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RECENT EXAMPLES OF DISCRIMINATORY VOTING MEASURES BLOCKED BY SECTION 5 OF THE VOTING RIGHTS ACT

(This is a sample of recent Section 5 successes, not an exhaustive list)

- **Alaska** (2008) (vote denial, stopped by an official "More Information Request") – In May 2008, Alaska sought to preclear a plan to eliminate precincts in several Native villages. The proposed changes would have consolidated various Alaska Native communities with distant majority white communities. Each proposed consolidation was between *28* and *77 miles apart*, and *none* was connected by road. Put differently, each of the proposed changes requested in the submission would have required Native voters to travel substantial distances by air or by boat simply in order to vote. Two weeks after DOJ responded with a request for more information, Alaska withdrew the submission.

- **Calera, Alabama (Shelby County)** (2008) (discriminatory annexations and redistricting plan) – In August 2008, the DOJ objected to a submission seeking preclearance for 177 new annexations and an accompanying redistricting plan for Calera's City Council. Taken together, the annexations and the redistricting plan would have eliminated the city's only majority African American district by changing its composition from 70% registered Black voters just 29.5%. The district had itself been created as the result of a consent decree in prior voting rights litigation. In its submission, Calera admitted that it had adopted the annexations without receiving preclearance. The DOJ objected to both the unprecleared annexations, as well as the accompanying redistricting plan. Notwithstanding this denial, the Calera went on to conduct City Council elections both with the annexations and under the rejected plan, causing the city's sole African American councilmember to lose his seat. The DOJ was then compelled to bring an enforcement action under Section 5 to enjoin certification of the results of the illegal election. After a consent decree was reached with a new precleared plan, the African American district was restored, and Black voters in Calera succeeded in electing their candidate of choice.

- **Kilmichael, Mississippi** (2001) -- After the 2000 Census indicated that Black candidates could be elected for the first time, and an unprecedented number of Black candidates registered for election, white officials attempted to cancel local elections.

- **Texas redistricting plans** (2012) -- Section 5 blocked three of Texas's post-2010 statewide redistricting plans, finding that two were enacted with discriminatory purpose, and that the third may also have been. That court (which included two

judges appointed by George W. Bush) unanimously found "unchallenged evidence" that the redistricting plans were "enacted with discriminatory intent."

- **North Harris Montgomery Community College District, Texas** (2006) (reduction of polling sites) – The jurisdiction proposed to reduce the number of its polling places from 84 to 12, where one polling place, which had the lowest proportion of voters of color, would serve 6,500 voters, while the polling place with the highest proportion of voters of color (80% Black and Latino) would serve over 67,000 voters.

- **Nueces County, Texas** (2011). Another redistricting plan in Texas, this time from Nueces County, was also denied preclearance based on a finding of discriminatory intent. The County was undergoing a dramatic demographic shift, and as of the 2010 Census, was 61% Latino (57% Hispanic Voting Age Population). The County commission had been majority Latino-preferred since the 1990s. But a narrow 2008 election in one of the precincts, Precinct 1, resulted in one of the commission's majority Latino districts electing an Anglo-preferred candidate, switching the commission to majority Anglo-preferred. The 2011 County redistricting plan increased the percentage of Anglo voters in Precinct #1, while concurrently removing Latino voters out of this same district. This change reduced the ability of Latino voters to elect their candidate of choice, thereby ensuring the re-election of a majority Anglo-preferred commission in 2012. DOJ concluded that the County offered "no plausible non-discriminatory justification" for this plan, and instead offered "shifting explanations" for the changes. The Department concluded that the County's actions "appear to have been undertaken to have an adverse impact on Hispanic voters." The Department of Justice blocked the County's 2011 redistricting plan based on both discriminatory purpose and retrogressive impact.

- **South Carolina (2012) --** In response to Section 5 scrutiny and litigation, South Carolina opted to carve out an exception in its voter ID law for anyone with a "reasonable impediment" to obtaining government-issued photo ID. A judge (also appointed by George W. Bush) sitting on the panel that considered that voter ID law noted that "The Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of [the voter identification law] demonstrates the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes."

- **Charles Mix County, South Dakota** (2008) (intentional vote dilution) – The County elected its commissioners from three single-member districts, one of which was a Native American ability-to-elect district. Just as a Native American candidate won a primary in that district, and was to run unopposed to be the County's first Native American commissioner, the County increased its commission to five representatives—the additional two hailing from at-large districts. The DOJ found evidence of discriminatory purpose in the timing of the decision to increase the number of commissioners, also citing that "[v]arious

community members, including Native Americans and non-Native Americans, also have informed the Section that county commissioners have made comments that evidence a racially discriminatory intent."

- **Texas** (2012) -- Section 5 blocked Texas's discriminatory voter ID law—one of the strictest in the nation—after finding that the proposed law imposed "strict, unforgiving burdens on the poor," and after considering evidence that the state legislature had rejected many ameliorative changes that would have made the law easier for poor voters and voters of color to satisfy.

- **Natchez, Mississippi** (2011) (redistricting on verge, with intent) – The city of Natchez has a 54% Black voting age population, and is governed by a six member board. The benchmark plan contained three Black ability to elect districts. In another district (Ward 5), the Black voting age population was 52.6%, but with no ability to elect. The proposed redistricting plan for the districts would have maintained the three ability to elect districts, but reduced the Black voting age population in the fourth district by 6%. While the plan maintained the existing three ability to elect districts, therefore not technically retrogressing. The DOJ, however, found evidence of discriminatory intent underlying the proposed plan. The DOJ considered that the city had a history of reducing the Black population in Ward 5 in each redistricting cycle, concluding that "the city has intentionally and unnecessarily reduced the black VAP in Ward 5 under circumstances that suggest the black population in ward 5 would otherwise have been on the verge of exercising an ability to elect their candidates of choice."

- **Augusta-Richmond, Georgia** (2012) (changing election date, with intent) – The Black voting age population in the consolidated municipal government of Augusta and Richmond has grown considerably. As of the 2010 Census, African Americans had reached a majority of the voting-age population. Shortly thereafter, the Georgia legislature passed a bill, which applied only to Augusta-Richmond, that rescheduled municipal elections from November (when African-American turnout is high) to July (when it is not). Preclearance was rejected on the basis of retrogressive purpose and effect.