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The Voting Rights Act of 1965, as amended, was designed to alleviate racial and language discrimination in voting and to enable racial and mohority language citizens to have the same electoral rights and opportunities as other Americans. The Department of Justice's program for enforcing the act has contributed towards meeting its objectives, but certain improvements are needed. Deficiencies identified were: lack of assurance that States and localities are fully complying with provisions for Federal review of changes in the electoral process; failure to perform comprehensive evaluations of the examiner and observer programs; limited litigative activity by the Department of Justice; limited usefulness of the Census bureau's biennial survey in identifying jurisdictions with voting problems; and weaknesses in implementing language provisions in and difficulties in identifying populations needing assistance. The act's objectives could be more fully realized if the Attorney General: improved compliance by developing procedures for disseminating information to States and localities, identifying noncompliance, and conducting followup reviews; reassessed current Department guidelines for documentation related to voting law changes; developed data and information systems; provided more assistance to election officials; assessed cost factors; and made other organizational and personnel changes. Congress should consider amending minority language provisions and reassess the requirement for collecting voting statistics. (HTW)

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STATEMENT OF

VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

HOUSE COMMITTEE ON THE JUDICIARY

ON THE

DEPARTMENT OF JUSTICE'S ENFORCEMENT

ACTIVITIES REGARDING THE VOTING

RIGHTS ACT OF 1965 AS AMENDED

Mr. Chairm[illegible] bers of the Subcommittee:

We are pl[illegible] to discuss our work in the voting rights area which was pe[illegible] at the request of Chairman Edwards. Our review was directed toward assessing the implementation and impact of the Voting Rights Act of 1965 as amended, with particular emphasis on the Department of Justice's enforcement of the special and minority language provisions.

As you know, the Voting Rights Act was designed to alleviate racial and language discrimination in voting and enable racial and minority language citizens to have the same electoral rights

and opportunities afforded other Americans. The act, as amended, contains general provisions which apply throughout the United States and special provisions that provide for direct Federal action in the electoral process of certain States and localities covered by statutory formulas. The act's 1975 amendments added minority language provisions which apply in certain covered States and localities. The Attorney General has primary responsibility for enforcing the act with the U.S. Civil Service Commission and the Bureau of the Census of the Department of Commerce having support functions.

Today we are issuing our report entitled "Voting Rights Act--Enforcement Needs Strengthening" to you, as well as Senator Daniel Inouye and Congressman William Ketchum. As you know, they requested that we review the implementation of the minority language provisions.

Our review showed that the Department of Justice's program for enforcing the act has contributed toward fuller participation by language and racial minorities in the political process. However, the act's objectives could be more fully realized if certain improvements were made. We would now like to summarize the findings, conclusions, and recommendations contained in our report.

PROGRAM IMPROVEMENTS NEEDED TO STRENGTHEN ENFORCEMENT

The act's preclearance provision provides for Federal review of changes in the electoral process, such as voter qualifications, and

voting practices and or procedures. This is possibly the most important means of protecting the voting rights of minorities. The provision's chief purpose is to make sure that State and local officials do not change election laws and practices to discriminate against racial and language minorities. Even though the Voting Rights Act has been in effect for over 12 years, there is little assurance that all covered States and localities are fully complying with the act's preclearance provision.

Our review showed that the Department of Justice:

--Had no formal procedures for determining whether all voting changes were being submitted for review by the 927 covered jurisdictions or for determining whether jurisdictions implemented changes over the Department's objections.

--Made decisions on the appropriateness of voting changes without States and jurisdictions submitting all the data required by Federal regulation--we found this to be the case for 59 percent of the changes we sampled.

--Should make its review of submitted voting changes more timely. Although only 3 percent of the sampled changes exceeded the 60-day time limit, some of these

were ultimately objected to. Timely decisions are necessary to prevent implementation of improper changes by submitting jurisdictions.

COMPREHENSIVE EVALUATION OF THE EXAMINER AND OBSERVER PROGRAMS HAS NOT BEEN PERFORMED

The Voting Rights Act deals directly with voter registration problems and the conduct of elections through the provisions establishing the examiner and observer programs. Because these programs are critical to the act's enforcement, provisions should have been made for a comprehensive evaluation of their operation. This was not done. Neither the Department of Justice nor the Civil Service Commission had provided for the accumulation of the cost and impact information which are needed for such an evaluation.

Because of the limited documentary data available, we contacted representatives of minority interest groups and individuals who have served as examiners and observers to gain their perspectives of the programs. The observations of minority interest group members convinced us that a comprehensive evaluation of the programs is needed. In particular, their observations showed concern regarding publicity of observer activities, participation of minorities in the programs, adequacy of observers' functions, and feedback on voting complaints.

Department of Justice officials acknowledged the need to obtain more detailed data in order to perform a comprehensive evaluation of the examiner and observer programs. They were unable to explain why such efforts had not been made in the past.

LITIGATIVE ACTIVITY IS LIMITED

The Voting Rights Act strengthened the Attorney General's authority to bring suits to protect voting rights. This litigative authority is not only essential in enforcing the preclearance provisions, but also for protecting voting rights in jurisdictions that are not covered by the act's special provisions and for otherwise challenging discriminatory laws and practices.

The Department of Justice's litigative efforts have, however, been limited. We found that the Department has been unable to litigate all matters related to the act's special provisions nor to develop and initiate litigation against jurisdictions not covered by the special provisions.

Our review showed that 177 cases have been litigated since 1965; and in 90 of these the Department was acting as a defendant or as a friend of the court, rather than as the plaintiff.

Department of Justice officials said litigation, particularly in matters other than the special provisions of the act, has been limited because of other demands on attorney resources

for handling nonlitigative functions, such as preclearance reviews and election coverage activities. We noted that paraprofessionals are performing most of the preclearance functions. If they were given more responsibility for election coverage and followup on minor complaints from citizens, additional attorney resources could be freed to handle litigative matters.

The Department, as the primary organization for enforcing Federal voting rights laws, has a difficult task because of the potential volume of voting violations. Department attorneys said no formal procedures existed for identifying private litigation in the voting rights area. They agreed that there was a need for such monitoring.

CENSUS BUREAU'S BIENNIAL SURVEY MAY HAVE LIMITED USEFULNESS

Under the Voting Rights Act, the Bureau of the Census has responsibility for conducting biennial surveys (concurrent with congressional election years) of jurisdictions covered under the act's preclearance requirements to assist the Department of Justice in identifying jurisdictions with voting problems and to provide the Congress with data to measure the impact of the act. Although the surveys will provide the Congress with some impact data, they are costly and are of limited use in assisting the Department of Justice in identifying potential litigative matters.

The Bureau of the Census surveyed the 1976 elections to obtain participation data. According to Census officials, differing

interpretations of the legislative requirements for the survey and insufficient leadtime resulted in an inadequate survey costing approximately $4 million.

The Census Bureau has estimated that the more detailed survey required by the act would cost about $44 million to perform. To avoid such a cost every 2 years, the Census Bureau, in February 1977 developed a legislative proposal which recommended the survey be performed every 4 years rather than every 2 years. The proposal stated that registration and voting participation rates differ significantly between Presidential and non-Presidential election years and that biennial surveys would result in statistics that have the potential for misleading conclusions. The proposal was never forwarded to the Congress.

Department of Justice officials said that, based on conversations with Census Bureau officials, the survey statistics will only provide indications of voting problems. They believe that the litigative staff would still have to investigate alleged voting improprieties for actual verification; and noted in this regard that funds have not been provided for such an increased workload. Although the survey may provide useful information to the Congress for assessing the need for voting rights enforcement, the Department's Voting Section officials said that if the ultimate goal is to identify and eliminate voting improprieties, consideration should be given to budgeting the

$44 million for investigation and litigation rather than for an election survey.

MINORITY LANGUAGE PROVISIONS COULD BE MORE EFFECTIVE

Coverage Formulas Inhibit Effective Implementation

Election officials and minority group representatives we contacted told us that the coverage formulas used to subject jurisdictions to the language provisions of the act are a major factor inhibiting effective implementation. They said that, in some cases, the formulas did not identify the minority population needing assistance. The minority group representatives also told us that formulas provided minimal authority for Department of Justice enforcement in jurisdictions covered by the minority language provisions but not subject to the preclearance of compliance plans.

The formulas under which a jurisdiction is covered determine, to a great extent, the type of enforcement activity performed by the Department of Justice. For instance, only jurisdictions covered by the formula which subjects them to the special provisions as well as the minority language provisions must submit election law changes and bilingual plans to the Attorney General for preclearance before implementation. Through the preclearance review process, the Department can determine the adequacy of implementation plans.

Conversely, jurisdictions covered by the formula which subjects them only to the minority language provisions are not required to submit voting law changes or minority language compliance measures for preclearance. Most minority persons contacted believed that this lack of preclearance authority limits Justice's capability to monitor and enforce the act's minority language provisions.

Minority Populations Needing Assistance May Not Be Identified

The act's formulas provide for minority language assistance in jurisdictions with a single language minority group constituting more than 5 percent of the voting age citizens. Because of varied population sizes, therefore, a jurisdiction with a voting population size of 100 would require only five minority language voting-age citizens to fall under the act's requirements, whereas a jurisdiction with a voting population of 100,000 could have up to 5,000 potential minority voters but not be covered because of the 5-percent provision.

For example, in 1976 the Korean population in Honolulu, Hawaii, was 5,762 or 1.3 percent of Honolulu County's population. The county therefore was covered for its Korean population. On the other hand, the Filipino population in Hawaii County was covered because it met the 5 percent formula even though its population (5,466) was less than the Korean population in Honolulu County. Hawaii's election officials told us that

Koreans who may need assistance would, therefore, not receive it under the act's formula requirements.

Coverage Determination Enforcement

We interviewed 6 of the 43 U.S. attorneys given enforcement responsibility in jurisdictions subject only to the minority language provisions, and headquarters officials in the Department of Justice. All six attorneys said that no formal monitoring efforts of the minority language plans had been initiated. Three of the six were unaware of their responsibilities and only two had performed any type of enforcement activity. Each U.S. attorney contacted indicated that the monitoring of the language compliance was of low priority in his office and should probably be handled at Department headquarters.

Department headquarters officials said they were unaware of any formally developed plans by the U.S. attorneys to enforce the language provisions. They also said that the Department's monitoring authority is limited in jurisdictions subject only to the language provisions due to the absence of the preclearance requirement. These officials told us that in the case of these jurisdictions a change in the law would be necessary to have the Attorney General require preclearance of minority language measures.

State and Local Election Officials Need Assistance from the Department of Justice

Many election officials that we contacted indicated that they were unsure as to what actions were needed to meet the act's

language requirements. They said that existing Department of Justice guidelines are vague and that the Department needed to give more assistance in developing compliance approaches.

Our analysis of the information obtained from election officials showed that (1) some jurisdictions had developed costly compliance plans while others had made limited or no attempts to develop a plan, (2) different methods were used to assess language minority needs, including several of a questionable nature, and (3) varying degrees of assistance were provided to minority language voters.

Department officials said that they had developed broad guidelines, but had provided only limited technical assistance because of the potential conflict which could arise if they were to litigate to enforce compliance.

Varying Approaches in Covered Jurisdictions

Since a jurisdiction intending to comply with the language provisions should have some type of planned approach, we contacted the 30 covered States to determine whether they had developed a formal compliance plan and to ascertain their progress and problems related to implementing the language provisions.

Not only did 24 of the 30 States report they had not developed a plan, but most State officials were even unsure what the Department might and might not accept as complying with the act.

According to most election officials contacted, the guidelines should have been more specific, especially regarding minority language implementation plans, methods of performing needs assessments, and types of registration and voting assistance required. Further, they said that the Department provided minimal guidance for developing and implementing methods for meeting the act's requirements.

Of the 149 local jurisdictions contacted, 133 offered some assistance--oral, written, or both -but used different approaches. Jurisdictions used either (1) a blanket approach by making language minority materials and/or assistance available to the entire population of registered voters or (2) a target approach, making language minority materials and/or assistance available on a selected coverage basis. Many States and jurisdiction officials said that providing language assistance caused financial hardship.

Lack of Data to Evaluate Provisions' Impact and Effectiveness

The act's minority language provisions do not require jurisdictions to accumulate cost or impact statistics. Consequently, a proper analysis of the provisions' implementation was precluded by the lack of information on the size of language group assisted, and the cost of the coverage approaches used, which included various types of voting materials as well as other assistance. Where

States and local jurisdictions did keep statistics, their differing compliance approaches and data-gathering procedures did not allow for comparisons between jurisdictions.

Our review showed 16 of the 30 States and 124 of the 149 local jurisdictions had developed some cost information; however, this was of varying completeness and uniformity. A variety of assistance was reported available in various States and local jurisdictions, but they did not identify what or how much, nor did they indicate how, if at all, needs were determined. Our survey also showed that States' political subdivisions used differing election procedures, making cost comparisons meaningless.

Only a few States and local jurisdictions reported having performed a cost/impact study on the minority language provisions. As a result, most were unable to provide information on requests for or use of the available minority language material and assistance. Additional data needed for analysis, such as the quality and effectiveness of the jurisdictions' outreach in publicizing availability of language minority materials and assistance were not available. In addition, the population sizes to which this information was given and how it had been made available were unknown. Most critical, however, is whether the assistance or material made available was needed; there is evidence that, in some instances, it was not.

CONCLUSIONS

The act's objectives could be more fully realized if the Attorney General:

--Improved compliance by developing procedures for (1) informing States and localities periodically of their responsibilities under the act, (2) identifying systematically States and localities not submitting voting changes, (3) conducting followup reviews to make sure voting changes are not implemented over the Department's objection, and (4) soliciting the views of interest groups and individuals.

--Reassessed current Department guidelines to determine what documentation States and localities should submit with voting law changes.

--Developed cost, minority participation, and other data on the examiner and observer programs and performed a thorough evaluation of their operation, giving due regard to minority viewpoints on needed program improvements.

--Expanded the Voting Section paraprofessionals' responsibilities where possible to allow attorneys greater opportunity for involvement in litigative matters.

--Developed and initiated a systematic approach to more extensively identify litigative matters in the voting rights area.

--Considered placing responsibility for enforcing compliance in jurisdictions subject only to the minority language provisions with the Department's Civil Rights Division at headquarters rather than at U.S. attorneys' offices.

--Provided more assistance to election officials in developing plans for complying with the act's minority language provisions and in assessing the needs of the minority population.

--Would seek the establishment of an information system which would include cost, dissemination, and usage data to evaluate the cost effectiveness of various methods of providing language assistance and to give proper feedback to election administrators to assist them in providing effective minority language assistance. At a minimum, he should attempt to seek periodic collection of this information for analysis purposes.

--Assessed the extent of financial hardships incurred in implementing the language provisions

to determine if Federal funds are necessary to assist States and jurisdictions in effectively implementing these provisions.

To complement the actions taken by the Attorney General, the Congress should:

(1) Consider amending the minority language provisions of the act to establish a coverage requirement based on a jurisdiction's needs rather than a percentage-of-population basis, and require all States and localities covered by the minority language provisions to preclear minority language measures.

(2) Reassess the requirement that the Bureau of Census collect voting statistics in covered States and localities because the mandated biennial survey will cost an estimated $44 million, and result in statistics that will be of limited use to the Department of Justice.

Mr. Chairman and Members of the Subcommittee, this concludes our statement. We will be happy to respond to any questions you have.