

## Department of Justice

## § 51.52

change in question is entered by the U.S. District Court for the District of Columbia.

(e) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(f) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

[52 FR 490, Jan. 6, 1987, as amended by Order 3262-2011, 76 FR 21248, Apr. 15, 2011]

### § 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5, and, as stated in section 5, “(n)either 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.”

### § 51.50 Records concerning submissions.

(a) *Section 5 files.* The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on electronic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) *Objection letters.* The Attorney General shall maintain section 5 notification letters regarding decisions to interpose, continue, or withdraw an objection.

(c) *Computer file.* Records of all submissions and their dispositions by the Attorney General shall be electronically stored.

(d) *Copies.* The contents of the section 5 submission files in paper, microfiche, electronic, or other form shall be

available for obtaining copies by the public, pursuant to written request directed to the Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC. Such written request may be delivered to the addresses or telefacsimile number specified in § 51.24 or by electronic mail to *Voting.Section@usdoj.gov*. It is the Attorney General's intent and practice to expedite, to the extent possible, requests pertaining to pending submissions. Those who desire copies of information that has been provided on electronic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. The identity of any individual or entity that provided information to the Attorney General regarding the administration of section 5 shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

[Order 3262-2011, 76 FR 21248, Apr. 15, 2011]

## Subpart F—Determinations by the Attorney General

### § 51.51 Purpose of the subpart.

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5 and in defending section 5 declaratory judgment actions.

### § 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under

section 5: whether the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. *South Carolina v. Katzenbach*, 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of both the prohibited discriminatory purpose and effect.

[Order 3262–2011, 76 FR 21248, Apr. 15, 2011]

#### § 51.53 Information considered.

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

#### § 51.54 Discriminatory purpose and effect.

(a) *Discriminatory purpose.* A change affecting voting is considered to have a discriminatory purpose under section 5 if it is enacted or sought to be administered with any purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The term “purpose” in section 5 includes any discriminatory purpose. 42 U.S.C. 1973c.

The Attorney General’s evaluation of discriminatory purpose under section 5 is guided by the analysis in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

(b) *Discriminatory effect.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.*, will make members of such a group worse off than they had been before the change) with respect to their effective exercise of the electoral franchise. *Beer v. United States*, 425 U.S. 130, 140–42 (1976).

(c) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting standard, practice, or procedure in force or effect at the time of the submission. If the existing standard, practice, or procedure upon submission was not in effect on the jurisdiction’s applicable date for coverage (specified in the appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (c)(4) of this section, the comparison shall be with the last legally enforceable standard, practice, or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction.

(4) Where at the time of submission of a change for section 5 review there exists no other lawful standard, practice, or procedure for use as a benchmark (*e.g.*, where a newly incorporated college district selects a method of election) the Attorney General’s determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

(d) *Protection of the ability to elect.* Any change affecting voting that has the purpose of or will have the effect of