



United States Senate Committee on the Judiciary

Statement for the Record at the Hearing:

***“The Voting Rights Amendment Act, S. 1945:
Updating the Voting Rights Act in Response to Shelby County v. Holder”***

**Miles Rapoport
President
Common Cause**

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Common Cause is a national nonpartisan advocacy organization founded in 1970 by John Gardner as a vehicle for ordinary citizens to make their voices heard in the political process. Protecting the right to vote against discrimination is fundamental to a democracy where every vote is equal and sacred. Mr. Chairman, on behalf of our 400,000 members and supporters, we appreciate the opportunity to submit this statement for the record.

One year ago this morning, the Supreme Court issued its shameful decision in *Shelby County, Alabama v. Holder*. In striking down Section 4 of the Voting Rights Act, the Court gutted a core protection against discrimination, leaving a hollow shell of Section 5’s preclearance provision that existed for decades as a bulwark against insidious efforts to block citizens of color from voting.

Racial discrimination against voters continues to subvert the integrity of our democracy.¹ That was true when Congress overwhelmingly reauthorized the Voting Rights Act in 2006 with strong bipartisan support, it was true one year ago when the Court handed down its 5-4 decision in *Shelby County* and it remains true twelve months later.² Even Chief Justice Roberts, ruling

¹ Kara Brandeisky and Mike Tigas, *Everything That’s Happened Since the Supreme Court Ruled on Voting Rights Act*, PROPUBLICA, Nov. 1, 2013, <http://www.propublica.org/article/voting-rights-by-state-map>.

² For a comprehensive review of voting rights violations since 2000 and new laws after the decision last June, see THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, *THE PERSISTENT CHALLENGE OF VOTING DISCRIMINATION: A STUDY OF RECENT VOTING RIGHTS VIOLATIONS BY STATE*, June 2014, <http://www.civilrights.org/press/2014/Racial-Discrimination-in-Voting-Whitepaper.pdf>.

that the previous preclearance formula was unconstitutional, wrote that “voting discrimination still exists; no one doubts that.”³

We urge this Committee and the Senate to approve the Voting Rights Amendment Act, S. 1945, swiftly. This bill is a measured legislative response to the *Shelby County* decision and conforms closely to the Court’s reasoning. In addition to providing new protections for voters in all 50 states, the bill establishes a new modern formula to determine which jurisdictions will be subject to Section 5’s pre-clearance mechanisms (which remain undisturbed, but rely on a formula that is no longer in place). This will stop the implementation of racially discriminatory voting changes before they occur in jurisdictions with a recent history of voting rights violations.

In her dissent to *Shelby County*, Justice Ginsburg wrote that “[t]hrowing out pre-clearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”⁴ Unfortunately, it is still raining, and voters no longer have an adequate umbrella. Discrimination continues to mar our democracy.

Soon after *Shelby County*, some jurisdictions previously subject to preclearance began implementing laws that will make it harder for certain minority populations to vote, even though the Department of Justice and federal courts previously denied preclearance to those very laws.⁵ For example, the Attorney General of Texas announced hours after the Supreme Court’s decision that the state would move forward immediately with two restrictive voting measures that federal courts previously rejected.⁶ This included Texas’s stringent voter identification law which had previously failed to obtain preclearance because it would disproportionately affect African American and Latino voters, as well as gerrymandered redistricting maps charged with being discriminatory in both purpose and effect.⁷

Similarly, Alabama passed a voter identification law in 2011 but did not submit it for preclearance because it was then unlikely to obtain approval due to its discriminatory effects.⁸

³ *Shelby County, Alabam v. Holder*, 133 S. Ct. 2612, 2619 (2013).

⁴ *Id.* at 2650 (Ginsburg, J., dissenting).

⁵ Michael Cooper, *After Ruling, States Rush to Enact Voting Laws*, N.Y. TIMES, July 5, 2013, <http://www.nytimes.com/2013/07/06/us/politics/after-Supreme-Court-ruling-states-rush-to-enact-voting-laws.html?pagewanted=all>.

⁶ *Id.*

⁷ *Id.*; Sarah Kellogg, *Voting Rights Act Post-Shelby County*, WASHINGTON LAWYER, Dec. 2013, <http://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/december-2013-voting-rights.cfm>.

⁸ THE NEW YORKER, “Interactive Map: The War on Voting Rights,” Feb. 12, 2014, <http://www.newyorker.com/online/blogs/newsdesk/2014/02/interactive-map-the-war-on-voting-rights.html>.

Post-*Shelby County*, Alabama implemented the law. It was in place for the June 2014 primary election where pollworkers turned 93-year old Willie Mims away from voting (even with a provisional ballot) despite having voted in every past election for as long as the records exist.⁹ Ms. Mims, who is black, no longer drives and no longer has a license to use as identification. She is not unlike many other voters of color who are more likely than whites to lack the specific form of voter identification required to cast a ballot.¹⁰ Mississippi and South Carolina also passed voter identification laws before the decision that they moved forward implementing after *Shelby County*. The laws will disproportionately affect minority voters. Preclearance would have served as a backstop for further review.¹¹

Other jurisdictions passed new, more restrictive laws after the Supreme Court struck down the preclearance formula. North Carolina is the most egregious example, where just weeks after the Court's ruling, the state legislature eliminated same-day voter registration, eliminated a week of early voting, ended pre-registration for 16- and 17-year olds, introduced stringent voter identification requirements, and eliminated out-of-precinct voting, among other changes.¹² The pending Justice Department lawsuit details numerous ways that North Carolina's entire package of voting limitations disproportionately affects minority voters, including the 71 percent of African American voters who voted during the early voting period in 2012 and the disproportionate number that utilized same-day voter registration and lack the requisite photo identification.¹³ According to one analysis, "African Americans were 22 percent of registered voters in 2012 [in North Carolina], but they cast 34 percent of the Same-Day Registration ballots for new voters, 33 percent of the ballots cast in the first week of the Early Voting, 30 percent of the out-of-precinct ballots cast on Election Day and 43 percent of the ballots cast on the now eliminated first Sunday of Early Voting. They are 34 percent of the registered voters who do not

⁹ Steve Benen, *ID Law Blocks 93-year-old Voter in Alabama*, MSNBC, Jun. 3, 2014, <http://www.msnbc.com/rachel-maddow-show/id-law-blocks-93-year-old-voter-alabama>.

¹⁰ Wendy R. Weiser, Erik Opsal, *THE STATE OF VOTING IN 2014*, BRENNAN CENTER FOR JUSTICE, Jun. 17, 2014, http://www.brennancenter.org/sites/default/files/analysis/Restrictive_Appendix_Post-2010.pdf.

¹¹ *Id.*

¹² Democracy North Carolina, *Summary of North Carolina's New Voting Law*, August 2013, <http://democracy-nc.org/downloads/NewVotingLawSummaryAug2013.pdf>.

¹³ Complaint, *United States v. North Carolina*, No. 13-cv-861 (M.D.N.C. filed Sept. 30, 2013); Maya Rhodan, *Obama Administration Targets North Carolina Voting Law*, TIME, Sept. 30, 2013, <http://swampland.time.com/2013/09/30/obama-administration-targets-north-carolina-voting-law>.

appear to have a DMV license of NC photo ID.”¹⁴ Common Cause’s North Carolina chapter is a party to ongoing litigation challenging the constitutionality of North Carolina’s new law.¹⁵

In another example at the local level, Georgia lawmakers changed the date of the elections for the city council of Augusta from November to June, a time well known for having lower turnout among African American voters.¹⁶ A jurisdiction in Pasadena, Texas is moving from single-district to at-large elections for council members, making it more difficult for minority candidates to win office.¹⁷ Such tactics date back to the Jim Crow era.

Additionally, several states are initiating or reenacting programs to purge their voter rolls of allegedly non-citizen voters. Florida is using the federal SAVE database (Systematic Alien Verification for Entitlements) to remove thousands of names from their voter lists.¹⁸ Using the SAVE system to verify voting rolls risks disenfranchising eligible voters who are in fact citizens because the system was never designed to be used for such a purpose. It is notoriously unreliable for voter list maintenance. Past uses of the system resulted in disproportionate targeting of Latino voters and many voters flagged as non-citizens were later able to demonstrate that they were in fact citizens.¹⁹ In Virginia more than 40,000 voters were purged just weeks before the November gubernatorial elections in 2013, even though local election administrators voiced their concerns that many names of these individuals were in fact citizens eligible to vote.²⁰

Respectfully, the time for Congress to act is now. The need is urgent. What remains of the Voting Rights Act is inadequate to fully address the problem of racial discrimination in voting. Section 2 provides critical remedies, but bringing such litigation is often costly, time-consuming and does not provide the best tools to stop discrimination before it occurs. Justice Ginsburg wrote in her dissent that *Shelby County* upended “one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation’s history.”²¹

¹⁴ Bob Hall, *Why NC’s Voter ID Law is Unfair*, op-d, Oct. 15, 2013, NEWS & OBSERVER, <http://www.newsobserver.com/2013/10/15/3284031/why-ncs-voter-id-law-is-unfair.html>.

¹⁵ *League of Women Voters et al. v. North Carolina et al.*, No. 1:13-cv-00660 (M.D.N.C. filed Aug. 12, 2013).

¹⁶ Zachary Roth, *Voting Rights in Danger One Year After Shelby County Supreme Court Ruling*, MSNBC, Jun. 23, 2014, <http://www.msnbc.com/msnbc/one-year-after-shelby-county-ruling-voting-rights-are-danger>.

¹⁷ *Id.*

¹⁸ Ashley Lopez, *Secretary of State Prepares New Voter Purge*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING, Aug. 6, 2013, <http://fcir.org/2013/08/06/rick-scott-voter-purge>.

¹⁹ *Id.*

²⁰ Reid Wilson, *Virginia Election Officials Purging Almost 40,000 Voters*, WASHINGTON POST, Oct. 17, 2013 <http://www.washingtonpost.com/blogs/govbeat/wp/2013/10/17/virginia-election-officials-purging-almost-40000-voters/>.

²¹ *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612, 2634 (2013) (Ginsburg, J., dissenting).

As the record demonstrates, the Voting Rights Amendment Act is similarly amply justified. Moreover, it comports with the Court's jurisprudence in a manner that will advance our shared commitment to a vibrant, open, fair and participatory democracy for all Americans.

We thank you for the opportunity to submit this statement for the record.