

tained on November 1, 1972, any test or device, and with respect to which the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November, 1972.

Subsec. (d). Pub. L. 94-73, § 206, substituted “on account of race or color or in contravention of the guarantees set forth in section 1973b(f)(2) of this title” for “on account of race or color”.

Subsec. (f). Pub. L. 94-73, § 203, added subsec. (f).  
1970—Subsec. (a). Pub. L. 91-285, § 3, substituted “ten” for “five” years in first and third pars.

Subsec. (b). Pub. L. 91-285, § 4, inserted provision respecting the making of factual determinations concerning maintenance of any test or device on Nov. 1, 1968, registration of less than 50 per centum of persons of voting age on Nov. 1, 1968, and voting by less than 50 per centum of such persons in the presidential election of November 1968.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 2(a), (c) of Pub. L. 97-205 effective June 29, 1982, see section 6 of Pub. L. 97-205, set out as a note under section 10301 of this title.

Pub. L. 97-205, § 2(b), June 29, 1982, 96 Stat. 131, provided that the amendment made by that section is effective on and after Aug. 5, 1984.

#### § 10304. Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the first sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the second sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the third sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, pre-

requisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term “purpose” in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

(Pub. L. 89-110, title I, § 5, Aug. 6, 1965, 79 Stat. 439; renumbered title I and amended Pub. L. 91-285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94-73, title II, §§ 204, 206, title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404; Pub. L. 109-246, § 5, July 27, 2006, 120 Stat. 580.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 1973c of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

##### AMENDMENTS

2006—Pub. L. 109-246 designated existing provisions as subsec. (a), substituted “neither has the purpose nor will have the effect” for “does not have the purpose and will not have the effect”, and added subsecs. (b) to (d).

1975—Pub. L. 94-73 inserted “or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,” after 1968, substituted “or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General’s failure to object,” for “except that neither the Attorney General’s failure to object”, and “on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title” for “on account of race or color”, and inserted provisions that in the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to examine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.

1970—Pub. L. 91-285 inserted “based upon determinations made under the first sentence of section 1973b(b) of this title” after “section 1973b(a) of this title” and “or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968,” after “1964.”

### § 10305. Use of observers

#### (a) Assignment

Whenever—

(1) a court has authorized the appointment of observers under section 10302(a) of this title for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 10303(b) of this title, unless a declaratory judgment has been rendered under section 10303(a) of this title, that—

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title are likely to occur; or

(B) in the Attorney General’s judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for

such subdivision as the Director may deem appropriate.

#### (b) Status

Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under chapters 103 to 107 of this title shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5 prohibiting partisan political activity.

#### (c) Designation

The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.

#### (d) Authority

Observers shall be authorized to—

(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

#### (e) Investigation and report

Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 10302(a) of this title, to the court.

(Pub. L. 89-110, title I, § 8, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 109-246, § 3(a), July 27, 2006, 120 Stat. 578.)

### Editorial Notes

#### CODIFICATION

Section was formerly classified to section 1973f of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers referenced in amendment notes below reflect the classification of such sections prior to their editorial reclassification to this title.

#### AMENDMENTS

2006—Pub. L. 109-246 amended section generally. Prior to amendment, text of section read as follows: “Whenever an examiner is serving under subchapters I-A to I-C of this chapter in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of exam-