CLIENT NEWS BRIEF

The U.S. Supreme Court Strikes Down the Voting Rights Act's Preclearance Formula

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In a 5-4 decision, the United States Supreme Court issued an opinion in *Shelby County v. Holder*, (June 25, 2013 ___ U.S. ___ (2013 WL 3184629)), holding that Section 4(b) of the federal Voting Rights Act is unconstitutional. Section 4(b) contains the formula, based on data from the 1960's and 1970's, for determining which states or political subdivisions are "covered jurisdictions" for purposes of the Voting Rights Act's preclearance requirement. "Covered jurisdictions" must obtain approval (also known as "preclearance") from federal authorities prior to making any changes in voting procedures.

Importantly, *Shelby County* left Sections 2 and 5 of the Act intact. Section 2 prohibits voting standards, practices or procedures that result in racial discrimination. Section 5 of the Act outlines procedures for preclearance of changes to voting laws by covered jurisdictions. Preclearance requires federal approval to changes in voting standards, practices and procedures prior to implementation by the state or political subdivision.

Only Section 4(b)'s formula for determining which "covered jurisdictions" subject to the preclearance requirement was held unconstitutional. When the Voting Rights Act was originally enacted, "covered jurisdictions" were those which maintained a "test or device" (such as a literacy test) as a prerequisite to voting as of November 1, 1964 and had less than 50% voter registration or turnout in the 1964 general election. In 1975, Section 4 was amended to reflect voter registration and turnout numbers for 1972. However, later extensions of the Act in 1982 and 2006 did not amend Section 4(b)'s formula.

In the 1966 decision *South Carolina v. Katzenbach*, 383 U.S. 301, the U.S. Supreme Court upheld the formula in Section 4(b) on the grounds that it was "rational in both practice and theory." Nearly 50 years later, in *Shelby County*, the Court held that Section 4(b)'s formula for determining which states, cities and counties are subject to the preclearance requirement is no longer constitutional, reasoning that it no longer rationally related to the problem it was intended to target because the formula did not reflect current conditions.

For California counties previously subject to the preclearance requirements (the Counties of Monterey, Yuba and Kings) this means their status as a "covered jurisdiction" is no longer considered constitutional under the current Section 4(b) formula.

Many public agencies are considering changes in their election method, moving from at-large to "by-trustee" or "by-district" elections. Despite the fact that these changes may be required to comply with the California Voting Rights Act, they may also be subject to preclearance requirements under the Federal Voting Rights Act. Following the ruling in *Shelby County*, public agencies in the Counties of Monterey, Yuba and Kings will be permitted to change voting requirements to comply with the California Voting Rights Act without the extra step of seeking federal preclearance.

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If you have any questions regarding this decision or Voting Rights Act compliance in general, please feel free to contact one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.