HEARING OVERVIEW

The purpose of this hearing is to explore the ramifications of the June 25, 2013 U.S. Supreme Court ruling in *Shelby County v. Holder* which held that the coverage formula in Section 4(b) of the Voting Rights Act of 1965 (VRA) is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the VRA.

Voting Rights Act of 1965. The 15th Amendment to the U.S. Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. The 15th Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions of the 15th Amendment. Congressional hearings found that litigation to eliminate discriminatory practices was largely ineffective because state and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the VRA. The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

Section 2 of the VRA is a nationwide prohibition against voting practices and procedures, including redistricting plans and at-large election systems, poll worker hiring, and voting registration procedures, that discriminate on the basis of race, color, or membership in a language minority group. Section 2 allows the U.S. Attorney General (AG), as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA. Section 4 of the VRA sets the criteria for determining whether a jurisdiction is covered under certain provisions of the VRA, including the requirement for review of changes affecting voting under Section 5. Section 5 of the VRA requires certain states and covered jurisdictions to receive approval for any changes to law and practices affecting voting from the U.S. Department of Justice (DOJ) or the U.S. District Court of the District of Colombia to ensure that the changes do not have the purpose or effect of "denying or abridging the right to vote on account of race or color." The requirement to obtain approval under Section 5 is commonly referred to as a "preclearance" requirement.

Shelby County v. Holder. While much of the VRA is permanent, certain special provisions of the VRA are temporary, including Section 5. When the VRA was enacted, Section 5 was scheduled to expire in five years. Subsequently, Congress extended those provisions for another five years in 1970, an additional seven years in 1975, and an additional 25 years in 1982, and again for an additional 25 years in 2006. As a result, Section 5 currently is scheduled to expire in 2031.

In April 2010, Shelby County in Alabama filed suit in the U.S. District Court for the District of Columbia challenging the constitutionality of Section 5 of the VRA, and of the coverage formulas contained in Section 4(b) of the VRA. Because the State of Alabama

was covered under the preclearance requirements of Section 5, Shelby County was also covered as a political subdivision of Alabama. In the lawsuit, Shelby County contends that Congress exceeded its authority under the 15th Amendment and thus violated the 10th Amendment and Article IV of the U.S. Constitution when it voted to reauthorize Section 5 without changing or updating the formulas that determined which jurisdictions were covered under Section 5. The District Court rejected Shelby County's arguments, and upheld the constitutionality of the Section 5 reauthorization and the coverage formulas contained in Section 4(b). On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the ruling of the District Court, and Shelby County subsequently appealed to the U.S. Supreme Court.

On June 25, 2013, the U.S. Supreme Court, in *Shelby County v. Holder*, held that the coverage formula in Section 4(b) of the VRA is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the VRA. The Court stated that although the formula was rational and necessary at the time of its enactment, it is no longer responsive to current conditions. The Court, however, did not strike down Section 5, which contains the preclearance conditions. Without Section 4(b), however, no jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

The effect of the Shelby County decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance from the U.S. AG or the U.S. District Court for the District of Columbia before implementing new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the VRA.

All or specific portions of the following states were required to have their voting changes precleared before the U.S. Supreme Court decision in Shelby: Alabama, Alaska, Arizona, Florida, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Also included were the California counties of Kings, Monterey, and Yuba. Merced County previously was subject to the preclearance requirement, but it successfully bailed out from Section 5 coverage last year through a court approved consent decree negotiated with the U.S. DOJ.

According to the U.S. DOJ, the ruling in Shelby County does not affect Section 3(c) of the VRA. Jurisdictions covered by a preclearance requirement pursuant to court orders under Section 3(c) remain subject to the terms of those court orders. Additionally, the Supreme Court's decision states that Section 2 of the VRA, which prohibits discrimination in voting based on race or language minority status, and which applies on a permanent nationwide basis, is unaffected by the decision. Likewise, other provisions of the VRA that prohibit discrimination in voting remain in full force and effect, as do other federal laws that protect voting rights, including the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, and the Help America Vote Act.

Recent and Pending Related California Legislation. During 2013, the California Legislature adopted Senate Joint Resolution 14 (Yee), attached, which urges Congress and the President of the United States to enact amendments to the VRA that would

restore Section 4 of the VRA with a new coverage formula and update the entire VRA in order to address ongoing violations of voting rights in the states.

Assembly Bill 280 (Alejo), attached, was amended on September 6, 2013 to include language which would establish a state preclearance system applicable only to the counties of Kings, Monterey, and Yuba. Under this system, if a county enacts or seeks to administer a voting qualification or prerequisite to voting, or a standard, practice, or procedure with respect to voting, that is different from that in force or effect on June 25, 2013, the county elections official would be required to submit the qualification, prerequisite, standard, practice, or procedure to the Attorney General for approval.

AB 280 would require the Attorney General of California to approve the qualification, prerequisite, standard, practice, or procedure only if it neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color and would provide that the qualification, prerequisite, standard, practice, or procedure shall not take effect or be administered in the county until the county receives the approval of the Attorney General.

AB 280 is currently pending in the Senate Committee on Elections and Constitutional Amendments.

The California Voting Rights Act. The California Voting Rights Act (CVRA) was enacted by the Legislature as Senate Bill 976 (Polanco), Chapter 129 of 2002. The CVRA established criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies.

The CVRA provides that voter rights have been abridged if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. "Racially polarized voting" is defined as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required in order for a court to find a violation of the CVRA, and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

Upon a finding of racially polarized voting the court must implement appropriate remedies, including the imposition of district-based elections.

Attachments. In addition to the aforementioned legislation, also attached are copies of the text of the VRA, the text of the *Shelby* decision, as well as various articles and commentaries regarding the decision.