

September 24, 2013  
OPINION 13-0124

Honorable Tom Schedler  
Secretary of State  
Post Office Box 94125  
Baton Rouge, Louisiana 70804

15-A CONSTITUTIONAL LAW

42 U.S.C. § 1971 *et seq.*

In light of the United States Supreme Court decision in *Shelby County*, Louisiana is no longer a covered jurisdiction under Section 4(b) of the Voting Rights Act ("VRA") and is not required to obtain preclearance pursuant to Section 5 of the VRA prior to implementing any new voting qualification or prerequisite to voting, or standard, practice, or procedure.

Dear Secretary Schedler:

You have requested an opinion of the Attorney General as to whether Louisiana is still subject to Section 5 of the 1965 Voting Rights Act ("VRA") in light of the United States Supreme Court ruling in the case of *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (U.S. 2013). If Louisiana is no longer subject to Section 5, you would like to know how *Shelby County* affects state statutes that may still require preclearance pursuant to the Voting Rights Act. Your request has been assigned to me for research and reply.

The VRA<sup>1</sup> was enacted to protect the Fifteenth Amendment's guarantee that the right to vote shall not be abridged or denied on account of race or color.<sup>2</sup> Section 5 of the VRA required certain covered jurisdictions<sup>3</sup> to refrain from implementing any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect," unless they had first obtained preclearance for the change from the United States Attorney General or the United States District Court for the District of Columbia.<sup>4</sup> Section 4 of the VRA established the formula used to determine which jurisdictions would be subject to Section 5.<sup>5</sup> Louisiana was considered a covered jurisdiction under Section 4(b) of the VRA.<sup>6</sup>

On June 25, 2013, the Supreme Court ruled in *Shelby County* that the coverage formula in Section 4 of the VRA is unconstitutional and "can no longer be used as a basis for subjecting jurisdictions to preclearance."<sup>7</sup> The Supreme Court's ruling "stops any application of §5 by holding that §4(b)'s coverage formula is unconstitutional."<sup>8</sup> Thus, in light of *Shelby County*, Louisiana is no longer a "covered jurisdiction" under Section 4 of

---

<sup>1</sup> 42 U.S.C. § 1971 *et seq.*

<sup>2</sup> See La. Atty. Gen. Op. No. 07-0291.

<sup>3</sup> 42 U.S.C. § 1973b.

<sup>4</sup> 42 U.S.C. § 1973c(a).

<sup>5</sup> 42 U.S.C. § 1973b.

<sup>6</sup> Louisiana became a covered jurisdiction pursuant to Section 4(b) of the VRA on November 1, 1964. See 28 C.F.R. pt. 51, App. (2012).

<sup>7</sup> *Shelby Cnty.*, 133 S.Ct. at 2631.

<sup>8</sup> *Shelby Cnty.*, 133 S.Ct. at 2648 (citing dissent of Ginsberg, J.).

the VRA, and it is not required to obtain preclearance pursuant to Section 5 of the Voting Rights Act.

Additionally, you have asked our office to discuss the effect of *Shelby County* on various state statutes which require Section 5 preclearance prior to implementing changes in voting practices, standards, or procedures.<sup>9</sup> The Supreme Court's decision was limited to the coverage formula contained in Section 4 of the VRA. The Court did not issue a holding on Section 5 of the VRA itself.<sup>10</sup> Congress, in the future, may draft another coverage formula based on current conditions. Therefore, it is the opinion of this office that in light of the Supreme Court's decision in *Shelby County*, all Louisiana state statutes which require Section 5 preclearance are presently rendered inoperative and enforcement of such is suspended at this time. Such statutes remain as state law, albeit dormant for now, and the laws would become enforceable in the future if Congress enacts a new coverage formula.

Finally, the Court's ruling in *Shelby County* also did not affect Section 3(c) of the VRA. Section 3(c) of the VRA allows a court, in a proper case, to impose Section 5 preclearance on states or political subdivisions upon finding that violations of the Fourteenth or Fifteenth Amendment occurred within the territory of such state or political subdivision.<sup>11</sup> Any state statute requiring Section 5 preclearance would be operative and enforceable again if Louisiana, or any political subdivision within Louisiana, were to become a covered jurisdiction pursuant to a court order under Section 3(c) of the VRA as long as the court order remains valid.

In conclusion, Louisiana is no longer a "covered jurisdiction" under Section 4 of the VRA, and it is not required to obtain preclearance pursuant to Section 5 of the VRA prior to implementing changes in voting practices or procedures. All Louisiana statutes which require Section 5 preclearance remain as state law; however, they are unenforceable at this time. The statutes requiring preclearance would become operative again at any time Congress enacts a new coverage formula or if Louisiana, or any jurisdiction within Louisiana, becomes a covered jurisdiction pursuant to a court order under Section 3(c) of the VRA.

---

<sup>9</sup> See e.g., La. R.S. 17:71.5, La. R.S. 18:1922, La. R.S. 18:1941 and La. R.S. 18:1942.

<sup>10</sup> *Shelby Cnty.*, 133 S. Ct. at 2631.

<sup>11</sup> 42 U.S.C. § 1973a(c); See also *Jeffers v. Clinton*, 740 F. Supp. 585, 587 (E.D. Ark. 1990).

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY: \_\_\_\_\_  
Erin C. Day  
Assistant Attorney General

JDC: ECD

## SYLLABUS

### OPINION 13-0124

#### 15-A CONSTITUTIONAL LAW

42 U.S.C. § 1971 *et seq.*

In light of the United States Supreme Court decision in *Shelby County*, Louisiana is no longer a covered jurisdiction under Section 4(b) of the Voting Rights Act (“VRA”) and is not required to obtain preclearance pursuant to Section 5 of the VRA prior to implementing any new voting qualification or prerequisite to voting, or standard, practice, or procedure.

Honorable Tom Schedler  
Secretary of State  
Post Office Box 94125  
Baton Rouge, Louisiana 70804

Date Assigned:

Date Released: September 24, 2013

Erin C. Day  
Assistant Attorney General