Wednesday Morning Session
May 23, 2012

The Wednesday morning session of The American Law Institute convened in the Grand Ballroom of The Mayflower, Washington, D.C., and was called to order at 9:03 a.m. by President Roberta Cooper Ramo.

President Ramo: You are all on time, but Washington traffic, even for the attorney general, what can I say? Let me call the Meeting to order, and it is my great honor to introduce and bring to our podium the Attorney General of the United States, the Honorable Eric Holder. (*Applause*)

I was trying the other day to remember when I first met Eric Holder, but what I remembered most, I have to tell you, General Holder, is I remember reading your résumé for the first time and thinking, wow, Stuyvesant High School. (*Laughter*) (*Applause*)

So although you have had many accolades, even out into the wilds of New Mexico, we all knew that the smartest people in America went to Stuyvesant High School. (*Laughter*)

I so appreciate it that the Attorney General of the United States would take the time in an incredibly busy time of year—not that any time of year is not so busy for you—to come to speak to The American Law Institute.

Eric Holder has had quite a remarkable career. He is, I think, perhaps the first attorney general who has seen the Justice Department from so many places, including the honors program when he graduated from law school. He is what we hope every attorney general might be, a lawyer's lawyer. He has been in private practice, he has worked for one of the great nonprofit legal advocacy groups of the world, the Legal Defense Fund, he has been involved in investigations of varying sorts, he has been a U.S. Attorney, and so he is the perfect person to stand in front of the world and our country as the First Lawyer.

It is not an easy job to be the attorney general; that is no news to him. But the most important thing for all of us is that we have an attorney general who has such great faith in our Article III courts that he felt personally that was the right place to try anyone, because they would get a fair hearing and the world would see how well our courts worked. (*Applause*)

He is an attorney general who is brave enough and has enough integrity to directly confront any errors that are made, and he is an attorney general who is brave enough to stand up for the principle of a free and independent bar and a free and independent judiciary. It is always a pleasure to see him and an honor to hear him.

Mr. General. (*Applause*)

Attorney General Eric H. Holder, Jr.: Well, thank you for those kind words, Roberta. I will say that I am proud of the fact that I went to and graduated from Stuyvesant High School. There are mistakes that are made occasionally, so I like to think maybe I was not one of them, but it was interesting as I heard that description, it almost sounds like I can't hold a job (*laughter*) as you

went through all those things. I can assure you all the decisions that I made to go to another were voluntary; I was not asked to leave any of those spots. Oh, I've been asked to leave this one, but that's another story. (*Laughter*) Yes, being attorney general is a little tough nowadays.

But I want to thank you, Roberta, for those kind words—and for all that you and your colleagues have done to bring us together today. It's a pleasure to be part of this annual gathering. And it's a privilege to join so many distinguished attorneys, judges, and scholars in celebrating—and working to extend—The American Law Institute's tradition of excellence, achievement, and service in helping to develop the law.

For nearly nine decades, ALI has been on the front lines of efforts to improve the strength, integrity, and effectiveness of our justice system. Today, ALI's members—and ever-expanding network of partners and supporters—continue to call forth, and to bring out, the very best from our nation's legal community—and to make essential contributions in both the public and private sectors—and, I'm proud to note, at the highest levels of our nation's Department of Justice.

Over the years, ALI has not only promoted thoughtful research, scholarship, and discussion—this organization also has challenged lawyers, leaders, and policymakers nationwide to confront difficult questions, to reevaluate accepted ideas, and to reaffirm our most fundamental principles. Alongside generations of courageous civil-rights activists, religious leaders, elected officials, and ordinary citizens, ALI members have helped to advance the fight for equal justice under law. You've defended the basic rights that form the bedrock of our nation, and worked alongside the Department of Justice and a host of other partners to ensure that—in our workplaces and military bases; in our schools and places of worship; in our border areas and, perhaps most importantly, in our voting booths—the rights of *all* Americans are protected.

The efforts that you are leading—and the call to action that you are consistently issuing—honor our nation's most noble and enduring cause—of security, opportunity, and justice for all. And despite the transformative progress that you and so many others have helped to bring about—and the advances our nation has seen even within my lifetime—the harsh reality is that the vision that inspired the creation of this organization has not yet been realized; and a great deal of difficult work remains before us. Particularly when it comes to safeguarding that most essential and inclusive democratic exercise—the right to vote—there is much left to be done. And as we gather this morning, we have an important opportunity—and, I would argue, an obligation—not just to reflect on how far we've come, but also to look forward; and to acknowledge that—in 2012, nearly half a century since the landmark Voting Rights Act [Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973 et seq.)] was signed into law—our nation's long struggle to expand the franchise—and guarantee the most basic right of American citizenship—continues.

Of course, this struggle is a defining part of our nation's history—and stretches back to America's earliest days. Although the 15th Amendment to our Constitution—which was ratified in 1870—officially prohibited the denial of the right to vote based on race, color, or previous servitude, institutional forces—and broad legislative efforts at the state level—effectively stripped this essential right from many African Americans until well past the middle of the 20th century. A century later, only one-third of African Americans were on the registration rolls in former Confederate states, compared to two-thirds of eligible whites.

It was in this climate of widespread social unrest—triggered by countless acts of violence targeting the civil-rights movement—that President Johnson worked with Congress to pass the Voting Rights Act of 1965—which now is widely considered to be one of our nation's most important pieces of civil-rights legislation. It sought to address, and to undo, decades of systematic disenfranchisement—by outlawing barriers to voting, and by creating mechanisms for the federal oversight of elections nationwide.

The Voting Rights Act also targeted—under Section 5 of the law—specific areas where discrimination historically had existed. Under that important provision, certain "covered jurisdictions" are prevented from altering their voting practices until it can be determined that any proposed changes would have neither a discriminatory purpose nor effect. This process, known as "preclearance," has been a powerful tool in combating discrimination for decades. And it has consistently enjoyed broad bipartisan support—including in its most recent reauthorization, when President Bush and an overwhelming Congressional majority came together in 2006 to renew the Act's key provisions and extend it until 2031.

Yet, in the six years since its reauthorization, Section 5 has increasingly come under attack by those who believe it's no longer needed. Between 1965 and 2010—nearly half a century—only eight challenges to Section 5 were filed in court. By contrast, over the last two years alone, we've seen no fewer than nine lawsuits contesting the constitutionality of that provision. Four of these currently are in litigation.

Each of these challenges to Section 5 claims that we've attained a new era of electoral equality, that America in 2012 has moved beyond the challenges of 1965, and that Section 5 is no longer necessary.

I wish this were the case. But the reality is that, despite how far we've come as a nation, in jurisdictions across the country both overt and subtle forms of discrimination remain all too common—and have not yet been relegated to the pages of history.

That's why institutions like this one are so important. And that's why the Justice Department will continue to vigorously defend Section 5 against challenges to its constitutionality.

Over the years, the Voting Rights Act—including Section 5—has been consistently upheld in court. In fact, just last week, the D.C. Circuit [in Shelby County, Alabama v. Holder, 679 F.3d 848 (D.C. Cir. 2012)] rejected one of the latest challenges to Section 5, reaffirming its continued relevance as a cornerstone of civil-rights law, and underscoring the fact that it remains critical in combating discrimination—and safeguarding essential voting rights that, for many Americans, now are at risk.

Researchers around the country have noted that the past two years have seen nearly two dozen new state laws and executive orders, from more than a dozen states, that could make it significantly harder for many eligible voters to cast ballots in 2012. In response to some of these changes—in areas covered by Section 5—the Justice Department has initiated careful, thorough, and independent reviews. We're now examining a number of redistricting plans in covered

jurisdictions, as well as other types of changes to our elections systems and processes—including changes to the procedures governing third-party voter-registration organizations, to early voting procedures, and to photo-identification requirements—to ensure that there is no discriminatory purpose or effect. If a state passes a new voting law and meets its burden of showing that the law is not discriminatory, we will follow the law and approve the change. And, as we have demonstrated repeatedly, when a jurisdiction fails to meet its burden of proving that a proposed voting change would not have a racially discriminatory effect—we will object, as we have in 15 separate cases since last September.

For example, in Texas, the Justice Department has argued that proposed redistricting plans for both the State House and the U.S. Congress are impermissible, based upon evidence suggesting that electoral maps were manipulated to give the appearance of minority control while minimizing minority electoral strength. Though this case has been tried and we are now awaiting the court's decision, we intend to continue arguing—as we have successfully in the past—that this is precisely the type of discrimination that Section 5 was intended to block.

In Louisiana, the Department objected to a redistricting plan where the map-drawer began the process by meeting exclusively with white officeholders—and neglected to consult black officeholders at all. The resulting map diminished opportunity for African Americans. But, after our objection, the state adopted a new, nondiscriminatory map.

More recently, in Mississippi, the Department rejected a local redistricting plan that would have modified ward boundaries to limit black voting strength—something that city officials had attempted to do in every redistricting cycle in that area since 1990. Even when presented with an alternative plan that would have avoided such a result, the city failed to adopt that option—and the Department had no choice but to intervene.

Unfortunately, electoral redistricting is far from the only area of concern in covered jurisdictions. The recent wave of changes to state-level voter-identification laws also has presented a number of problems requiring the Department's attention. In December, we objected to South Carolina's voter ID law, after finding—based on the state's own data—that the proposed change would place an unfair burden on nonwhite voters. And this past March, we objected to a photo ID requirement in Texas because it would have had a disproportionate impact on Hispanic voters.

Now, let me be clear: the Justice Department is firmly committed to combating voter fraud and protecting the integrity of our elections systems. No form of electoral fraud ever has been—or ever will be—tolerated by the United States Government.

From my early days as a trial attorney in the Justice Department's Public Integrity Section, I've stood on the front lines of this fight—and I fully understand the importance of investigating and prosecuting fraud cases whenever and wherever they arise. But I've also come to recognize the indisputable fact that in-person voter fraud is exceedingly rare—and that making voter registration easier is simply not likely to make our elections any more susceptible to it.

On the other hand, it is clear—based on the history of discrimination that the Department's Civil Rights Division has fought against—that we must continue to employ a range of measures to

ensure access to the ballot box for all Americans. We must remain vigilant in protecting the voting rights of our men and women fighting overseas and our veterans returning home—as well as Americans living abroad, citizens with disabilities, college students, and language minorities. We must keep working to enforce provisions like the "Motor Voter" law [also known as the National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (codified at 42 U.S.C. § 1973gg et seq.)]—and, to that end, have recently filed two lawsuits to increase access to registration opportunities beyond local DMV offices. In one of those cases, we reached a settlement with the State of Rhode Island that resulted in more voters being registered in the first full month after our lawsuit than in the entire previous two-year period. And in just the past year, we've participated as an amicus in five separate lawsuits raising issues under Sections 7 and 8 of the NVRA.

In every action we take to fulfill the promise of the Voting Rights Act, I'd like to emphasize that the Justice Department is committed to working alongside jurisdictions covered under Section 5 to foster constructive dialogue, to provide guidance when necessary, and to avoid litigation wherever possible. In fact, Assistant Attorney General Tom Perez, head of the Civil Rights Division, traveled to Baton Rouge at the start of Louisiana's post-Census redistricting process, and addressed a joint legislative session to discuss Section 5 and answer questions from state legislators about its requirements. And I believe we can all be encouraged by the indications we've seen in many counties and cities within the covered states—including in Alabama, Texas, Georgia, North Carolina, and Virginia—where a number of localities recently have met the criteria necessary to receive exemptions from Section 5 review.

There's no question that we can take pride in the progress that's been made—and the record of success that we've established—in recent years. And as we continue working to expand—and to protect—the voting franchise, we're fortunate to have strong allies in a number of Congressional leaders—including Senators Charles Schumer and Ben Cardin, who—last year—reintroduced legislation to establish tough penalties for those who engage in fraudulent voting practices, and to help ensure that citizens have complete and accurate information about where and when to vote.

We're also privileged to have committed partners in, and far beyond, this room. As members of this esteemed organization—and as stewards of our nation's justice system—you have a collective responsibility to consider reforms and contemplate new and innovative ways to safeguard this "most basic" of all American rights. You have a thoughtful voice to add to this discussion, and a solemn obligation to help preserve the integrity of our elections systems while ensuring access to the ballot box for all eligible voters.

So, today, as you gather to reflect on the past year—and to review the Institute's work—I invite you to seize this opportunity to rededicate yourselves to these important efforts; to build on the research and outreach that have defined ALI and advanced its critical mission; and to lead us forward—with optimism, and without delay—in overcoming the divisions, and rising to the challenges, of this moment—and signaling to all the world that, in America today, the pursuit of a more perfect union lives on.

In driving these efforts forward, I am privileged to count you as colleagues and partners. I am grateful for the opportunity to participate in this important Annual Meeting. And I am eager to see where The American Law Institute will help to lead us from here.

Thank you very much. (*Applause*)