NATIONAL CATHOLIC REPO
THE INDEPENDENT NEWS SOURCE

Published on *National Catholic Reporter* (https://www.ncronline.org)
February 26, 2013 at 4:15pm

Supreme Court to hear arguments in voter discrimination case

by Eloisa Perez-Lozano

The U.S. Supreme Court will hear oral arguments Wednesday in a case that could determine whether towns and counties with a history of voter discrimination will continue to be required to obtain federal approval before enacting changes to local voting laws.

Officials in Shelby County, Ala., are challenging the constitutionality of Section 5 of the Voting Rights Act, arguing that Congress overstepped its bounds in 2006 when it reauthorized Section 5 for 25 more years. Section 5 requires states and localities with a history of voter discrimination, mainly in the South and Southwest, to obtain federal preclearance before enacting any change in a voting practice or procedure. To obtain that preclearance, the state or locality must show that the proposed change does not have a discriminatory purpose or effect.

Shelby County officials believe Congress did not have enough evidence to conclude that the Section 5 preclearance requirement is still needed, states the Petitioner's Brief the county filed in December.

According to the Lawyers? Committee for Civil Rights Under Law, Section 5 is considered an essential element of the federal civil rights legislation.

A number of organizations representing minorities spoke up regarding the continued need for Section 5 in a Feb. 12 teleconference.

The 15th Amendment gives Congress main responsibility for determining if and what legislation is needed to block practices that deny or reduce the right to vote based on race, said panel member Myrna Pérez, who serves as senior counsel in the Brennan Center for Justice Democracy program at the NYU School of Law. She is also a co-author of one of the amicus briefs in the *Shelby County* v. *Holder* case.

?With the passage of the Voting Rights Act in 1965, Congress acted to fulfill the promise of the 15th Amendment of the Constitution,? Pérez said. ?The Voting Rights Act, just like the 15th Amendment, was designed to protect the right to vote and also to ensure that the right is not eroded in the future.?

Voting rights became an issue in the last election, when some states attempted to tighten requirements for eligibility or cut back voting times. The concern even gained a mention in President Barack Obama?s State of the Union address: ?We must all do our part to make sure our God-given rights are protected here at home. That includes our most fundamental right as citizens: the right to vote.?

In 2005, the Lawyers? Committee for Civil Rights Under Law created the National Commission on the Voting Rights Act to determine whether jurisdictions covered under Section 5 have continued to experience ?serious and widespread discrimination in voting.? In results published in 2006, the commission said it found sufficient evidence that Section 5 is still necessary.

Congress held almost a year of hearings, heard testimony from more than 90 people and put together more than 15,000 pages of evidence, said Dale Ho, assistant counsel of the Political Participation Group with the National Association for the Advancement of Colored People Legal Defense and Educational Fund.

The record showed that since the last reauthorization of Section 5 in 1982, there were ?literally hundreds of discriminatory voting laws that threatened to undermine our democratic processes but were only stopped by the Voting Rights Act,? Ho said.

After reviewing the evidence, Ho said members of both parties noted that racial discrimination in voting is a persistent problem. This led to the reauthorization of Section 5 with much bipartisan support: It passed with a 98-0 vote in the Senate and a vote of 390-33 in the House of Representatives.

Section 5 was originally enacted in 1965. Congress has renewed this part of the Voting Rights Act four times, in 1970, 1975, 1982 and 2006.

Glenn Magpantay, democracy program director for the Asian American Legal Defense and Education Fund, said Section 5 provides protection under the law so Asian-Americans would not be disenfranchised and excluded from ?fully participating in the political process.?

Magpantay said Section 5?s impact on Asian-Americans has been felt the most in three areas: bilingual ballots, poll site changes, and redistricting.

Bilingual ballots were an issue in the 1990s when the Board of Elections in New York City did not want to fully translate ballots for Asian-Americans, he said. Because Section 5 was enforced, Magpantay said, translations were made available to those who needed them.

Asian-Americans in Texas were again protected by Section 5 in a case where the only Asian-American

legislator?s district was ?submerged into a white incumbent?s district,? Magpantay said. This jeopardized his ability to be elected and the ability of Asian-Americans to continue to vote for a candidate of their choosing.

In addition to Asian-Americans, Latino voters who have historically suffered race-based discrimination in voting have also benefited and continue to benefit from the protections of Section 5.

Today, the increasing Latino population in Texas is met by ?jurisdictions enacting new discriminatory laws intended to reduce Latino voting strength,? said Nina Perales, vice president of litigation for the Mexican American Legal Defense and Educational Fund.

Since 1975, more than 200 discriminatory laws and practices have been blocked by Section 5?s preclearance requirement at the state and local levels in Texas alone, Perales said.

Perales said she believes *Shelby County* v. *Holder* and previous cases demonstrate three strengths of Section 5:

- Section 5 prevents repeat-offender jurisdictions from enacting new discriminatory laws to replace the old ones that are blocked.
- Section 5 covers jurisdictions where discrimination is most prevalent.
- The law ?shifts the burden of proof to the jurisdictions and away from under-resourced, private litigants who, even if they win, usually lose at least one election cycle to discriminatory measures before they can secure an injunction,? Perales said.

Although there is no set date for the Supreme Court to hand down a decision, one is expected before the court goes into summer recess in June.

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