed, but restarted at the end of last year post-*Shelby*.
- **State of Georgia** – In the wake of the *Shelby* decision, the Georgia Secretary of State has announced that the 2014 election for Augusta-Richmond County will be held at the time of the primary rather than during the November general election, reinstating a plan that DOJ had objected to prior to *Shelby* on the grounds that it would disproportionately negatively impact the turnout of African-American voters. (See page 10)

- **State of North Carolina** – North Carolina passed H.B. 589 in 2013, which includes a multitude of voting restrictions. Lawsuits have been filed challenging provisions of the bill under Section 2 of the VRA, under the 14th and 15th amendments to the Constitution, and under state law. The provisions challenged include elimination of early voting, increases in the number and scope of challengers and observers, a strict photo identification requirement, a repeal of out-of-precinct voting, the elimination of flexibility in opening early voting sites at different hours within a county, a provision making it more difficult to add satellite polling sites for the elderly or voters with disabilities, new limits on who can assist a voter adjudicated to be incompetent by court, plus numerous other provisions. The law was enacted just one month after the *Shelby* County decision and is currently being challenged in one state court lawsuit and in three federal lawsuits: North Carolina State Conference of the NAACP et al. v. McCrory et al., League of Women Voters et al v. North Carolina et al., and U.S. v. North Carolina.
- **State of Texas** – Within hours of the *Shelby* decision, Texas’ attorney general announced that the state would begin to implement its photo ID law immediately. This law was previously denied Section 5 preclearance by DOJ and by a three-judge panel of the U.S. District Court of the District of Columbia on the grounds it would have a racially discriminatory effect. A Section 2 case by the United States and two lawsuits brought by private plaintiffs have been consolidated and are scheduled to go to trial in September 2014.
- **Galveston County, Texas** – A few days after the *Shelby* decision, Galveston County decided to implement the reduction in the number of justice of the peace and constable districts to which DOJ had objected in 2012.
- **Pasadena, Texas** – During a special election in November 2013, Pasadena voters voted in favor of Proposition 1, a measure that changed the city’s eight single-member district system of electing members of the city council to a 6-2 system featuring six single-member districts and two at-large seats. The change would reduce Latino voting strength in city council elections by making it more difficult for Latino voters to reach majority status in the districts.



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[4310-93]

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 50**

**RIN 1090-AB05**

**Procedures for Reestablishing a Government-to-Government Relationship with the Native Hawaiian Community**

[145D0102DM DS61400000 DLSN00000.000000 DX.61401]

**AGENCY:** Office of the Secretary, Department of the Interior.

**ACTION:** Advance notice of proposed rulemaking; solicitation of comments.

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**SUMMARY:** The Secretary of the Interior (Secretary) is considering whether to propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community, to more effectively implement the special political and trust relationship that Congress has established between that community and the United States. The purpose of this advance notice of proposed rulemaking (ANPRM) is to solicit public comments on whether and how the Department of the Interior should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. In this ANPRM, the Secretary also announces several public meetings in Hawaii and several consultations with federally recognized tribes in the continental United States to consider these issues.

**DATE:** Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this ANPRM by any of the methods listed below.

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.
2. U.S. mail, courier, or hand delivery: Office of the Secretary, Department of the Interior, Room 7329, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John Strylowski , Office of the Secretary, telephone (202) 208-3071 (not a toll-free number), john\_strylowski @ios.doi.gov.

**SUPPLEMENTARY INFORMATION:**

**Public Comment**

Please direct all comments to Regulation Identifier Number 1090-AB05. The Department of the Interior intends to include all comments received in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means the Department of the Interior will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the Department of the Interior without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the Department of the Interior recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the Department of the Interior cannot read your comment due to technical difficulties and cannot contact you for clarification, the Department of the Interior may not be

able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

The Secretary is considering whether to propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. We are interested in hearing from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States. We also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and other members of the public.

To be most useful, and most likely to inform decisions on the content of a potential administrative rule, comments should:

- Be specific;
- Be substantive;
- Explain the reasoning behind the comments; and
- Address the issues outlined in the ANPRM.

For the purpose of this ANPRM, we are seeking input solely on questions related to a potential administrative rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. Because promulgating a rule would not (1) alter the fundamental nature of the political and trust relationship established by Congress between the United States and the Native Hawaiian community, (2) authorize compensation for past wrongs, or (3) have any direct impact on the status of the Hawaiian home lands, we are not seeking comments on those topics.

Furthermore, at this time, we are not seeking comments on what the contents of a reorganized Native Hawaiian government's constitution or other governing document (if one

were adopted) might include, how that Native Hawaiian government might be structured, or what powers that Native Hawaiian government might exercise.

Rather, we are seeking comments solely on five threshold questions:

- Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?
- Should the Secretary assist the Native Hawaiian community in reorganizing its government, with which the United States could reestablish a government-to-government relationship?
- If so, what process should be established for drafting and ratifying a reorganized Native Hawaiian government's constitution or other governing document?
- Should the Secretary instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, to the extent such a process is consistent with Federal law?
- If so, what conditions should the Secretary establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government?

In addition to receiving comments through the Federal eRulemaking Portal, U.S. mail, courier services, and hand delivery, we will conduct a series of public meetings on the islands of Hawaii, Kauai, Lānai, Maui, Molokai, and Oahu, and a series of in-person consultations with federally recognized tribes in the continental United States. We will announce locally the time and place of each meeting and will give public notice of each tribal consultation. At these

meetings and consultations, we will accept both oral and written communications. We strongly encourage Native Hawaiian organizations and federally recognized tribes in the continental United States to hold their own meetings to develop comments on the issues outlined in this ANPRM, and to share the outcomes of those meetings with us.

All of the citations listed in this ANPRM will be available on the Department of the Interior's Office of Native Hawaiian Relations' website at <http://www.doi.gov/ohr/>.

## **Background**

The United States has a unique political and trust relationship with federally recognized tribes across the country, as set forth in the United States Constitution, treaties, statutes, Executive Orders, administrative regulations, and judicial decisions. The Federal government's relationship with these tribes is guided by a trust responsibility—a long-standing, paramount commitment to protect their unique rights and ensure their well-being, while respecting their tribal sovereignty. In recognition of that special commitment—and in fulfillment of the solemn obligations it entails—the United States, acting through the Department of the Interior, has developed processes to help tribes in the continental United States to reorganize their governments and to establish government-to-government relationships with the United States.

Strong tribal governments have proved critical to tribes' capacity to exercise their inherent sovereign powers and sustain prosperous and resilient Native American communities. And, although we must not ignore the history of mistreatment and destructive policies that have done great harm to so many tribal communities, it is undeniable that the government-to-government relationships between tribes and the United States that have flourished during the last half century, in the current era of tribal self-determination, have been enormously beneficial not only to Native Americans but to *all* Americans. Yet the benefits of the government-to-

government relationship have long been denied to one place in our Nation, even though it is home to one of the world's largest indigenous communities: Hawaii.

Over many decades, Congress has enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community. Among other things, these statutes create programs and services for members of the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. But during this same period, the United States has not partnered with Native Hawaiians on a government-to-government basis, at least partly because there has been no formal, organized Native Hawaiian government since 1893, when the United States helped overthrow the Kingdom of Hawaii.

In recent years, the Department has increasingly heard from Native Hawaiians who assert that their community's opportunities to thrive would be significantly bolstered by reorganizing a sovereign Native Hawaiian government that could engage the United States in a government-to-government relationship, exercise inherent sovereign powers of self-governance and self-determination, and enhance the implementation of programs and services that Congress has created specifically to benefit the Native Hawaiian community.

We would now like to hear from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States about whether, and how, the Department should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. Meaningful consultation and collaboration with both the Native Hawaiian community and the federally recognized tribes in the continental United States will be essential to the Department in developing any policy regarding potential

reestablishment of a government-to-government relationship with the Native Hawaiian community. *See* Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 5, 2009). And as stated above, we also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and other members of the public.

### ***The Relationship Between the United States and the Native Hawaiian Community***

At the time of the first documented encounter between Native Hawaiians and Europeans in 1778, “the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.” 20 U.S.C. 7512(2); *accord* 42 U.S.C. 11701(4). Although the indigenous people shared a common language, ancestry, and religion, the eight islands were governed by four independent chiefdoms until 1810, when the islands were unified under one Kingdom of Hawaii. *See Rice v. Cayetano*, 528 U.S. 495, 500-01 (2000).

Throughout the nineteenth century and until 1893, the United States “recognized the independence of the Hawaiian Nation,” “extended full and complete diplomatic recognition to the Hawaiian Government,” and entered into several treaties with the Hawaiian monarch. 42 U.S.C. 11701(6); *accord* 20 U.S.C. 7512(4); *see Rice*, 528 U.S. at 504 (citing treaties and conventions that the two countries signed in 1826, 1849, 1875, and 1887). But during that same period, westerners became “increasing[ly] involve[d] . . . in the economic and political affairs of the Kingdom,” leading to the overthrow of the Kingdom in 1893 by a small group of non-Hawaiians, aided by the United States Minister to Hawaii and the Armed Forces of the United States. *Rice*, 528 U.S. at 501, 504-05. After the overthrow, the Republic of Hawaii ceded its land to the United States, and Congress passed a joint resolution annexing the islands in 1898.

*See id.* at 505. The Hawaiian Organic Act, enacted in 1900, established the Territory of Hawaii, placed ceded lands under United States control, and directed that proceeds from the lands be used to benefit the inhabitants of Hawaii. Act of Apr. 30, 1900, ch. 339, 31 Stat. 141.

By 1919, the decline in the Native Hawaiian population—by some estimates from several hundred thousand in 1778 to only 22,600—led the Secretary to recommend to Congress that land be set aside to help Native Hawaiians reestablish their traditional way of life. *See* H.R. Rep. No. 839, 66th Cong., 2d Sess. 4 (1920); 20 U.S.C. 7512(7). This recommendation resulted in enactment of the Hawaiian Homes Commission Act (HHCA), which designated approximately 200,000 acres of land for homesteading by Native Hawaiians. Act of July 9, 1921, ch. 42, 42 Stat. 108; *see also Rice*, 528 U.S. at 507 (HHCA’s stated purpose was “to rehabilitate the native Hawaiian population”) (citing H.R. Rep. No. 839, at 1-2).

When Hawaii was admitted to the Union in 1959, Congress vested authority in the State to administer HHCA lands subject to certain limitations. 73 Stat. 4 (1959). Congress also placed additional lands into a trust to be managed by the State for purposes that included “the betterment of the conditions of native Hawaiians, as defined in the [HHCA], as amended.” *Id.* at 6. Congress further detailed the Secretary’s responsibilities with respect to the HHCA lands and the HHCA itself in the Hawaiian Home Lands Recovery Act, 109 Stat. 357 (1995).

Since Hawaii’s admission to the Union, Congress has enacted dozens of statutes on behalf of Native Hawaiians pursuant to the United States’ recognized political relationship and trust responsibility. Congress has:

- Established special Native Hawaiian programs in the areas of health care, education, loans, and employment. *See, e.g.,* Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701-11714; Native Hawaiian Education Act, 20

U.S.C. 7511-7517; Workforce Investment Act of 1998, 29 U.S.C. 2911; Native American Programs Act of 1974, 42 U.S.C. 2991-2992.

- Enacted statutes to preserve Native Hawaiian culture, language, and historical sites. *See, e.g.*, 16 U.S.C. 396d(a); Native American Languages Act, 25 U.S.C. 2901-2906; National Historic Preservation Act of 1966, 16 U.S.C. 470a(d)(6).
- Extended to the Native Hawaiian people many of “the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities” by classifying Native Hawaiians as “Native Americans” under numerous Federal statutes. 42 U.S.C. 11701(19); *see, e.g.*, American Indian Religious Freedom Act, 42 U.S.C. 1996-1996a. *See generally* 20 U.S.C. 7512(13) (noting that “[t]he political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians” in many statutes); *accord* 114 Stat. 2968-69 (2000); 114 Stat. 2874-75 (2000).

In a number of enactments, Congress has expressly identified Native Hawaiians as “a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago,” 42 U.S.C. 11701(1); *accord* 20 U.S.C. 7512(1), with whom the United States has a “special” “trust” relationship, 42 U.S.C. 11701(15), (16), (18), (20); 20 U.S.C. 7512(8), (10), (11), (12).

In 1993, Congress enacted a joint resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to offer an apology to Native Hawaiians. 107 Stat. 1510 (1993). In that Joint Resolution, Congress acknowledged that the overthrow of the Kingdom of Hawaii thwarted Native Hawaiian efforts to exercise their rights to “self-

determination” and “inherent sovereignty,” and stated that “the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.” *Id.* at 1512-13; *see also* 20 U.S.C. 7512(20). In light of those findings, Congress “express[ed] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.” 107 Stat. 1513 (1993).

Following a series of hearings and meetings with the Native Hawaiian community in 1999, the U.S. Departments of the Interior and Justice issued “From Mauka to Makai: The River of Justice Must Flow Freely,” a report on the reconciliation process between the Federal government and Native Hawaiians. The report recommended as its top priority that “the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law.” Department of the Interior and Department of Justice, *From Mauka to Makai* 4 (2000).

In 2000, in *Rice v. Cayetano*, while addressing aspects of the legal status of Native Hawaiians under one provision of Hawaii state law, the Supreme Court assumed, without deciding, that the United States “may treat the native Hawaiians as it does the [organized] Indian tribes.” 528 U.S. at 518-19. *Rice* involved a distinctive state law that limited the right to vote for the trustees of the state Office of Hawaiian Affairs to “Hawaiians,” defined as “any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.” Haw. Rev. Stat. 10-2 (1993). The Court invalidated that state-

law provision on the ground that, rather than implementing a political classification designed to promote the self-governance of a quasi-sovereign tribal entity, it used a racial classification in violation of the Fifteenth Amendment, which prohibits States from denying or abridging United States citizens' right to vote on account of race or color. *See Rice*, 528 U.S. at 514, 518-22.

In recent statutes, Congress has again recognized that “Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands.” 114 Stat. 2968 (2000); *see also id.* at 2966; 114 Stat. 2872, 2874 (2000); 118 Stat. 445 (2004). Congress has consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are, in many respects, analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. As Congress has explained, it “does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship.” 114 Stat. 2968 (2000).

Although Congress has repeatedly acknowledged its special political and trust relationship with the Native Hawaiian community since the overthrow of the Kingdom of Hawaii more than a century ago, the Federal government has not maintained a government-to-government relationship with the Native Hawaiian community as an organized, sovereign entity. Reestablishing a government-to-government relationship with a reorganized sovereign Native Hawaiian government that has been acknowledged by the United States could enhance Federal agencies' ability to implement the established relationship between the United States and the

Native Hawaiian community, while strengthening the self-determination of Hawaii's indigenous people and facilitating the preservation of their language, customs, heritage, health, and welfare.

The Federal government has long consulted with Native Hawaiians under several Federal statutes, including the National Historic Preservation Act of 1966, 16 U.S.C. 470a(d)(6)(B), 470h-2(a)(2)(D); the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002(c)(2); and the Hawaiian Home Lands Recovery Act, 109 Stat. 360 (1995). And for decades, Native Hawaiians have sought to formally reorganize a government through a community- or State-facilitated process. In recent years, there have been calls from the Native Hawaiian community for the Federal government to "assist with the creation of a Native Hawaiian [governing] entity" to address the legal status of the community and to reestablish a government-to-government relationship, in part to more effectively implement the special political and trust relationship between the United States and the Native Hawaiian community. Department of the Interior & Department of Justice, *From Mauka to Makai* 17 (2000).

In 2001, a group of Native Hawaiian individuals and organizations brought suit challenging Native Hawaiians' exclusion from the Department's acknowledgment regulations (25 CFR part 83), which establish a uniform process for Federal acknowledgment of Indian tribes. The Ninth Circuit upheld the geographic limitation in the part 83 regulations, concluding that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the history of separate congressional enactments regarding the two groups and the unique history of Hawaii. The Ninth Circuit also noted the question whether Native Hawaiians "constitute one large tribe . . . or whether there are, in fact, several different tribal groups." *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1283 (9th Cir. 2004). The court expressed a preference for the Department to apply its expertise to "determine whether

native Hawaiians, or some native Hawaiian groups, could be acknowledged on a government-to-government basis.” *Id.*

Also in 2004, Congress authorized the Department’s Office of Native Hawaiian Relations to discharge the Secretary’s responsibilities for matters related to the Native Hawaiian community. *See* 118 Stat. 445-46 (2004).

Legislation has been proposed in Congress to reorganize a single Native Hawaiian governing entity to which the United States could relate on a government-to-government basis. In 2010, during the Second Session of the 111th Congress, nearly identical Native Hawaiian government reorganization bills were passed by the House of Representatives by a bipartisan vote of 245 to 164 (H.R. 2314), reported favorably by the Senate Committee on Indian Affairs (S. 1011), and strongly supported by the Administration (S. 3945). In a letter to the Senate concerning S. 3945, the Secretary and the Attorney General stated: “Of the Nation’s three major indigenous groups, Native Hawaiians—unlike American Indians and Alaska Natives—are the only one that currently lacks a government-to-government relationship with the United States. This bill provides Native Hawaiians a means by which to exercise the inherent rights to local self-government, self-determination, and economic self-sufficiency that other Native Americans enjoy.” 156 Cong. Rec. S10990, S10992 (Dec. 22, 2010).

The 2010 House and Senate bills provided that the Native Hawaiian government “shall be vested with the inherent powers and privileges of self-government of a native government under existing law,” including the inherent powers “to determine its own membership criteria [and] its own membership” and to negotiate and implement agreements with the United States or with the State of Hawaii. The bills would have required protection of the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968,

25 U.S.C. 1301 et seq., and would have barred the Native Hawaiian government and its members from conducting gaming activities under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., or other authority. The bills further would have provided that the Native Hawaiian government and its members would *not* be eligible for Federal Indian programs and services unless Congress had expressly declared them eligible. And S. 3945 expressly left untouched the privileges, immunities, powers, authorities, and jurisdiction of federally recognized tribes in the continental United States.

The bills would have acknowledged the existing special political and trust relationship between Native Hawaiians and the United States, and would have established a process for reorganizing a Native Hawaiian governing entity. Some in Congress, however, expressed a preference not for recognizing a reorganized Native Hawaiian government by legislation, but for applying the Department's Federal acknowledgment process to the Native Hawaiian community. *See, e.g.,* S. Rep. No. 112-251, at 45 (2012); S. Rep. No. 111-162, at 41 (2010).

The State of Hawaii, in Act 195, Session Laws of Hawaii 2011, expressed its support for reorganizing and federally recognizing a Native Hawaiian government, while also providing for state recognition of the Native Hawaiian people as “the only indigenous, aboriginal, maoli people of Hawaii.” Haw. Rev. Stat. 10H-1 (2013); *see* Act 195, sec. 1, Sess. L. Haw. 2011. In particular, Act 195 established a process for compiling a roll of qualified Native Hawaiians in order to facilitate the development of a reorganized Native Hawaiian governing entity by the Native Hawaiian community. *See* Haw. Rev. Stat. 10H-3-4 (2013); *id.* 10H-5 (“The publication of the roll of qualified Native Hawaiians . . . is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of

qualified Native Hawaiians, established for the purpose of organizing themselves.”); Act 195, secs. 3-5, Sess. L. Haw. 2011.

In addition, Native Hawaiian community representatives have asked the Department to provide an administrative avenue to facilitate reestablishing a government-to-government relationship between that community and the United States. Most recently, in comments on the Department’s discussion draft of potential revisions to the Federal acknowledgment regulations in 25 CFR part 83, which expressly do not apply outside the continental United States, several Native Hawaiian organizations requested an analogous administrative process for the Native Hawaiian community. *See, e.g.,* <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-023645.pdf>.

This ANPRM seeks input on whether the Secretary should promulgate an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. The goals of the rule would be to more effectively implement the special political and trust relationship between Native Hawaiians and the United States, which Congress has long recognized, and to better implement programs and services that Congress has created to benefit the Native Hawaiian community. The rule could focus on either:

- A Federal process to assist the Native Hawaiian community in reorganizing a government; or
- Reestablishing a government-to-government relationship with a Native Hawaiian government reorganized through a process established by the Native Hawaiian community and facilitated by the State of Hawaii. This process would have to be consistent with Federal law.

***Who Should Be Eligible to Participate in Reorganizing a Native Hawaiian Government***

If the Department were to proceed with an administrative rule to assist the Native Hawaiian community in reorganizing a Native Hawaiian government, the rule would not determine who ultimately would be a citizen or member of that government. For that reason, this ANPRM does *not* concern the question of how a Native Hawaiian constitution or other governing document should define a set of membership criteria. Presumably, a Native Hawaiian government would exercise its sovereign prerogative and, operating under its own constitution or other governing document, could define its membership criteria without regard to whether any person participated, or had been eligible to participate, in the government's initial reorganization (unless Federal legislation provided otherwise). *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (holding that tribes are "distinct, independent political communities, retaining their original natural rights in matters of local self-government," with the power to regulate "their internal and social relations, . . . to make their own substantive law in internal matters" such as membership, and "to enforce that law in their own forums") (citations and internal quotation marks omitted); *id.* at 72 n.32 ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.").

But a Federal administrative rule concerning reorganization of a Native Hawaiian government would need to determine who can participate in the reorganization, including who would be eligible to assist in drafting a constitution or other governing document, and who would be eligible to vote in a ratification referendum. In discussing that issue, commenters may wish to consider observations made by members of the Supreme Court in *Rice v. Cayetano*, which invalidated a voting law of the State of Hawaii under the Fifteenth Amendment. *Rice*, 528 U.S. at 518-22. Concurring in the judgment, Justice Breyer, joined by Justice Souter, concluded

that the voting qualification was impermissible because the state statute “defines the electorate in a way that is not analogous to membership in an Indian tribe.” *Id.* at 526. Justice Breyer contrasted the state law’s “broad” definition of “Hawaiian”—which he noted would “includ[e] anyone with one ancestor who lived in Hawaii prior to 1778, thereby including individuals who are less than one five-hundredth original Hawaiian (assuming nine generations between 1778 and the present)” —with membership definitions for various tribes in the continental United States, which, for example, focus on whether individuals and their parents are “regarded as Native” by a Native village or group to which they claim membership, or whether individuals have “an ancestor whose name appeared on a tribal roll . . . in the far less distant past [such as 1906, 1936, 1937, or 1968, rather than 1778].” *Id.* at 526-27 (citations and internal quotation marks omitted). While Justice Breyer acknowledged that “a Native American tribe has broad authority to define its membership,” in his view the voting qualification created by the State of Hawaii went “well beyond any reasonable limit” on the State’s power to create such a definition and was “not like any actual membership classification created by any actual tribe.” *Id.* at 527.

In defining the persons who would be eligible to participate in any reorganization of a Native Hawaiian government, certain other legislative approaches may be instructive. For example, in the Hawaiian Homes Commission Act (HHCA), Congress exercised its trust responsibility to set aside Hawaiian home lands for homesteading by “native Hawaiians,” a category Congress defined as “any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.” Act of July 9, 1921, ch. 42, sec. 201(a)(7), 42 Stat. 108; *see id.* sec. 207, 42 Stat. 110-11. Congress later consented to amendments that would permit a lessee’s spouse, child, or grandchild who is of at least 25% Native Hawaiian ancestry to acquire the lease. 100 Stat. 3143 (1986) (consenting to, *inter alia*,

Act 272, Sess. L. Haw. 1982); 111 Stat. 235 (1997) (consenting to, *inter alia*, Act 37, Sess. L. Haw. 1994).

A second approach is found in the State of Hawaii's Act 195, Session Laws of Hawaii 2011, legislation designed to facilitate the reorganization of a Native Hawaiian government. As amended in 2012 and 2013, Act 195 provides that "qualified Native Hawaiians" can participate in reorganizing a Native Hawaiian government, where the term "qualified Native Hawaiian" is defined to mean an individual 18 years or older who has maintained a significant cultural connection to the Native Hawaiian community and who:

- Is determined to be a descendant of the aboriginal peoples who, before 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii;
- Is determined to be one of the indigenous native peoples of Hawaii and to be eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act of 1920, or a direct lineal descendant of that individual; or
- Meets the ancestry requirements of Kamehameha Schools or of any Hawaiian registry program of the office of Hawaiian affairs.

*See* Haw. Rev. Stat. 10H-3(a)(2) (2013)

The state law does not specify the documents or evidence that the Native Hawaiian Roll Commission should deem adequate to verify ancestry or to verify that an individual "[h]as maintained a significant cultural, social, or civic connection to the Native Hawaiian community." *Id.* 10H-3(a)(2)(B). In a 2013 amendment, the legislature further instructed the Native Hawaiian Roll Commission to "include in the roll of qualified Native Hawaiians all individuals already registered with the State as verified Hawaiians or Native Hawaiians through the office of

Hawaiian affairs as demonstrated by the production of relevant office of Hawaiian affairs records”; those individuals do not have to certify that they have maintained a connection to the Native Hawaiian community or wish to be included in the roll of qualified Native Hawaiians. *Id.* 10H-3(a)(4).

Another possible approach is found in legislation proposed in Congress to reorganize a Native Hawaiian government. The Native Hawaiian Government Reorganization Act of 2010 contained requirements that were similar to state Act 195’s requirements, as to both ancestry and cultural, social, or civic connection to the community. This Federal legislation provided considerable detail about the documentation an individual would have to provide to demonstrate both ancestry and the kinds of significant cultural, social, or civic connections that evidence an individual’s membership in the political community. The legislation stated that ancestry could be verified by presenting certain types of documentary evidence of lineal descent, identifying a lineal ancestor on the Kingdom of Hawaii’s 1890 Census, or producing sworn affidavits from at least two “qualified Native Hawaiian constituents” (for those lacking birth certificates under certain circumstances). *See* S. 3945, sec. 8(c)(1)(B)-(C), 111th Cong., 2d Sess. (2010).

The Federal legislation further provided that an individual could demonstrate a significant cultural, social, or civic connection to the Native Hawaiian community if he or she satisfied at least two of ten criteria relating to current state of residence, eligibility to be a beneficiary of programs under the Hawaiian Homes Commission Act, residence on or ownership interest in “kuleana land,” participation in Hawaiian language schools or programs, membership in Native Hawaiian membership organizations, and regard as Native Hawaiian by the Native Hawaiian community. *See* S. 3945, sec. 3(12)(E), 111th Cong., 2d Sess. (2010); *see id.* sec. 3(10).

This ANPRM seeks input on which individuals, as members of the Native Hawaiian community, should be eligible to participate in the process of reorganizing a sovereign Native Hawaiian government that could reestablish a relationship with the Federal government. The ANPRM does not seek input on the membership or citizenship criteria that the Native Hawaiian community may adopt in its constitution or other governing document; that decision belongs to the Native Hawaiian community.

***Frameworks for Reorganization, Roll Preparation, and Acknowledgment***

The Department's existing regulatory frameworks for reorganizing, preparing rolls for, and acknowledging Indian tribes in the continental United States may inform the analogous processes that Native Hawaiians may ultimately propose for reorganization or acknowledgment. Tribal officials have worked with these regulatory provisions for decades, and their experiences likely will be helpful in responding to this ANPRM.

The Department has established a regulatory framework for members of Indian tribes to adopt new governing documents and reorganize their tribal governments. The framework includes procedures that identify eligible voters, provide notice to those voters, provide equal opportunities to participate, establish minimum participation standards to ensure that the outcome of the voting reflects the will of the majority, and provide for the Secretary's approval of the governing document. *See* 25 CFR part 81.

Federal regulations also provide a framework for the Secretary to compile rolls for some tribes for limited purposes. Those regulations provide for public notice of the preparation of the roll, procedures for enrollment, and an opportunity to appeal adverse decisions. *See* 25 CFR parts 61 and 62.

The Department's regulatory framework for Federal acknowledgment of Indian tribes, found in 25 CFR Part 83, establishes uniform administrative standards and procedures for identifying, defining, and acknowledging those Indian groups that exist as tribes. *Id.* 83.2. The regulations require evidence of community—such as shared cultural or social activities, residence in a defined geographic area, marriages within the group, shared language, kinship systems, or ceremonies, and significant social relationships among members—and evidence of political influence, such as widespread knowledge and involvement in political processes, and leaders who take action on matters that most of the membership consider important. *Id.* 83.7(b) and (c). If these and other mandatory criteria are met, tribal existence is acknowledged. *Id.* 83.6(c) and 83.10(m). Indeed, Congress has expressly found that administrative acknowledgment under procedures set forth in a Federal regulation such as Part 83 is a valid method for recognizing an Indian tribe with which the United States can maintain a government-to-government relationship. *See* 108 Stat. 4791 (1994).

The acknowledgment of the Indian group under part 83 recognizes or reaffirms a special political and trust relationship with the United States. Here, however, the Native Hawaiian community already has a congressionally recognized special political and trust relationship with the United States, but lacks an organized governing body, a constitution, settled membership criteria, and a complete membership list, which petitioners under part 83 have. The experiences of tribes in the continental United States with part 83, like their experiences with the other parts of title 25 of the Code of Federal Regulations discussed above, nonetheless may provide useful guidance for the Native Hawaiian community. For example, the mandatory criteria in part 83 help clarify what constitutes a political community.

Given the Native Hawaiians' unique situation, one of the topics on which this ANPRM seeks input is whether and how to promulgate a distinct regulatory framework for the Native Hawaiian community, for purposes such as:

- Identifying those persons of Native Hawaiian descent who are part of the political community and should be eligible to participate in the reorganization by virtue of verifiable cultural, social, or civic connection to the Native Hawaiian community; and
- Identifying procedures for adopting a constitution or other governing document, should the Native Hawaiian community indicate that it would like to do so.

#### ***Federal Programs and Services***

As described above, Congress has consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are, in many respects, analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States. Generally, Native Hawaiians have not been eligible for Federal Indian programs and services unless Congress expressly and specifically declared them eligible. Consistent with that approach, the Department of the Interior does not foresee that a Federal rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community would alter or affect the programs and services that the United States currently provides to federally recognized tribes in the continental United States. Congress has enacted more than 150 statutes expressly affecting Native Hawaiians, and it is these laws that define the scope of Federal programs and services for Native Hawaiians.

#### ***Consultation with Federally Recognized Tribes in the Continental United States***

Given that the Secretary is considering whether to propose an administrative rule to facilitate the reestablishment of a government-to-government relationship with an indigenous people, the knowledge, expertise, and input of officials from federally recognized tribes in the continental United States, including those tribes that have reorganized their own sovereign governments or have reestablished a government-to-government relationship with the United States, will be important. So, along with a series of public meetings in Hawaii, we will conduct a series of formal, in-person consultations with officials of federally recognized tribes in various regions of the continental United States during the public-comment period for this ANPRM. We will give public notice of each tribal consultation, and we will accept both oral and written communications. Tribal consultations on this ANPRM will be conducted in accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000); the Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, 74 FR 57881 (Nov. 9, 2009); and the Department of the Interior Policy on Consultation with Indian Tribes.

If the Department ultimately decides to issue a Notice of Proposed Rulemaking (NPRM), the NPRM's preamble will include a tribal summary impact statement that reflects comments received from tribal officials in response to this ANPRM. Publication of an NPRM also would open a second round of tribal consultation and another formal comment period to allow for further input and refinements before publishing a final rule.

### **Description of the Information Requested**

We are particularly interested in receiving comments on the following questions relating to an administrative rule we may develop concerning the potential reestablishment of a government-to-government relationship with the Native Hawaiian community:

#### ***General Questions***

1. Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?
2. What role, if any, should the Department of the Interior—exercising the authorities described in 25 U.S.C. 2, 25 U.S.C. 9, 43 U.S.C. 1457, and other statutes—play in facilitating the reestablishment of a government-to-government relationship with the Native Hawaiian community?
3. Should there be a reorganization of a Native Hawaiian government in order to reestablish and maintain a government-to-government relationship between the Native Hawaiian community and the United States?
4. If a Native Hawaiian government is reorganized, under what conditions should the Secretary federally acknowledge it and thus reestablish a government-to-government relationship?
5. What features, including any within 25 CFR parts 61, 62, 81, and 83 or other regulations, should the Secretary incorporate in a proposed administrative rule addressing potential reorganization or acknowledgment of a Native Hawaiian government?

***Criteria for Inclusion on the Roll of Persons Eligible to Participate in the Reorganization***

6. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the criteria for persons to be included on the roll of those eligible to participate in reorganizing this government? (This roll would determine which persons are eligible to participate in reorganizing a Native Hawaiian government; it would *not* determine which persons ultimately could

become members or citizens of a reorganized sovereign Native Hawaiian government.)

7. To be included on the roll, what should constitute adequate evidence or verification that a person has Native Hawaiian ancestry?
8. To be included on the roll, what should constitute adequate evidence or verification that a person has a significant cultural, social, or civic connection to the Native Hawaiian community?
9. To be included on the roll, what significance, if any, should be given to the fact that a person is potentially eligible under the Hawaiian Homes Commission Act (HHCA), Act of July 9, 1921, ch. 42, 42 Stat. 108, as amended? To the extent that this is a relevant criterion, what process should be used to identify persons who are potentially eligible under the HHCA, as amended?

***The Process for Preparing a Roll of Persons Eligible to Participate in the Reorganization***

10. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for preparing a roll of persons who would be eligible to participate in reorganizing a Native Hawaiian government?
11. What role, if any, should the Secretary play in establishing, operating, or approving the process for preparing such a roll?
12. What role, if any, should be played by the Native Hawaiian Roll Commission established under Hawaii state law to prepare the Kanaiolowalu registry?

***Drafting a Constitution for a Native Hawaiian Government***

13. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for drafting a constitution or other

governing document for a Native Hawaiian government, and what should be the Secretary's role in providing such assistance?

14. How should the drafters of a constitution or other governing document be selected?

***Ratifying and Approving a Constitution for a Native Hawaiian Government***

15. If the Secretary were to propose a rule to assist in reorganizing a Native Hawaiian government, what should be the process for ratifying and approving a constitution or other governing document for a Native Hawaiian government?

16. Should there be a minimum turnout requirement for any referendum to ratify a Native Hawaiian constitution or other governing document?

17. In addition to being ratified by a majority of all qualified Native Hawaiians who participate in a ratification referendum, should a Native Hawaiian constitution or other governing document also have to be ratified by a majority of all qualified Native Hawaiians who participate in the ratification referendum and are potentially eligible under the HHCA, as amended?

18. Should the Secretary have the responsibility to approve or disapprove a Native Hawaiian constitution or other governing document? If so, what factors, if any, other than consistency with Federal law, should be considered? For example, should the Secretary's approval depend on substantive issues (e.g., the constitution's safeguards for civil rights and liberties), procedural issues (e.g., lost or destroyed ballots, wrongful denial of ballots, etc.), or both?

***Federal Acknowledgment of an Already Reorganized Native Hawaiian Government***

19. Should reorganization of a Native Hawaiian government occur through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, rather than through a Federal process? This non-Federal process would

have to be consistent with Federal law and satisfy conditions established by the Secretary as prerequisites to Federal acknowledgment. We seek views on each of the following as a potential condition for Federal acknowledgment of a Native Hawaiian government that has already been reorganized through a community-established, State-facilitated process:

- Acknowledgment by the State of Hawaii.
- A Native Hawaiian constitution (or other governing document) that—
  - Safeguards the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968, as amended, 25 U.S.C. 1301-1304;
  - Has been ratified by a majority vote of “qualified Native Hawaiians,” as defined in Haw. Rev. Stat. 10H-3(a) (2013); and
  - Has *also* (and perhaps simultaneously) been ratified by a majority vote of “qualified Native Hawaiians” who are potentially eligible under the HHCA, as amended.
- Any other criterion that should be included as a condition for Federal acknowledgment of an already reorganized Native Hawaiian government.



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Michael L. Connor  
Deputy Secretary

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