Q&A on the new section 3 claim about Texas redistricting (TEXAS REDISTRICTING blog, 7-3-10

Answers to (or at least thoughts on) a few questions about the new section 3 claims:

Has a section 3 claim ever been brought in the D.C. court before?

No. This is new territory, and African-American and Hispanic groups recognized as much when they told the D.C. court in their pleadings that it was "being asked to tread new ground."

Historically, section 3 claims have been made as a part of litigation of claims brought under section 2 of the Voting Rights Act and the Constitution. And those claims are tried not in Washington but in federal courts in the state or jurisdiction in question (e.g., the San Antonio court in the case of the 2011 maps).

By contrast, while the D.C. court hears voting rights cases, it has done so under section 5 of the Voting Rights Act, when "the offending jurisdiction … was, obviously, already covered by the Section 5 preclearance requirement."

But with section 5 having been rendered effectively unenforceable by *Shelby Co*. - but not invalidated - the question becomes whether the D.C. court retains jurisdiction to order other remedies such as placing Texas under a section 3 preclearance requirement.

Expect those jurisdictional issues - and various technical and sometimes arcane procedural issues - to be the subject of vigorous briefing over the next few weeks.

What would preclearance under section 3 look like?

The scope of section 3 preclearance requirements would be up to the D.C. court.

However, the intervenors' motion today said they believed that evidence of Texas' discriminatory actions made it appropriate to require Texas "to submit all statewide laws relating to voting practices, including redistricting plans, for preclearance review, for a time period deemed appropriate by th[e D.C.] Court but certainly no less than 10 years."

While that scope would be broad enough to include all laws enacted by the Texas Legislature, it notably would exclude things like city, county, and school board electoral changes as well as things like changes to political party rules.

Has the Justice Department taken a position yet?

No. Today's motion was filed by various African-American and Hispanic intervenors in the section 5 case.

However, DOJ is a party to the section 5 case - in fact, the defendant - and will have an opportunity to respond. Many observers will be watching closely since this will be the department's first post-*Shelby Co.* foray into section 3.

When will the D.C. court decide?

That's unclear. Under the court's local rules, responses to the request to add section 3 claim are due on July 17 - but the court could shorten or lengthen that. The court also will have to decide whether it wanted to hear oral argument on the motion before ruling.

But all that merely involves the threshold question of whether to let the section 3 claim be added to the case.

If the court agrees to that the section 3 claim should be added to the case, it then will have to actually decide the claim.

That process presumably will require additional briefing and, in all likelihood, additional evidentiary hearings and argument - after which the court will have to decide what it wants to do and write an opinion.

All that said, it is early in the process, and this is a very unusual situation. We may get a better sense of how all this will play out once the panel has a chance to review the intervenors' motion and enter some scheduling orders.

How will the section 3 claim in this D.C. case impact proceedings in San Antonio?

That's also pretty unclear at this juncture. All we **know** for now is that opening briefs on section 3 are due at the San Antonio court on July 12.

Could this delay the Texas primary?

It's hard to say at this time. Everyone would like to avoid that, but right now there are a lot of moving pieces. At Monday's hearing in San Antonio, however, the redistricting plaintiffs **told** the court that their goal was to have the 2013 maps submitted for preclearance before they were put into effect.