



## Legislation Text

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**File #:** Res 1640-2013, **Version:** \*

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### Preconsidered Res. No. 1640

Resolution authorizing the Speaker to file or join amicus briefs on behalf of the Council in the litigation captioned *Shelby County v. Holder*, currently pending before the United States Supreme Court, for the purpose of supporting the federal government’s position that Section 5 of the Voting Rights Act is constitutional.

By The Speaker (Council Member Quinn) and Council Members Brewer, Jackson, Cabrera, Williams, Gonzalez, Chin, Wills, Arroyo, Foster, Barron, Comrie, Dickens, Dromm, Eugene, James, Koo, Koslowitz, Lander, Levin, Mark-Viverito, Palma and Rose

Whereas, Following the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments were added to the United States Constitution, prohibiting slavery and the deprivation of life, liberty, or property, without due process of law, and guaranteeing equal protection of the laws and the right of citizens to vote; and

Whereas, The Fourteenth and Fifteenth Amendments give Congress the power to pass appropriate enforcement legislation; and

Whereas, As early as 1890, several jurisdictions began employing tests and devices specifically designed to prevent black citizens from voting, including poll taxes, literacy tests, grandfather clauses, and property qualifications, as well as enacting laws intended to dilute black voting strength; and

Whereas, To combat these pernicious efforts, Congress passed the Voting Rights Act of 1965 (the “Act”); and

Whereas, Section 2 of the Act forbids any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”; and

Whereas, Under Section 5, a covered jurisdiction seeking to change its election laws or procedures must either submit the change to the Attorney General or seek preclearance from a three-judge panel in federal district court; and

Whereas, Preclearance may be granted only if the jurisdiction demonstrates that the proposed change to its voting law “does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color”; and

Whereas, Section 4(b) contains a formula for determining whether a state or political subdivision is subject to the preclearance requirements of Section 5; such formula considers the use of voting eligibility tests or devices and the rate of registration and turnout among all voters; and

Whereas; In 2006, Congress extended the Voting Rights Act for another twenty-five years; and

Whereas, The 2006 legislation was immediately challenged as unconstitutional by a covered locality in federal court, but the district court interpreted the Act to allow any covered jurisdiction to seek an exemption from its provisions, thus avoiding the need to resolve the larger question of the Act’s constitutionality; and

Whereas, In April 2010, Shelby County, Alabama, filed suit in the District Court for the District of Columbia, seeking both a declaratory judgment that Sections 4(b) and 5 are facially unconstitutional and a permanent injunction prohibiting the Attorney General from enforcing them; and

Whereas, Shelby County alleges that the extraordinary problems of discrimination that led to the enactment of the Act in 1965 no longer exist, and that the burdens it imposes on states and localities are no longer justifiable; and

Whereas, On September 21, 2011, the district court upheld the constitutionality of Sections 5 and the formula set out in Section 4(b) that triggers Section 5 coverage; and

Whereas, On May 18, 2012, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court’s ruling; and

Whereas, Shelby County petitioned the U.S. Supreme Court to grant *certiorari* to hear the appeal; and

Whereas; On November 9, 2012, the U.S. Supreme Court granted *certiorari* to decide the question of “whether Congress’ decision in 2006 to reauthorize Section 5 of the Voting Rights Act under the pre-existing coverage formula of Section 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and

Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the United States Constitution”; and

Whereas, Three counties in New York City are subject to Section 5 preclearance: Bronx, Kings and New York; and

Whereas, Compliance with Section 5 does not impose undue burdens on covered jurisdictions; and

Whereas, Section 5 continues to provide substantial benefits to the nation by eliminating barriers to minority political participation; and

Whereas, Section 5 has helped secure the rights of racial and language-minority voters; and

Whereas, The advance guidance provided by Section 5 can help covered jurisdictions avoid potentially costly and burdensome litigation; now, therefore, be it

Resolved, That the Council of the City of New York authorizes the Speaker to file or join amicus briefs on behalf of the Council in the litigation captioned *Shelby County v. Holder*, currently pending before the United States Supreme Court, for the purpose of supporting the federal government’s position that Section 5 of the Voting Rights Act is constitutional.

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