Follow-Up Report to the United Nations Human Rights Committee in Connection with
the Fourth Periodic Review of the United States’ Compliance with the
International Covenant on Civil and Political Rights

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• Reporting Organizations

This follow-up report has been authored by two non-profit organizations working on civil rights issues, including voting rights, in the United States—the American Civil Liberties Union and the Lawyers’ Committee for Civil Rights Under Law (the “Reporting Organizations”). Both of the Reporting Organizations submitted reports to the U.N. Human Rights Committee (the “Committee”)—individually or jointly with other groups—in connection with the Fourth Periodic Review of the United States’ compliance with the International Covenant on Civil and Political Rights (“ICCPR”). This brief report focuses issues of voting rights and serves as an update to the Reporting Organizations’ September 2013 submissions related to U.S. compliance with articles 25 and 26 of the ICCPR.

• Voting Rights Act Developments

In June 2013, the Supreme Court of the United States issued its decision in Shelby County, Ala. v. Holder, which effectively nullified a key component of the Voting Rights Act (“VRA”). The Court invalidated the formula used to identify the state and local jurisdictions with the most troubling records of race discrimination in voting. These jurisdictions were then required, under Section 5 of the VRA, to obtain “preclearance” or preapproval from the U.S. Department of Justice or a federal district court before implementing potentially discriminatory voting changes. As a result of the Shelby County ruling, the identified jurisdictions are no longer required to preclear their voting changes.

In the aftermath of the Shelby County decision, however, some of the important protections under the Voting Rights Act remained in effect, including Section 3(c) of the Act. Section 3(c) authorizes a federal district court to subject (or “bail-in”) a jurisdiction to preclearance if the court finds an occurrence of intentional discrimination in violation of the Fourteenth or Fifteenth Amendments of the U.S. Constitution. In January 2014, a federal court exercised this authority and ordered the City of Evergreen, Alabama to submit for preclearance certain voting changes related to redistricting, method of elections and voter eligibility. The preclearance requirements
apply to Evergreen through December 2020. Prior to the Shelby County decision, all jurisdictions in Alabama were required to submit all voting changes for preclearance under Section 5, as described above. While the City of Evergreen decision illustrates the ability to bring cases under the provisions of the Voting Rights Act left intact after Shelby County, the decision also illustrates the resulting limited reach of what remains of preclearance. Currently, Section 3(c) bail-in requires litigation, which can be costly and expensive for plaintiffs, as well as a finding of intentional race discrimination, which can be more difficult to demonstrate than instances where a voting practice has a racially discriminatory impact. Moreover, the types of changes a jurisdiction must preclear under Section 3(c) may be more limited than what was previously required of jurisdictions covered under the broader preclearance formula prior to the Shelby County decision.

Congress, however, has the power to pass legislation to restore the protections of the VRA in response to the Court’s decision. The Reporting Organizations are encouraged by Congress’ introduction in January 2014 of the Voting Rights Amendment Act of 2014. Although elements of the initial proposed legislation need improvement, its introduction is a positive and necessary first step. It includes a new preclearance mechanism that is forward-looking and focuses on recent discrimination, as well as an expanded judicial bail-in provision for a voting violation found to have a discriminatory result as well as intent, new public notice and disclosure requirements, and enhanced preliminary relief when challenging certain types of voting changes that are likely to be discriminatory.

- Presidential Commission on Election Administration

In January 2014, the bipartisan Presidential Commission on Election Administration (“PCEA”) issued the results of a six-month examination of voting and election administration across the U.S. The PCEA issued a wide-ranging set of unanimous recommendations on how to vastly improve, modernize, and increase access to the polls, focusing on accuracy, technology, and polling place operations. These included While there may be some privacy and civil rights concerns with some of the recommendations that need to be further analyzed, many of the PCEA’s recommendations provide a useful blueprint for advocates and policymakers in addressing some of the most pressing election administration challenges.

- Felony Disenfranchisement
The disenfranchisement of individuals with felony convictions and the disproportionate impact of such restrictions on minority communities continue to be a major concern of the Reporting Organizations. One of the more positive developments in this area has come from the State of Kentucky, where individuals with felony convictions are permanently disenfranchised (including after completion of their sentences), unless they successfully petition the governor to restore their right to vote. In 2014, the Kentucky House of Representatives passed a bill that would give voters the opportunity to amend the state constitution by referendum to automatically restore voting rights for many individuals with felony convictions upon completion of their full sentences (including probation and parole).

By contrast, a more discouraging landscape persists in the State of Florida, where the disenfranchisement rate remains the highest and most racially disparate in the U.S. The Governor’s office and the Board of Executive Clemency remain unresponsive to the demands of the 1.5 million people, predominately African-American, who are completely shut out of the political process due to the state’s strict disenfranchisement policies. Despite repeated requests, to date, the Clemency Board has failed to provide any figures regarding the number of applications it has granted for restoration of civil rights since it issued its last official report in July 2013. However, given that only 342 people out of the thousands of applications submitted had their voting rights restored in 2012, we expect the number for 2014 to be very low, as well. The Clemency Board’s continued inattention to the demands for automatic restoration of voting rights made by citizens, clergy, community groups and national organizations, further illustrates the need for international attention on this issue.

- Conclusion

The Reporting Organizations greatly appreciate the Committee’s consideration of this report. We refer the Committee to our respective full reports submitted in September 2013 for specific recommendations and suggested questions to be posed to the U.S. during its March 2014 review.