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## ISSUE BRIEF

**DATE:** April 22, 2009  
**TO:** Concerned Parties  
**FROM:** Hilary O. Shelton, Director, Washington Bureau

### **Lawsuit Before the U.S. Supreme Court Seeks to Overturn Section 5 Enforcement Provisions of the 1965 Voting Rights Act** *CRUCIAL NATIONAL VOTING RIGHTS PROTECTION PROVISION IS AT STAKE IN TEXAS CASE TO BE HEARD APRIL 29*

#### **THE ISSUE:**

On Wednesday, April 29, 2009, the United States' Supreme Court is scheduled to hear arguments in the case of *Northwest Austin Municipal Utility District Number One v. Eric Holder, Jr, Attorney General, et al.* This case is a crucial constitutional challenge to Section 5 of the Voting Rights Act of 1965. Section 5, regarded by many as the heart of the Voting Rights Act, both blocks and deters discriminatory voting changes in a select number of jurisdictions around the country. Specifically, Section 5 requires jurisdictions with a history of racial discrimination in voting to submit proposed voting changes to its election process to the Department of Justice or to the D.C. District Court for pre-approval. In 2006, after careful review of an expansive record, Congress concluded that the Section 5 preclearance provision is still necessary to prevent minority citizens from being deprived of the right to fully participate in our democracy. Accordingly, with overwhelming bipartisan support, Congress voted to reauthorize Section 5 and former President Bush signed the reauthorization into law.

Days after the reauthorization, the Northwest Austin Municipal Utility District Number One (a small Austin, Texas-based utility district) filed suit challenging the Section 5 preclearance provision of the Act. The Utility District sought to end its responsibility for having its voting changes reviewed because it claimed that although it sits within the State of Texas (which has a long history of discrimination against Black and Latino voters), it has not discriminated and should be exempted. More importantly, the lawsuit is seeking to have the core provision of the Voting Rights Act, Section 5, declared unconstitutional. Last spring, the U.S. District Court for the District of Columbia unequivocally rejected their claims that it was exempt from the preclearance provision, and concluded that Section 5 is constitutional.

A thorough review of the extensive record developed by Congress during the 2006 reauthorization, including testimony from over 90 witnesses in the course of nearly two dozen hearings, clearly demonstrates that pervasive discrimination against minority voters still persists in the jurisdictions that are covered by Section 5. It was thus well within Congress's authority to renew this core provision of the Act to ensure protection for minority voting rights. The lawsuit contends that with the election of Barack Obama, there is no longer a need for the Voting Rights Act. Yet in 2006, despite the fact that Congress observed some progress in our nation's efforts to eliminate voting discrimination, it also found substantial, continuing intentional discrimination. Furthermore, in 2008, Barack Obama won the Presidency, but a close look at voting patterns suggests that race remains a major factor in American political life. Despite an overall victory, President Obama did poorly with white Democrats in states currently covered by Section 5. He received forty-seven per cent of the white vote in states that are not covered under Section 5 but won only twenty-six per cent of the white vote in covered states. In fact, Barack Obama actually did worse among whites than John Kerry in several of the covered jurisdictions, despite the nationwide Democratic swing. Race seems like the best explanation for this difference. The fact that other African-American candidates have failed so often and for so long with white voters in the South indicates a strong continuing need for the Voting Rights Act.