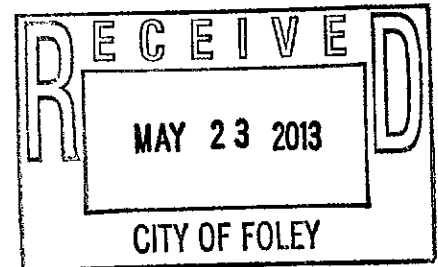




STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL



LUTHER STRANGE
ATTORNEY GENERAL

May 21, 2013

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable John E. Koniar
Mayor, City of Foley
Post Office Box 1750
Foley, Alabama 36536

Re: Preclearance of Act Nos. 2013-230, 2013-231, and 2013-232

Dear Mayor Koniar:

Act Nos. 2013-230, 2013-231, and 2013-232 all provide for the rearrangement of the boundary lines of the City of Foley. Because these Acts adjust boundary lines (i.e. may alter who is eligible to vote in municipal elections), *see* 28 C.F.R. 51(e), these Acts must be submitted to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c¹ or an action for a corresponding declaratory judgment must be filed in the United States District Court for the District of Columbia. Submissions of this type are ordinarily made to the Department of Justice by the locality or local entity affected by the Act. Therefore, in addition to a copy of Act No. 2013-230, Act No. 2013-231, and Act No. 2013-232, I am enclosing a memorandum setting forth the contents required in a submission for preclearance by the Justice Department, the mailing procedures, and a telephone number for assistance. If the City of Foley has already submitted this Act for preclearance, please disregard this letter.

If this Office may be of further assistance in this matter, please contact me at 334-353-9110.

Sincerely,

WINFIELD J. SINCLAIR
Assistant Attorney General

WJS/kb
Enclosures
Hon. J. Casey Pipes
Mr. Michael L. Thompson

¹ This statute was amended in 2006 and its coverage was broadened. I have enclosed a copy of 42 U.S.C. § 1973c as amended for your convenience.



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MEMORANDUM

Date: May 15, 2013

To: All Interested Individuals

From: Winfield J. Sinclair, Assistant Attorney General, Constitutional Defense Division *WJS*

Re: Making a Preclearance Submission under Section 5 of the Voting Rights Act

Overview

On July 27, 2006, President Bush signed into law a 25-year extension of the preclearance provisions Voting Rights Act. On April 15, 2011, United States published revisions to the Procedures for the Administration of Section 5 of the Voting Rights Act, *see* Volume 76 of the *Federal Register* at pp. 21239-52 (April 15, 2011). While the Supreme Court is currently considering the constitutionality of the extension, until a court invalidates Section 5, Alabama governments remain under its preclearance requirements. Section 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c) requires that the State of Alabama and its political subdivisions seek preclearance from the United States Department of Justice or the United States District Court for the District of Columbia before making any change in any "voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting." The Office of the Attorney General makes many submissions under Section 5 to the Department of Justice ("DOJ") each year on behalf of the State but the State's political subdivisions are responsible for submission of local changes (such as annexations, de-annexations, ordinances, local elections, and relocations of polling places). The Attorney General's Office can provide a sample submission for reference and comparison to help local officials in their preparation of such a submission. This memorandum is a brief outline for local officials on how to prepare a Section 5 preclearance submission.

In preparing a preclearance submission to the Department of Justice, you should follow the "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965." The applicable regulations are in Part 51 of Title 28 of the Code of Federal Regulations and can also be found at the Department of Justice website <http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.htm>. The Voting Section portion of the website provides a great deal of helpful information regarding making Section 5 submissions at http://www.usdoj.gov/crt/voting/sec_5/about.htm. The Voting Section can also be contacted by telephone at (800) 253-3931 or (202) 307-2767. Their facsimile (FAX) number is (202) 307-3961 (a different FAX number must be used for submissions).

Necessary Submission Contents

Sections 51.26, 51.27 and 51.28 of the DOJ regulations explain the necessary content for submissions. The list of required contents is found in section 51.27 and includes:

- a. A copy of the Act, plan, ordinance, etc., to be precleared;
- b. A copy of the Act, plan, ordinance, etc., repealed or amended by the submitted Act, plan, ordinance, etc. (if any);
- c. An explanation of the change affecting voting;
- d. The name, address, and telephone number of the person(s) making the submission; Where available, a fax number and e-mail address should also be provided
- e. The submitting authority and jurisdiction responsible for making the change;
- f. The county and state in which the submitting authority is located;
- g. The person or body responsible for making the change and the mode of decision;
- h. The statutory authority under which the change is made;
- i. The date of adoption of the submitted Act, plan, ordinance, etc.;
- j. The effective date of the submitted Act, plan, ordinance, etc.;
- k. A statement that the change has not been enforced or an explanation as to why such statement cannot be made;
- l. If the change affects less than the entire jurisdiction, the scope of the change;
- m. A statement of the reasons for the change;
- n. A statement of the anticipated effect on minority groups;
- o. Identification and description of past or pending litigation;
- p. A statement that the prior practice has been precleared or why it was not precleared; and,
- q. Other information as needed.

Supplemental Submission Contents

Section 51.28 lists supplemental contents for submissions. Some of this information is optional, but some is required. For example, maps are required for annexations. Examples of supplemental information include:

1. Maps, if pertinent, showing prior and new boundaries and location of racial groups;
2. Demographic information;
3. Total and voting age population in affected area by race;
4. Registered voters in affected area by precinct and by race;
5. Election returns and race of candidates;
6. Publicity information and participation of interested parties, e.g., newspaper articles, public hearings, public notices;
7. Notices of availability of submission to the public;
8. Minority group contacts – Name(s), address(es) and telephone number(s) of minority individual(s) whom DOJ can contact regarding the change;
9. Old and new boundaries for annexations, district changes, etc.; and,
10. Racial makeup of areas.

Transmittal of the Preclearance Request

By Mail or Other Carrier

The preclearance submission should be addressed to the Chief of the Voting Section, and can be sent either by U.S. mail or by a private carrier, such as UPS, Federal Express, Airborne Express, or DHL. U.S. mail may be delayed due to volume and is not recommended. Whatever method of delivery is chosen, it is recommended that you obtain and retain proof of delivery. **The envelope and the first page of the submission must be marked: “Submission under Section 5 of the Voting Rights Act.”** In the case of short submissions, a submission can be sent by FAX transmission, retaining proof of transmission, to: (202) 616-9514.

Submissions may also include electronically stored media (such as magnetic disks) but such submissions are subject to very detailed and specific requirements as to labeling, contents, and formatting, so a review of the DOJ requirements (posted on its website) is recommended before submitting a submission containing such media.

Use the following addresses for documentary submissions:

By U.S. Mail:

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

By Private Carriers:

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
1800 G St., N.W.
Washington, D.C. 20006
(202) 307-2767

By Electronic Means

The DOJ Voting Section website offers the option of filing a Section 5 preclearance submission (or updating a previous filing) electronically. Such a submission may only be submitted during certain times and using a space-limited DOJ form. To utilize this feature, the submitting jurisdiction accesses the DOJ Voting Section website at the appropriate place and clicks on either the “New Submission” button or the “Update Previous Submission” button and follows the instructions. Due to limitations in the electronic submission process, the Office of the Attorney General has not made a Section 5 submission electronically. Accordingly, we have no recommendations on such submissions at the present.

The DOJ Review Process

By statute, 42 U.S.C. § 1973(c), the Department of Justice has 60 days to review a submission. Sometimes DOJ will request additional information from the submitting authority and then restart the 60 day clock. Frequently, the DOJ reviewer will contact the submitting authority by telephone and ask for additional information and/or clarification with respect to less important matters contained in a submission. This will not restart the 60 day clock and ordinarily will not delay preclearance.

Section 51.34 of the regulations explains how to request expedited consideration of a preclearance request. Expedited consideration cannot be guaranteed, but DOJ will attempt to complete its review by the requested date in appropriate cases.

When the DOJ grants preclearance, it will send a letter so stating but will further state that their grant of preclearance does not bar litigation to enjoin enforcement of the change. In the event that expedited preclearance is granted, the DOJ preclearance letter will also reserve the right to reexamine the submission if additional information comes to the attention of the DOJ before the 60 day submission review period expires. Finally, you will want to retain the DOJ preclearance letter for future preclearance purposes because DOJ regulations require submission of details of prior preclearance information in the event that you thereafter modify your practice.

P

Effective: July 27, 2006

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 20. Elective Franchise

Subchapter I-A. Enforcement of Voting Rights (Refs & Annos)

→→ § 1973c. Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

CREDIT(S)

(Pub.L. 89-110, Title I, § 5, Aug. 6, 1965, 79 Stat. 439, redesignated and amended Pub.L. 91-285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub.L. 94-73, Title II, §§ 204, 206, Title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404; Pub.L. 109-246, § 5, July 27, 2006, 120 Stat. 580.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1965 Acts. Senate Report No. 439 and Conference Report No. 711, see 1965 U.S. Code Cong. and Adm. News, p. 2437.

1970 Acts. House Report No. 91-397, see 1970 U.S. Code Cong. and Adm. News, p. 3277.

1975 Acts. Senate Report No. 94-295, see 1975 U.S. Code Cong. and Adm. News, p. 774.

2006 Acts. House Conference Report No. 109-478, see 2006 U.S. Code Cong. and Adm. News, p. 618.

Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S31.

Amendments

2006 Amendments. Subsec. (a). Pub.L. 109-246, § 5(1) inserted the subsection identifier.

Pub.L. 109-246, § 5(2), in the first sentence, struck out "does not have the purpose and will not have the effect" and inserted "neither has the purpose nor will have the effect" prior to "of denying or abridging the right to vote".