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CIR Challenges Section 5 of Voting Rights Act

Kinston, NC.— The Center for Individual Rights filed suit today on behalf of a group of Kinston, North Carolina voters and prospective candidates in local elections who claim Section 5 of the Voting Rights Act of 1964 exceeds Congress' authority under the Fifth, Fourteenth and Fifteenth Amendments of the U.S. Constitution. Last year, Attorney General Eric Holder refused to approve a Kinston voter referendum to switch to non-partisan voting and the Kinston City Council voted not to appeal that ruling. Holder blocked the change on the basis of his authority under Section 5.

Section 5 prohibits certain state and local jurisdictions (mostly in the south) from implementing changes in voting procedures unless they first obtain federal pre-clearance that the proposed changes do not have the purpose or effect of reducing the ability of citizens to vote on the basis of their race.

Today's lawsuit addresses a question left open by the Supreme Court's decision last term in *Northwest Austin Municipal Utility District v. Holder*. In that case, the Court narrowly avoided deciding the constitutionality of Section 5 by unanimously holding that the utility district in that case was entitled to sue to "bail out" of Section 5's preclearance requirements. Chief Justice Roberts acknowledged, however, that members of the Court had "serious misgivings" about the constitutionality of Section 5.

Today's suit focuses squarely on the constitutional questions left unanswered by the Court's ruling in *Northwest Austin* because the 64% of Kinston voters who voted for the referendum can neither challenge the Attorney General's ruling nor file suit to "bail out" of Section 5 requirements. Such actions are reserved to the Kinston City Council, which has not undertaken either effort. This inaction has left the supermajority of Kinston citizens who voted for the referendum no other recourse than to challenge the constitutionality of Section 5 as a whole.

Originally passed in 1965, Section 5's extraordinary authority was supposed to expire in 1970. Instead, Congress has repeatedly re-enacted Section 5, most recently in 2006, when it extended it for another 25 years. The 2006 re-authorization broadened Section 5's focus beyond prohibiting voting changes that had the purpose or effect of disenfranchising minority voters. Section 5 now also prohibits changes that have the "effect of diminishing the ability of [minority groups] to elect their preferred candidate of choice."

There has never been a finding that Kinston engaged in discriminatory practices in voting. No voting change from Kinston or Lenoir County had previously ever been denied preclearance under Section 5. Moreover, blacks now comprise 64% of the registered voters in Kinston. The

referendum passed by a wide 2-to-1 margin (64%) and passed in 5 of 7 precincts where blacks were a majority of voters.

Despite the absence of voting-related race discrimination and the overwhelming support of all voters including blacks, Department of Justice officials concluded that the switch to non-partisan voting would "likely reduce the ability of blacks to elect candidates of choice." According to the Department, white Democratic voters would no longer vote for black candidates if those candidates were no longer affiliated with the Democratic Party.

The plaintiffs in today's lawsuit include Stephen LaRoque, who organized the referendum, and John Nix and Klay Northrup, both of whom intend to run in 2011 for election to the Kinston City Council. Nix, a Republican, and Northrup, an unaffiliated voter, believe a nonpartisan system would level the playing field between party affiliated and non-affiliated candidates and open the political system to a broader range of views. Other plaintiffs include Lee Raynor and Anthony Cuomo, two Kinston residents who assisted LaRoque in collecting signatures for the referendum.

Michael Carvin, a partner at Jones Day, has agreed to serve as *pro bono* lead counsel. Carvin has litigated a number of cases involving the Voting Rights Act, including a successful challenge against the Department of Justice's then interpretation of Section 5 in *Reno v. Bossier Parish* in 2000.

Carvin commented, "Although the Voting Rights Act has accomplished many valuable goals, its 'temporary' Section 5 provision is now unconstitutional because it singles out certain jurisdictions for extraordinary burdens based on 46-year-old election results (from 1964). Equally important, Section 5, as amended in 2006, imposes the 'minority maximization' agenda of Justice Department lawyers, even on good government measures like nonpartisan voting and even when they are supported by minority voters."

Referendum organizer and plaintiff Stephen LaRoque commented, "I hope that by filing this lawsuit we will get the federal government out of the business of pre-clearing election law changes such as this one, which are local in nature, supported by a wide majority of voters and encourage greater participation by citizens of all political outlooks."

CIR President Terence Pell added, " Whereas the Voting Rights Act has been used in the past to prevent disenfranchisement of black voters, Section 5 is now being used to set aside the votes of black voters in an actual election in favor of the federal government's presumptions about the preferences of voters in some future election. Such an extraordinary exercise of federal authority is neither supported by the Constitution nor by common sense."

The Center for Individual Rights is a non-profit public interest firm that specializes in civil rights, free speech, and other cases affecting individual rights. For more information, contact Terry Pell at 202-833-8400 x 113, or visit CIR's web site at <http://www.cir-usa.org>.

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