

## FACT SHEET ON JUSTICE DEPARTMENT'S ENFORCEMENT EFFORTS FOLLOWING *SHELBY COUNTY* DECISION

The Supreme Court's decision in [\*Shelby County v. Holder\*](#) concerned a coverage formula in Section 4(b) of the Voting Rights Act (VRA) that determined which jurisdictions had to preclear election-related changes under Section 5 of the VRA. In the areas covered by the Section 4(b) formula, the department used to be able to block discriminatory changes to election rules and practices before they took effect. But *Shelby County* struck down the Section 4(b) formula as the basis for preclearance, which means that Section 5 now applies nowhere. One of the impacts of *Shelby County* is that now, those discriminatory changes can go into and remain in effect while the department pursues litigation.

Since the Supreme Court's 2013 decision, the department has considered the impact of that decision in many ways, including its effect on our election monitoring efforts. In general, when trained individuals travel to different locations to watch the election process and collect evidence about how elections are being conducted, they have a unique ability to help deter wrongdoing, defuse tension, promote compliance with the law and bolster public confidence in the electoral process. *Shelby County* significantly impacted the department's ability to watch for problems while elections are taking place.

Prior to *Shelby County*, the department deployed personnel to watch the voting process on election days around the country and throughout the year, in three different ways. First, the department sent our own personnel to watch the voting process. Second, the department sent federal election observers who are specially recruited and trained by the Office of Personnel Management (OPM), to jurisdictions that are subject to a pertinent court order. Third, the department sent these federal election observers from OPM to jurisdictions with a need certified by the Attorney General, based in part on the Section 4(b) coverage formula. Much of the federal election monitoring before *Shelby County* was in this third category.

In light of the *Shelby County* decision, the department is not relying on the Section 4(b) coverage formula as a way to identify jurisdictions for election monitoring. The department will continue to engage OPM observers where there is a relevant court order and will continue to conduct our own monitoring around the country, without relying on the Section 4(b) formula.

This means that the department will be able to send fewer people than in similar past elections to watch the voting process in real-time. However, the department is still committed to using all of the tools at our disposal to enforce the federal voting rights laws — including working with Congress in ways that may increase our capacity.

*Shelby County* also impacts the department's enforcement efforts in two other respects. Section 4(f)(4) of the Voting Rights Act requires specific jurisdictions — jurisdictions dependent on a part of the Section 4(b) formula — to provide election-related materials or information in different languages. In light of *Shelby County*, the department is not enforcing this provision.

That said, two other provisions of the Voting Rights Act — Sections 4(e) and Section 203 — continue to provide substantial protections for language minorities nationwide or in geographies tied closely to consistently updated U.S. Census determinations. Both of these provisions include mandates to translate election-related materials or information, and neither is in any way affected by *Shelby County*.

Finally, Section 4(a)(1) of the Voting Rights Act prohibits the use of tests or devices to deny the right to vote in specific jurisdictions, directly dependent upon the coverage formula in Section 4(b). In light of *Shelby County*, the department is not enforcing this provision. However, a later amendment to the Voting Rights Act, in Section 201, established a permanent nationwide ban on such tests and devices. Section 201 was not in any way affected by *Shelby County*; it remains fully enforceable and protects voters nationwide.