

# Memorandum



<b>Subject:</b> Recommended Lawsuit Against the New Black Panther Party for Self-Defense and Three Individual Members for Violations of Section 11(b) of the Voting Rights Act DJ #166-62-22	<b>Date:</b> December 22, 2008
---	--------------------------------

<b>To:</b> Grace Chung Becker Acting Assistant Attorney General	<b>From:</b> Christopher Coates Chief, Voting Section  Robert Popper Deputy Chief  J. Christian Adams Trial Attorney  Spencer R. Fisher Law Clerk
--	---

## Recommendation

We recommend that you authorize us to file the attached complaint against the New Black Panther Party for Self-Defense, an unincorporated association, Chairman Malik Zulu Shabazz, Minister King Samir Shabazz, and Jerry Jackson. On Election Day, Tuesday, November 4, 2008, two members of the New Black Panther Party for Self-Defense ("NBPP") deployed at the entrance to a polling place in Philadelphia, Pennsylvania wearing military-style uniforms. They possessed and brandished a weapon. They directed racially-based threats at poll watchers. The national leader of the NBPP subsequently endorsed the Election Day behavior of the party members and said their deployment was part of a larger NBPP effort. We believe the deployment of uniformed members of a well-known group with an extremely hostile racial agenda, combined with the brandishing of a weapon at the entrance to a polling place, constitutes a violation of Section 11(b) of the Voting Rights Act which prohibits types of intimidation, threats, and coercion. We propose seeking a remedy that prohibits the members of the NBPP from deploying athwart the entry of polling places in future elections.

### I. Factual Background

#### A. The New Black Panther Party for Self-Defense is a well organized and well known group with an openly hostile racial agenda.

The NBPP's members and leaders openly advocate violence against members of a particular racial group. As part of its on-going monitoring activities of various groups, the Southern Poverty Law Center has described the NBPP as an active black-separatist group constituting a "federation of as

many as 35 chapters in at least 13 cities with informal links to certain Black Muslims.” S. Poverty Law Ctr., Intelligence Report: Snarling at the White Man (2000), <http://www.splcenter.org/intel/intelreport/article.jsp?aid=214> (last visited Nov. 10, 2008). The NBPP is recognized as a group “[e]schewing the health clinics and free breakfast programs of the original [Black] Panthers . . . to focus almost exclusively on hate rhetoric about Jews and whites.” *Id.* The Anti-Defamation League has cataloged a lengthy list of anti-Semitic statements by the NBPP’s current chairman, Dr. Malik Zulu Shabazz. See Anti-Defamation League, [http://www.adl.org/learn/ext\\_us/malik\\_zulu\\_shabazz/](http://www.adl.org/learn/ext_us/malik_zulu_shabazz/) (follow link to “In His Own Words”; see also link to NBPP) (last visited Dec. 19, 2008). Bobby Seale, a founding member of the original Black Panther Party, has accused the NBPP of being a “black racist hate group,” as evidenced by the NBPP showing up heavily armed at demonstrations and preaching violent, racist, and extremist views on its web site. See S. Poverty Law Ctr., *supra*; see also FOXNews.com, New Black Panthers of a Different Stripe, <http://www.foxnews.com/story/0,2933,65535,00.html> (last visited Nov. 10, 2008).

The leadership and organization of the NBPP extends to a women’s league called the “Panther Queens” and a children’s organization called the “Panther Youth” which their website characterizes as “the future of our people.” (Attach. B, photographs of the leadership and organization of the NBPP.) The leadership includes, as described at the NBPP website, [Chairman and] Attorney-at-War Malik Zulu Shabazz, National Field Marshall Najee Muhammad, National Minister of Culture Zayid Muhammad, National Youth Minister Divine Allah, and National Minister of Justice Imam Akbar Bilal. *Id.* A tribute to deceased NBPP “Black Power General Dr. Khallid Abdul Muhammad” is also located on the leadership page.<sup>1</sup>

Minister King Samir Shabazz, a.k.a. Maurice Heath, is the chairman of the Philadelphia chapter of the NBPP. (Attach. A, Figure 1.) He identifies his rank within the NBPP as a “Field Marshall.” Samir Shabazz is also a recognized presence in Philadelphia street politics.

A Philadelphia Daily News article pertaining to the Philadelphia chapter of the NBPP was published the week before the election on October 29, 2008. The article stated that Samir Shabazz “is one of the most recognizable black militants in a city known, since the days of MOVE, for its vocal black-extremism community.” Dana DiFilippo, New Panthers’ War on Whites, Phila. Daily News, Oct. 29, 2008, at 4, available at [http://www.philly.com/philly/news/20081029\\_New\\_Panthers](http://www.philly.com/philly/news/20081029_New_Panthers)

---

<sup>1</sup> In 1993, following a speech at Kean College New Jersey, in which he referred to Jews as “bloodsuckers”, labeled Pope John Paul II a “no-good cracker” and advocated the murder of white South Africans, the United States Senate voted 97-0 to censure Muhammad, and the United States House of Representatives in a special session passed a House Resolution. After Muhammad was dismissed from the Nation of Islam by Minister Louis Farrakhan, who found the statements too extreme, Muhammad formed the New Black Panther Party for Self-Defense. See J. Blair, K.A. Muhammad, 53, Dies; Ex-Official of Nation of Islam, N.Y. Times, Feb. 21, 2001.

war\_on\_whites.html. Statements attributed to Samir Shabazz were published in the article. The article stated: “the only thing the cracker understands is violence,” said Samir Shabazz, whose face also bears the tattoos ‘Freedom,’ ‘BPG’ (Black Power Gang) and ‘NBPP.’” Id. Further, the article attributed to Samir Shabazz the statements “the only thing the cracker understands is gunpowder” and “I’m about the total destruction of white people. I’m about the total liberation of black people. I hate white people. I hate my enemy.” Id. The article also attributed a statement to Samir Shabazz that he “listens to ‘revolutionary, cracker-killing hip-hop’ on his headphones.” Id.

**B. The NBPP’s presence at a Philadelphia polling place on Election Day was well documented.**

On Election Day, November 4, 2008, at a polling place in Philadelphia, PA in Ward 14, Division 4 (The Guild House, 1221 Fairmount St.) two members of the NBPP, Samir Shabazz and Jerry Jackson, were positioned directly in front of (approximately 8 to 15 feet), and close to, the entrance to the polling location. (Attach. A, Figures 2 & 3.) Because of the configuration of the sidewalk and landscaping, every voter entering the polling place would necessarily pass within a few feet of the men.<sup>2</sup> Further, the men were standing side-by-side, facing outward, as if stationed there as guards or sentries. They were not milling about or deployed askew to the entrance. Instead, they were positioned such that any voter would necessarily pass within their radius. Moreover, as discussed in detail below, the men brandished a weapon. Consequently, every voter necessarily had to pass within the mens’ armed purview, and within a distance at which the weapon could potentially be swung to hit them.<sup>3</sup>

Both Samir Shabazz and Jackson were wearing the NBPP’s uniform. Their uniforms consisted of black berets, black tunics with various NBPP insignia, and battle dress uniform (BDU) pants which were bloused into black combat boots. Samir Shabazz wore rank insignia on his collar consistent with a Captain in the United States Armed Forces. Samir Shabazz also possessed a black billy club, or baton, approximately two feet in length. The grip of the baton was contoured and there was a leather lanyard, or a thong, on the end to wrap around his wrist. Witness Chris Hill, a Republican poll watcher and Army infantry veteran, indicated that Samir Shabazz deployed his hand through the thong and wrapped the slack tight around his wrist.<sup>4</sup>

The presence of the uniformed Black Panthers at the entrance to the polling place was documented by Republican Party videographer Steve Morse. See Google Video,

---

<sup>2</sup> Samir Shabazz and Jackson were both at times within and beyond the state statutory limit which prohibits unauthorized parties within ten feet of the entrance to a polling place. This is a matter of state law, however, and irrelevant in this case for the purposes of analyzing the behavior under the Voting Rights Act.

<sup>3</sup> The best estimate of the total number of those who voted at the precinct is 580. This is the sum of the number of votes for Senator Barack Obama (568) and Senator John McCain (12). This is the highest total of votes for any of the contests on the ballot. It is unclear, however, if this sum includes any absentee votes.

<sup>4</sup> These details are not insignificant. According to Hill, the grip and the leather thong allow the person using a baton to swing and thrust with more force and greater abandon without the fear of dropping the weapon.

<http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Black Panther patrols intimidating voters in Philadelphia" hyperlink) (last visited Dec. 7, 2008). We also have obtained original digital files of Samir Shabazz's deployment and brandishing of the baton or nightstick. These digital files have a higher level of definition and clarity than the videos placed on Google Video, Youtube, and other internet video sites. As Morse approached and asked the men what they were doing at the polling place, Samir Shabazz began tapping the baton in his hand and identified himself as "security." *Id.* The weapon was never holstered, but was moved about and at times tapped against his leg. The baton was also used to point at individuals with whom the Black Panthers were having antagonistic discussions.

A second video, apparently shot a short time later, showed Philadelphia police arriving on the scene and approaching the two men. *See* Google Video, <http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Police confront Black Panthers who are intimidating voters in Philadelphia" hyperlink) (last visited Nov. 10, 2008). Police officer Richard Alexander is seen in the video. We interviewed Officer Alexander and he told us that he received a call from police dispatch about reports of "voter intimidation" at a polling place. Officer Alexander arrived with a partner, Officer Hazel. Officer Alexander said that when he arrived he saw Samir Shabazz and Jackson 10 to 12 feet from the entrance to the polling place. The video shows Officer Alexander and Officer Hazel, approach the Black Panthers and requesting that they "step over to the car." Jackson does not comply and Officer Hazel says "we aren't asking." The men then follow. Officer Alexander told us that he said to Samir Shabazz and Jackson, "you can't be out here intimidating voters." Samir Shabazz and Jackson denied they were intimidating voters. Officer Alexander said that Samir Shabazz wore various NBPP insignia on his uniform. Officer Alexander told us he concluded that they should not be standing athwart the entrance to a polling place with a weapon and ordered them to disperse. Samir Shabazz did so, but Jackson had poll watching credentials allowing him to stay. Jackson did not retain the weapon when Samir Shabazz departed. Republican poll watcher Mike Mauro, an attorney, recalls that he saw the police officers confiscate the weapon from Samir Shabazz. Officer Alexander stated that Shabazz complained to him that his removal from the polling location was "another white man trying to bring the black man down."

A FOX News reporter also responded to the scene and shot video. *See* Google Video, <http://video.google.com/> (search "Black Panthers Philadelphia"; then follow "Rick Leventhal of Fox News confronts Black Panther" hyperlink) (last visited Nov. 10, 2008). Video from that encounter (also readily available on elsewhere on the internet) shows the news team approaching and questioning the remaining man, Jackson, who was still standing in front of the entrance to the polling place. *Id.* When questioned about the presence of the other man and the baton, Jackson said no one had ever been at the polling station with a baton and claimed he didn't know what the reporter was talking about. *Id.* Witnesses we spoke with indicated that Samir Shabazz and Jackson were deployed at the poll for some time with the baton prior to the video being taken.

**C. Poll watchers and attorneys were deployed to various polling locations on Election Day both to observe and to aid voters.**

Attorney Joe DeFelice, an employee of the Pennsylvania Republican Party, was responsible for the deployment of poll watchers to polling locations in Philadelphia on Election Day. This program deployed both attorneys and non-attorneys as poll watchers. While the primary purpose of the Election Day monitoring program was to observe and document any behavior at the polls which was illegal or unwelcome, another purpose was to aid voters, according to DeFelice and others. Attorney

John Giordano, the Election Day operations director for southeastern Pennsylvania, trained the poll watchers. He said that one of the purposes of the poll watching program was to aid particular voters should they encounter difficulties in casting a ballot.<sup>5</sup>

Wayne Byman, an African-American, was a Republican Party poll watcher deployed in the program managed by DeFelice. He described how he would aid voters on Election Day. Byman noted that, in Pennsylvania, he could identify the political party of a voter through the registration books at a polling location. He also has identified voters' party affiliations by speaking to them. Byman said he "would introduce myself to the voter if I saw they had any problem casting a ballot." He attempted to resolve their problems with the goal of allowing them vote. He made direct appeals to the election officials on behalf of voters, both at the polling location and by telephone to the Board of Elections. Byman stated that he "help[ed] the voter by telling the voter what they need to do to get their vote counted. I can [also] get the voter to present their case to the election judges." Byman could testify in detail about how was trained to, and how he did, aid voters on Election Day.

Mauro said that, during his training, he was "specifically instructed that part of their job was to help voters." He stated "we were told that if a voter was denied the right to vote, we were allowed to speak to the voter and answer questions." In sum, Giordano, Defelice, Byman, and Mauro are witnesses with knowledge of how aiding voters was one of the purposes of the poll watcher program.

**D. Reports concerning the NBPP's presence at the polling place were made by poll watchers on the scene.**

The events which precipitated reports about the Black Panthers' presence were statements made by Samir Shabazz or Jackson, or both, to poll watchers for the Republican Party, and a complaint by an unspecified voter about the presence of the Black Panthers. Byman was at 1221 Fairmount Street for a short time and saw the Black Panthers. He characterized their presence as "menacing and intimidating." Byman told us they "were the type you don't confront unless you are ready for a confrontation." He reported their presence to Joe Fischetti, an attorney poll watcher for the Republican Party. Fischetti then arrived at 1221 Fairmount Street and encountered the Black Panthers and two African-American poll watchers for the Republican Party, Larry Counts and his wife Angela Counts, who were assigned there. The Counts' had credentials entitling them to enter and remain in the polling place. Fischetti described Larry Counts as scared and worried about his safety at the polling place. Counts, according to Fischetti, huddled away from the Panthers' presence and kept looking over his shoulder as he spoke to Fischetti. Counts described to Fischetti his concern about leaving the polling place at the end of the day given the presence of the Panthers. Fischetti also described the Black Panthers' presence as alarming and said members of the local community present at the time also seemed alarmed and annoyed by the Panthers. Fischetti made a call concerning the situation to the Philadelphia Republican Party headquarters that resulted in an incident report. Morse, back at headquarters, also separately received a telephone complaint from a voter concerning a man with a "billy club" at 1221 Fairmount Street.

Larry and Angela Counts, the husband and wife poll workers, confirmed that they were afraid to leave the polling place until the Black Panthers had departed. This is consistent with the behavior

---

<sup>5</sup> Giordano was recently Counsel to the Assistant Attorney General in the Environmental and Natural Resources Division and an Assistant United States Attorney in the Eastern District of Virginia before that.

of Counts as described to us by Fischetti. Angela Counts said she kept looking out the window at the Black Panthers with concern. She said she wondered what might occur next and if someone might "bomb the place." Lunch was brought to them, instead of them leaving to get it themselves. Larry and Angela Counts told us that when they finally departed the polling place, they first checked to see if the Black Panthers were still deployed outside. They told us that they left only because the Black Panthers had departed.

After these complaints were received, Mauro, Justin Myers, and Hill were deployed to the polling location by headquarters. Mauro stated that they were deployed because of a report that "one of our poll watchers was being harassed [by the Black Panthers]." Hill noted that he received a report that the Black Panthers had confronted Counts and called him a "race traitor." After Mauro, Myers, and Hill arrived, they approached the entrance to the polling place. Samir Shabazz, when engaging and speaking with Mauro and his fellow poll watchers, tapped the baton in the palm of his other hand. Hill told us that the leather thong on the end of the baton was wrapped around Shabazz's hand while he did this. Mauro heard the Black Panthers call him and his poll watching colleagues "white supremacists." Mauro said that Samir Shabazz also yelled at the poll watchers "fuck you cracker" as he alighted. When Hill sought to enter the polling location, he said Jackson and Shabazz formed ranks, meaning stood side by side to create a larger obstacle to Hill's entry into the polls.<sup>6</sup> The weapon was in plain view as Hill approached. Hill reported that as he departed the polling place, Samir Shabazz yelled "how you [sic] white mother fuckers gonna like being ruled by a black man?" Meyers told us the Black Panthers called him a "cracker" and opined that Meyers would "soon know what it was like to be ruled by the black man." Meyers, "found the guy to be intimidating." Morse, the videographer, also said that he was "scared to death" of the Black Panthers. Hill, Meyers, Mauro, Byman, and Morse are witnesses with knowledge concerning intimidation and threats by NBPP members.

**E. Witnesses observed voters reacting to the Black Panthers at the polling place.**

Mauro told us that he watched voters arrive at the polling location and exhibit manifest surprise and apprehension at the presence of the Black Panthers. Mauro also stated that he saw black voters congregate away from the entrance to the polling location and speak about the presence of the Black Panthers. He recalls them saying words to the effect of "what is going on there?" Mauro also witnessed an elderly black woman approaching the polls and exhibiting apprehension as she approached the scene. Attorney poll watcher Harry Lewis told us he saw voters appear apprehensive about approaching the polling location entrance behind the Black Panthers. We received similar information from Fischetti. Officer Alexander said that he received a call from dispatch about reports of "voter intimidation" at the polling place. He said he saw individuals gathered within sight of the polling entrance, but they did not attempt to enter. Officer Alexander did not interview any voters while he was at the polling location.

---

<sup>6</sup> Hill had credentials allowing him inside the polling location. He successfully entered the building.

**F. The leadership of the NBPP endorsed the polling place deployment in Philadelphia.**

We interviewed by telephone Chairman Malik Zulu Shabazz from his Washington D.C. law office.<sup>7</sup> He told us, "there were members of the party in many areas [on Election Day]." According to an interview with Fox News Zulu Shabazz, said that there were more than 300 Panthers deployed in several cities across the U.S. to ensure the voting process went fairly and smoothly.<sup>8</sup> See AOL Video, <http://video.aol.com/video-detail/dr-malik-shabazz/1916264308/?icid=VIDLRVGOV07> (follow hyperlink to FoxNews) (last visited Dec. 18, 2008). Zulu Shabazz told Fox News that the NBPP is comprised "of thousands" with a "very active grass roots." *Id.* Zulu Shabazz also specifically endorsed the use and display of the weapon at 1221 Fairmount Street by Samir Shabazz in our telephone conversation with him as well as in an the interview with Fox News. See *id.* For his part, the NBPP leader has claimed that his members were at the polling place merely to quell voter intimidation by white supremacists. See *id.*; see also FOXNews.com, Party Leader Says Black Panther Presence at Polls Provoked by 'Neo-Nazis', <http://elections.foxnews.com/2008/11/07/party-leader-says-black-panther-presence-polls-provoked-neo-nazis/> (last visited Nov. 10, 2008).

No witness we interviewed said they saw any skinheads or white supremacists at 1221 Fairmount Street. When we spoke by telephone to Zulu Shabazz on December 5, 2008, he said he was still gathering facts about the presence of skinheads at the polls. We also attempted to contact Jackson to obtain his version of events. Jackson did not return our telephone call. We were unable to find contact information for Samir Shabazz. Based on our interviews with poll watchers, Officer Alexander, and Zulu Shabazz, we do not find merit to the claims that there were white supremacists active at the polling location at 1221 Fairmount Street or anywhere else in the City of Philadelphia on November 4, 2008. This excuse would likely be presented by the defendants to offer a motivation other than an intent to intimidate; but this reason must be plausible to have any weight, and in our investigation we found it to be implausible.

**II. Section 11(b) of the Voting Rights Act**

Section 11(b) of the Voting Rights Act (VRA) of 1965, 42 U.S.C. § 1973i(b) (2000), provides as follows:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

---

<sup>7</sup> As Shabazz is not the given name of either Malik Zulu Shabazz or Samir Shabazz, they are apparently unrelated.

<sup>8</sup> We were unable to ascertain where or whether the NBPP actually deployed any other members at polling locations throughout the United States.

Section 11(b) protects both voters and those "aiding" voters. Unlike other sections of the Voting Rights Act, it does not require state action. It is a broad prohibition against intimidating, threatening, or coercive behavior pertaining to the process of voting.

Cases brought under Section 11(b) have been uniformly unsuccessful. But see Jackson v. Riddell, 476 F.Supp. 849, 859-60 (N.D. Miss. 1979) (finding that Section 11(b) "is to be given an expansive meaning."); Whatley v. City of Vidalia, 399 F.2d 521, 525-26 (5th Cir. 1968) (noting that Section 11(b) was intended to expand rights protected by 42 U.S.C. § 1971(b)). In fact, of the fewer than ten cases reported as being brought under Section 11(b), no plaintiff has ever won.

Cases brought under Section 11(b) have failed for two reasons. First, courts have held that the behavior alleged does not constitute a genuine threat, coercion, or intimidation. At one extreme, actual violence would seem to be the clearest example of a Section 11(b) violation. But no plaintiff has brought a case alleging actual violence. Second, courts have at times read into the statute an additional requirement that neither its plain language nor its legislative history supports, namely, that plaintiffs must prove racial intent. See, e.g., Willing v. Lake Orion Cmty. Schs., 924 F.Supp. 815, 820 (E.D. Mich. 1996) (finding that no claim exists under Section 11(b) "[a]bsent a claim of any racial or other intentional invidious discrimination[.]") Indeed, the legislative history of 11(b) suggests that Congress specifically intended to eliminate any necessity to prove racial intent.<sup>9</sup> Regardless, we believe that both of these historic barriers to plaintiffs' success in Section 11(b) cases are overcome in this matter. First, the deployment of armed and uniformed members of the NBPP who brandish a weapon will likely satisfy the high factual burden placed on plaintiffs to show a genuine threat, coercion, or intimidation. Second, if a court were to require evidence of racial intent, it would likely be established by the express racist agenda of the NBPP and the racial slurs and comments directed at various individuals by Samir Shabazz and Jackson at the polls.

Most recently, the Department litigated and lost a Section 11(b) claim in United States v. Brown, 494 F. Supp.2d 440, 477 n. 56 (S.D. Miss. 2007).<sup>10</sup> In Brown, the Department presented two sets of evidence to establish a violation of Section 11(b). First, the defendant, Ike Brown, published a list of 174 voters in a newspaper. Brown stated that they might be subject to challenge if they attempted to vote. A witness for the United States whose name appeared on the list testified at trial that she feared she would be arrested if she attempted to vote. She therefore stayed home on Election Day. Second, "Brown confronted [a white voter attempting to vote] and in a loud voice, ordered him to get away from the entrance to the building. When [the voter] refused, Brown summoned law enforcement, and [Deputy Sheriff] Terry Grasseree appeared." Id. at 472.

---

<sup>9</sup> On June 1, 1965, the House Judiciary Committee reported its version of the bill which would become the Voting Rights Act of 1965. Section 11(b) of the House committee bill was similar to the provision in the Senate-passed bill. In discussing Section 11(b), the House report stated that:

The prohibited acts of intimidation need not be racially motivated; indeed, unlike 42 U.S.C. 1971(b) (which requires proof of a 'purpose' to interfere with the right to vote) no subjective purpose or intent need be shown.

H.R. Rep. at 30 (1965). One difference between the two versions of Section 11(b) was that the House committee extended coverage to persons urging or aiding others to vote.

<sup>10</sup> The Department won a claim brought under Section 2 in this case.



The district court ruled against the United States and found that this evidence was not sufficient to find a violation Section 11(b). The court noted:

The Government contends that Brown's public 'threat' to challenge persons on the list of 174 white voters if they attempted to vote in the 2003 Democratic primary violates Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973i(b), which prohibits anyone from intimidating, threatening or coercing any person from attempting to vote. Although the court does conclude that there was a racial element to Brown's publication of this list, the court does not view the publication as the kind of threat or intimidation that was envisioned or covered by Section 11(b).

Id. at 472.

Regarding the threat to arrest the voter attempting to vote and the subsequent appearance of law enforcement, the district court noted Brown may have "mistakenly believed Coleman [a candidate] was in violation of the thirty-foot rule." Id. at 472. Instead of finding Brown liable for violating Section 11(b), the district court merely suggested that a "fair-minded person" would "have inquired before ordering [Coleman] to leave, and certainly before calling for law enforcement." Id.<sup>11</sup>

In United States v. Harvey, 250 F. Supp. 219 (E.D. La. 1966), the court heard another case brought under section 11(b) by the Department. The Department alleged that, in violation of Section 11(b) and § 1971(b), the defendants terminated sharecropping and tenant-farming relationships with blacks who had registered to vote, evicted such persons from rental homes, and discharged them from salaried jobs. Id. at 221-22. The court first concluded the applicability of the intimidation statutes to state and local elections exceeded Congress' power. See id. at 225-26, 236-37; but see United States v. Simms, 508 F. Supp. 1179, 1186-87 (W.D. La. 1979) (rejecting Harvey's constitutional analysis). The court further held that even if Congress had such power, the plaintiff had failed to prove the intimidation allegation since its entire claim rested on nothing more than the termination of a business relationship shortly after the complainants registered to vote. Id. at 231-37.

In Gremillion v. Rinaudo, 325 F. Supp. 375, 376-77 (E.D. La. 1971), an unsuccessful black candidate brought an action to set aside the results of a 1970 primary election for school board, alleging various irregularities, including intimidation by a uniformed police officer who assisted white and black voters in the voting booth. The court stated that the purpose of the VRA was to "protect voters from an actual or potential denial or abridgement of their right to vote only where the basis for the infringement was racial discrimination." Id. at 378. The court dismissed the only claim brought by plaintiffs which implicated Section 11(b) (the claim of intimidation based on assistance from a uniformed, white officer), holding that the officer's presence, without anything more, did not constitute a general violation of the VRA on its face. Id.

---

<sup>11</sup> The Department approved the filing of a complaint in United States v. North Carolina Republican Party, (E.D.N.C., No. 91-161-CIV-5-F, filed February 26, 1992) under Section 11(b). This case involved the potential of an election day challenge program. The challenge program included a mailing to voters which stated they may be asked on election day about how long they resided at their residence. The case was not litigated and the defendants entered into a consent decree before discovery began.

In Pincham v. Illinois Judicial Inquiry Board, 681 F. Supp. 1309, 1314-17 (N.D. Ill. 1988), the district court refused to allow the plaintiff to amend his complaint to include a claim under Section 11(b). The court made its finding on a number of bases, including the fact that the plaintiff had made "no allegation that the defendants intended to intimidate, threaten, or coerce Justice Pincham." Id. at 1317. The Section 11(b) claim was based on the defendant Board bringing a disciplinary action against the black plaintiff, Judge Pincham, for statements he made in a political campaign. Id. at 1312.

What actions constitute satisfaction of the statutory terms "intimidate, threaten, or coerce" in Section 11(b) have never been precisely defined. As discussed above, courts have opined what does not constitute "intimidate, threaten or coerce" under Section 11(b). Based on these cases, the following facts would most likely not constitute violations of Section 11(b): termination of a voter's lease contracts, contractual eviction from homes, termination of employment, or termination of a business relationship for exercising the franchise (Harvey), police officers in a polling place assisting voters (Gremillion), election improprieties (Willing), regulatory enforcement actions for statements made in political campaigns (Pincham), threats to arrest voters and the summoning of law enforcement officials, in the absence of clear evidence of intent; published threats to challenge named voters; and subjective fears that said named voters might be arrested if they tried to vote (Brown).

The meaning of "intimidate, threaten, or coerce" was explored, however, in a case not brought under Section 11(b), United States v. McLeod, 385 F.2d 734, 741 (5th Cir. 1967).<sup>13</sup> In McLeod, the Fifth Circuit reversed the district court's dismissal of an action seeking an injunction against the mass arrest of blacks seeking to vote or register to vote as well as police surveillance of private associations active in registering black voters. The district court had found "that each of the allegedly coercive acts was justified - that the surveillance of the mass meetings was necessary to keep order and to protect the Negroes" and that the mass arrests were warranted. Id. at 739. On appeal, the Fifth Circuit said "[i]t is difficult to imagine anything short of physical violence which would have a more chilling effect on a voter registration drive than the pattern of baseless arrests and prosecutions revealed in this record." Id. at 740-41. "We hold that the trial judge clearly erred in failing to find that the defendants' acts threatened, intimidated, and coerced the prospective Negro voters in Dallas County." Id. at 741; see also NAACP v. Thompson, 357 F.2d 831, 838 (5th Cir. 1966) (characterizing "arrest[s] en masse on frivolous or unfounded charges" as intimidation.).

### III. Legal & Factual Analysis

#### A. Brandishing a deadly weapon at the entrance to a polling place and related actions and statements by the uniformed members of the NBPP constituted acts designed to intimidate, threaten, or coerce those voting or attempting to vote.

Section 11(b) broadly prohibits intimidation pertaining to voting. It states: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce . . . any person for voting or attempting to vote." § 1973i(b). Standing athwart the entrance to a polling place in formation and brandishing a weapon in the presence of voters and poll watchers objectively violates Section 11(b), because a fact-finder would likely conclude that brandishing a weapon could have no

---

<sup>13</sup> McLeod was an action brought under, among others, § 1971(b). Both § 1971(b) and Section 11(b), § 1973i(b), use the same language, "intimidate, threaten, or coerce" pertaining to voting.

effect other than to intimidate, threaten, or coerce.<sup>14</sup> The well-recognized military-style uniform, complete with insignia, patches and bloused combat boots; the notoriety of the party and the individuals involved; and the many statements advocating racially-motivated violence made by the party and the individuals involved, would all reinforce this conclusion.

The evidence at trial obviously would include the many, nationally publicized digital video recordings of the incident, as well as the direct testimony of the many eyewitnesses named herein. The statements and racial comments by the NBPP members involved in the incident, both prior to and on Election Day, are very likely to be deemed non-hearsay admissions by a party opponent. The evidence would include the testimony of the Philadelphia police, who concluded that the NBPP members were sufficiently intimidating to the poll watchers, the voters, or both, to order them dispersed and to confiscate their weapon. The evidence also would include expert testimony about the NBPP, their stated mission, and their rhetoric.

We would argue at trial that the evidence objectively establishes a violation of Section 11(b). It is shocking to think that a United States citizen might have to run a gauntlet of billy clubs in order to vote. Where this occurs, we would argue that no further, special, or subjective harm need be proved. Stated differently, we would argue that all voters arriving at this polling location were subject to intimidation by the very fact of having to endure the implied physical threat posed by armed, uniformed individuals, of uncertain intentions, standing in formation in front of the polling place.

Notwithstanding this point, we also would proffer evidence showing that the intimidating behavior was particularly directed at two classes of voters, who were, in fact, intimidated. The most obvious targets of intimidation were the white voters in the precinct, a class of citizens about whom Shabazz and the NBPP have made statements expressing extreme racial hostility. Further, the NBPP's actions were directed at African-American voters who were not inclined to vote for the candidate favored by the NBPP. The threatening actions described represent an effort to impose racial solidarity on black voters in an election where race was regularly discussed. Accordingly, the evidence at trial would include testimony concerning the reactions of both white and black voters who came to the polling station to vote.

---

<sup>14</sup> Deployment and movement of the baton by Samir Shabazz likely constitutes "brandishment" of a deadly weapon. See United States v. Johnson, 931 F.2d 238, 240 (3d Cir. 1991) ("dictionary defines 'brandish' as 'to shake or wave (a weapon) menacingly,' and gives as synonyms 'flourish' and 'wave.'"); see also United States v. Marin, 523 F.3d 24, 30 (1st Cir. 2008) (United States argued exiting a vehicle with a billy club constituted admissible evidence creating inference that drug dealer recognized potential use of weapon may further drug business.); United States v. Koon, 833 F. Supp. 769, 781 (C.D. Cal. 1993) (United States argued and district court agreed that single handed baton was a dangerous weapon capable of inflicting death or serious bodily injury under sentencing guidelines.) Pennsylvania does not specifically criminalize the act of brandishing so no state statute or case defines what constitutes brandishing. Cf. Iowa Code § 723A.1(h)(1) (criminal brandishment is "display of a dangerous weapon, with intent to . . . intimidate."). The federal sentencing guidelines, however, define brandishing as "all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person." U.S. Sentencing Guidelines Manual § 1B1.1.

Finally, we would assert a second claim under Section 11(b), on the ground that Samir Shabazz, Jackson, and the NBPP attempted to intimidate, threaten or coerce voters. Section 11(b) provides that “[n]o person, . . . shall . . . attempt to intimidate, threaten, or coerce any person for voting or attempting to vote,” regardless whether the attempt was successful. This language, which was specifically added by the House of Representatives, was designed to give Section 11(b) a broader reach. Whatever the actual effect of the defendants’ conduct, the foregoing evidence amply demonstrates that they attempted to intimidate, threaten, and coerce voters.

The totality of the evidence should make a compelling case for a violation of Section 11(b). Indeed, it is difficult to imagine what could constitute a violation of Section 11(b) if armed, uniformed men standing in formation at the entrance to a polling location making racial slurs does not violate the statute. The facts in this case may present the clearest case for a violation of Section 11(b) that any plaintiff has brought in the 44-year history of the law.

**B. Brandishing a deadly weapon at the entrance to a polling place and related actions and statements by the uniformed members of the NBPP constituted acts designed to intimidate, threaten, or coerce those aiding voters.**

Section 11(b) also protects those who aid voters or urge them to vote. Section 11(b) of the Voting Rights Act provides that: “No person . . . shall . . . intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” § 1973i(b). The statute prohibits both the attempt to intimidate those aiding voters, as well as actual intimidation. We believe that the evidence supports a separate cause of action against the NBPP concerning the intimidation of those deployed to aid voters.

Republican poll watchers were, in part, deployed to aid voters. It is true that the deployment had broader purposes, but there is cumulative and credible evidence that aiding voters was one purpose of the deployment. Byman provided specific detail about how he identified and aided voters who encountered difficulty at the polls.

Many of the threatening actions and statements by the NBPP members were specifically directed at poll watchers. Republican Party poll watcher Larry Counts was subject to abuse. Videos show that Samir Shabazz, when engaging and speaking with Mauro and his fellow poll watchers, tapped the baton in the palm of his other hand. Other shots show Samir Shabazz using the baton to point at them. The Black Panthers also altered their positioning to threaten poll watchers. When Hill sought to enter the polling location, he said both Samir Shabazz and Jackson formed ranks, meaning stood side by side in front of Hill to create a larger obstacle to his entry into the polls. Meyers said the Black Panthers called him a “cracker” and opined that Meyers would “soon know what it was like to be ruled by the black man.” The Black Panthers directed racially tinged profanity at nearly all of the poll watchers at one time or another. This evidence should demonstrate both that the defendants attempted to, and they did, intimidate, threaten, and coerce those aiding others who were trying to vote.

**IV. Conclusion**

For the reasons given above, we believe that Section 11(b) was violated by Samir Shabazz, Zulu Shabazz, Jackson, and the NBPP when armed and uniformed members were deployed at the entrance to polling place. Section 11(b) was violated because their behavior was objectively intimidating and threatening to voters; because they attempted to intimidate and threaten, and did, in

fact, intimidate and threaten, voters, and those attempting to assist voters. We recommend authorization to file the attached complaint against the New Black Panther Party for Self-Defense, an unincorporated association, Chairman Malik Zulu Shabazz, Minister King Samir Shabazz, and Jerry Jackson.<sup>15</sup> We propose seeking a remedy that prohibits members of the NBPP from deploying in front of polling places in future elections.

Approved: \_\_\_\_\_

Disapproved: \_\_\_\_\_

Comments:

---

<sup>15</sup> We have attached a notice letter and consent decree as per our usual practice. We recommend, however, that you consider foregoing the sending of the notice letter and the attempt to negotiate the consent decree in this case. The nature of the NBPP is such that the letter and consent decree may not be received seriously or addressed in good faith by the defendants, who may instead seek to gain favorable publicity by publishing these documents and/or characterizing their contents in a tendentious manner. Accordingly, we recommend that you consider simply authorizing the commencement of a lawsuit.