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August 23, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION TO SUPPORT IMMEDIATE PASSAGE OF FEDERAL LEGISLATION TO UPDATE AND RESTORE SECTION 4 OF THE VOTING RIGHTS (AGENDA ITEM NO. 17, MEETING OF AUGUST 27, 2013)

Item No. 17 on the August 27, 2013 Agenda is a motion by Supervisors Ridley-Thomas and Molina to:

1. Instruct the County's Legislative Advocates in Washington, D.C. to take all appropriate actions to support the immediate passage of legislation designed to update Section 4 of the Voting Rights Act;

2. Direct the Chief Executive Office and the County's Legislative Advocates in Washington, D.C. to transmit a five-signature letter stating the Board's position to the President and Vice President of the United States, to the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, Minority Leader of the House of Representatives, and to each Senator and Representative serving Los Angeles County in the Congress of the United States. The letter shall state the Board's support for the immediate passage of legislation designed to update Section 4 of the Voting Rights Act in order to effectively protect voting rights and pass constitutional muster;

3. Direct the Chief Executive Office and the County's Legislative Advocates in Sacramento to transmit a five-signature letter stating the Board's support for the immediate passage of legislation designed to update Section 4 of the Voting Rights Act in order to pass constitutional muster to the Governor of California, Senate President pro Tempore, Speaker of the Assembly, and to each Senator and member of the State Assembly serving Los Angeles County in the California State Legislature; and

4. Direct the Chief Executive Office to transmit a copy of this motion to the mayor and city managers of each of Los Angeles County's eighty-eight cities. The letter shall encourage these local governments to officially record support for the immediate passage of legislation designed to update Section 4 of the Voting Rights Act and to convey said support to the leadership of the nation's executive and legislative branches.

Supreme Court Decision on Voting Rights Act

On June 25, 2013, in a 5 to 4 decision (*Shelby County v. Holder),* the United States Supreme Court struck down as unconstitutional Section 4(b) of the Voting Rights Act (VRA), which contains the coverage formula that determines which jurisdictions are subject to "preclearance" from the federal government before implementing changes in election rules and procedures, such as those affecting redistricting, voter registration, and voter identification. Federal preclearance had been required for jurisdictions with a legacy of voting discrimination against minorities. While the Court did not strike down the preclearance requirement, its ruling, in effect, means that it only would be required for a relatively few jurisdictions currently subject to a court order.

The majority opinion noted that "voting discrimination still exists," but that Section 4(b) of the VRA is unconstitutional due to how it conflicts with constitutional principles of federalism and "equal sovereignty of the states" by subjecting covered jurisdictions to federal oversight "based on 40-year-old facts having no logical relationship to the present day." The dissenting minority contended that Congress, not the Court, is the body which should decide which jurisdictions are subject to the VRA's preclearance procedures. The VRA originally was enacted in 1965 and has been amended and reauthorized five times, most recently in 2006 under H.R. 9 (P.L. 109-246), which was passed, 98 to 0, by the Senate and 390 to 33 by the House.

Voting Rights Act Coverage Formula

As enacted in 1965, the coverage formula applied to states or political subdivisions which used a test or device that restricted the opportunity to register or vote on November 1, 1964 and if less than 50% of persons of voting age were registered to vote

on that date or voted in the presidential election in November 1964. In 1970, the coverage formula was expanded to apply to states or political subdivisions which met similar criteria in November 1968. The coverage formula most recently was changed in 1975 when it was expanded to protect language minorities by applying to states or political subdivisions in which more than 5% of voting age citizens were of a single language minority, election materials were printed only in English for the November 1972 elections, and less than 50% voting age citizens were registered or voted in November 1972. Section 4 of the VRA enables a covered jurisdiction to be released from preclearance requirements if it meets certain criteria showing non-discriminatory practices during the previous 10 years. Before the Supreme Court ruling, nine entire states and a number of political subdivisions in six other states were covered jurisdictions under Section 4(b) subject to preclearance requirements.

Legislative Status of Voting Rights Act Legislation

In the aftermath of the Supreme Court ruling, both the Senate and House Judiciary Committees held informational hearings in mid-July on the ramifications of the Supreme Court ruling on the protections afforded by the Voting Rights Act. There were clear partisan differences in the testimony of witnesses with Democratic witnesses asserting that legislation is needed to restore voting rights protections which were significantly weakened by the Supreme Court ruling and Republican witnesses arguing the opposite. The notable exception was the Senate testimony of Representative Sensenbrenner (R-WI), who supports legislation to revise the VRA. He is a long-time supporter of the VRA, who chaired the House Judiciary Committee in 2006 when the VRA was last reauthorized and also worked on VRA reauthorization in 1982.

Senate Judiciary Chairman Leahy (R-VT) has indicated his intent to move legislation which would restore VRA protections in a manner that is constitutionally acceptable. House Judiciary Chairman Goodlatte (R-VA) and House Constitution and Civil Justice Subcommittee Chairman Franks (R-AZ), however, have expressed skepticism of the need to revise the VRA in the aftermath of the Supreme Court decision, citing that all other VRA provisions remain in place. Both of them also represent districts in states (Virginia and Arizona) which were covered jurisdictions before the Supreme Court struck down Section 4 of the VRA. Therefore, it is far less certain that VRA re-write legislation will move forward in the House. It also would not be easy to devise a politically viable coverage formula, especially in the House where all nine of the previously covered states have predominantly Republican House delegations.

County Impact and Conclusion

Neither the State of California nor Los Angeles County were among the jurisdictions covered by Section 4 of the Voting Rights Act before it was struck down by the Supreme Court. It also is unlikely that a new coverage formula would be enacted that would result in the County being a covered jurisdiction which must receive Federal approval before implementing changes in its voting rules.

The County's Federal Legislative Agenda does not include any policies relating to the coverage formula in Section 4 of the Voting Rights Act, which was struck down by the Supreme Court. **Therefore, approval of this motion, which supports legislation to update Section 4 to effectively protect voting rights and pass constitutional muster, is a matter of Board policy determination.**

We will continue to keep you advised.

WTF:RA
MR:MT:ma

c: Executive Office, Board of Supervisors
Registrar-Recorder/County Clerk
County Counsel