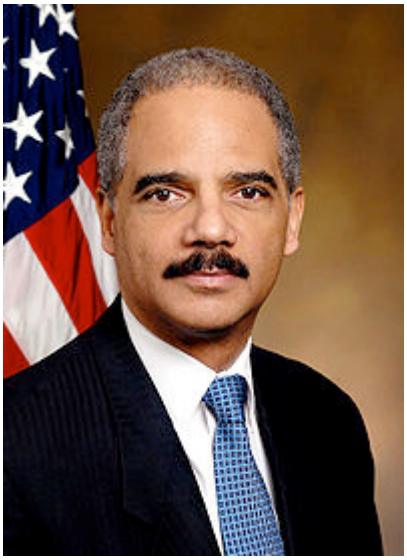
Written by **Joe Wolverton, II, J.D.** on December 16, 2011

# Attorney General to Begin "Thorough" Review of State Voting Laws



The Obama administration's quixotic quest to completely strip the states of their sovereignty has now turned its lance on the right of states to establish their own voter qualification statutes. At a speech given at the Lyndon Baines Johnson Library and Museum in Austin, Texas, Attorney General Eric Holder (left) announced this latest foray by the federal government into the sovereign territory of the states.

Calling the right to vote the cornerstone of our system of government, Holder apparently doesn't understand the foundation upon which that cornerstone is fixed federalism.

In his address, AG Holder proclaimed his firm commitment to examine several recently enacted state laws altering the acceptable methods for establishing verifiable identity at the polls.

The power of the federal government to monitor or examine lawfully enacted state laws will be analyzed below. First, the Attorney Generals own justification for his actions are set forth.

In 1965, President Lyndon Johnson signed the Voting Rights Act into law. Upon affixing his signature to this landmark legislation, President Johnson declared, The right to vote is the basic right, without which all others are meaningless.

In that summary of suffrage, Johnson and Holder are correct. None other leading light of liberty than James Madison used similar language in the *Federalist Papers* in describing the value of the right to vote: The definition of the right of suffrage is very justly regarded as a fundamental article of republican government.

The preeminence of this principle, then, may be stipulated by both sides of the supremacy issue. We, the people, are the ultimate sovereigns in this great Republic and the right to nominate those whose hands will steer the ship of state is the *sine qua non* of self-government.

What, then, is the problem with the Voting Rights Act and why would Attorney General Holder be riding herd on the states with regard to their conformity thereto?

In an article published by the *New York Times* in 2006 during the often acrimonious debate on the renewal of the Voting Rights Act, the key to the controversy is revealed:

> President Lyndon B. Johnson signed the Voting Rights Act into law in August 1965 after a string of violence in Southern states resulting from deep resistance to voting by blacks. The law instituted a nationwide prohibition against voting discrimination based on race, eliminated poll taxes and literacy tests, and put added safeguards in regions where discrimination had been especially pronounced. Those included a requirement for the Justice Department to review any proposed

changes to voting procedures to judge if they would be discriminatory.

The requirement that the Department of Justice review (or examine, to use AG Holders word) proposed changes to the procedures implemented by the states to qualify voters is called preclearance. And that invented word is the fulcrum upon which the federalism argument turns.

Section 5 of the Voting Rights Act sets forth the preclearance mandates. Specifically, this provision of the law establishes an administrative procedure by which the DOJ must pre-approve any law attempting to alter any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting… within a covered jurisdiction.

With regard to the interpretation of key terms in that section, the Supreme Court defined "any voting qualification or prerequisite to voting" very broadly in its decision in the case of *Allen v. State Board of Election*, 393 U.S. 544 (1969). Basically, the holding affords great latitude to the federal overseers, allowing them to dissect every revamped voting regulation, regardless of the rationale that precipitated its passage.

In order to implement any such change, a covered jurisdiction must receive preclearance either from the Attorney General or the U.S. District Court for the District of Columbia. In order to obtain this permission, the state must prove that the new law does not discriminate between voters based on race or color and that it was not enacted for such a purpose.

In the case of most of the current crop of new voter registration/identification laws that have attracted the never-blinking eye of the powers on the Potomac, Section 5 also mandates that a state must prove that the proposed changes do not violate the voting rights of any language minority group, including those of Spanish heritage.

After receiving the petition from a covered jurisdiction, the Justice Department has 60 days to respond. If the state (or other jurisdiction) enacts the proposed change in defiance of the DOJs denial of preclearance, then it must immediately cease enforcement of the offending provisions or enact another change and start the preclearance process afresh.

Obviously, any application of this controversial provision of the Voting Rights Act requires the identification of covered jurisdictions. The Act lists the following jurisdictions as subject to preclearance:

Alabama

Alaska

Arizona

Georgia, except for the city of Sandy Springs

Louisiana

Mississippi

South Carolina

Texas

Virginia, except for 14 counties (Amherst, Augusta, Botetourt, Essex, Frederick, Greene, Middlesex, Page, Pulaski, Roanoke, Rockingham, Shenandoah, Washington, and Warren) and four independent cities (Fairfax, Harrisonburg, Salem, and Winchester)

Of these nine states, four have passed laws requiring voters to show state-issued IDs at the polls. Prior to the enactment of these amendments to the voting statutes, voters were able to use other forms of identification, like bank statements, utility bills and Social Security cards.

The Attorney General believes that these changes are deliberate attempts by Republican-majority state legislatures to disenfranchise minority voters. The *New York Times* reports:

> Mr. Holder quoted with approval a speech by Representative John Lewis, a Georgia Democrat and longtime civil rights activist, who recently declared that voting rights were under attack in a deliberate and systematic attempt to prevent millions of elderly voters, young voters, students, minority and low-income voters from exercising their constitutional right to engage in the democratic process.

In his speech, Holder assured the audience that the Justice Departments analysis of these laws will be thorough.

Another branch of the federal government has already reviewed a couple of state statutes effecting changes to voter qualifications.

Recent rulings of the high court were briefed in a story in the *New York Times* covering the Attorney Generals speech in Austin:

> In 2008, the Supreme Court upheld an Indiana law requiring voters to present photo ID cards, ruling that the states interest in preventing fraud outweighed the burdens the law placed on voters. That case, however, was based on the Constitutions equal-protection clause and did not address the different standards imposed by the Voting Rights Act.
>
> In a 2009 case involving a Texas water board, the Supreme Court said that a key section of the Voting Rights Act, despite its undeniable historic importance, now raises serious constitutional concerns because it intrudes on states rights. However, it declined to strike down the law.

Five complaints have been filed in recent years petitioning the Court to throw out the law entirely, claiming that the purposes behind its original enactment have been fulfilled and the safeguards set forth therein are unnecessary.

“I wish this were the case,” the Attorney General responded. “The reality is that in jurisdictions across the country, both overt and subtle forms of discrimination remain all too common. You don’t have to look far to see recent proof.”

While such lawsuits may be one way for states to seek relief from the near constant oppression by the federal super nannies, there is a more potent and constitutionally sound method for throwing off the fetters being forged by the feds.

Nullification. Simply stated, nullification is the principle that each state retains the right to nullify, or invalidate, any federal law that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states formed the union, and as creators of the compact they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

The right to vote must be zealously protected precisely because it is so precious. It cannot be extended to those without legitimate proof of citizenship lest our Republic be thereby converted into a democracy (pure majority rule), one covered jurisdiction at a time.