

**Written Testimony of Bishop Dr. William J. Barber II, Repairers of the Breach
before the
U.S. House of Representatives
Committee on House Administration, Subcommittee on Elections
“Voting Rights and Elections Administration in North Carolina”**

Thursday, April 18, 2019
Weldon, North Carolina

Thank you for the opportunity to speak before you today. My name is Bishop Dr. William Barber II, and I am President and Senior Lecturer of Repairers of the Breach, and Co-Chair of the *Poor People's Campaign: A National Campaign for Moral Revival*.¹ I am also the immediate past president of the North Carolina State Conference of the NAACP and a leader of the Forward Together Moral Movement, a civil and human rights movement that began here in North Carolina and has since been embraced across the South and across the country.²

We are living at a time when voters of color have increasing potential for political power. Nearly 30 percent of America's eligible voters are people of color.³ African Americans, Latinos, Asian Americans, and Whites are coming together in historic numbers to form fusion coalitions to elect representatives of choice. But we are also living at a time when we are seeing, particularly across the South, the worst restrictions on voting rights since the 19th century. Without the protections of the preclearance provisions of the Voting Rights Act of 1965, Jim Crow-era voter suppression efforts are reappearing in North Carolina and in too many other states across the country. This wave of voter suppression, which has disproportionately impacted voters of color, imperils the confidence of all voters of good will and strikes at the very heart of our democracy.

Here in North Carolina, we have spent the better part of a decade of defending our state against an all-out attack on voting rights. This attack began as backlash against the multi-racial coalition that came together in 2008 to elect our nation's first black President but was given free license when the Supreme Court gutted the protections of the Voting Rights Act in *Shelby County*

¹ Repairers of the Breach is a nonpartisan not-for-profit organization that seeks to build a moral agenda rooted in a framework that uplifts our deepest moral and constitutional values to redeem the heart and soul of our country. The *Poor People's Campaign: A National Call for Moral Revival* unites tens of thousands of people across the country to challenge the evils of systemic racism, poverty, the war economy, ecological devastation and the nation's distorted morality.

² The NC NAACP is a nonpartisan, nonprofit organization composed of over 100 local branches and 20,000 individual members throughout the state of North Carolina. It has members who are citizens and registered voters in each of the state's 100 counties, including the 41 counties previously covered by the Voting Rights Act. The Forward Together Moral Movement is a multiracial movement of blacks, whites and Latinos seeking a just and inclusive democracy.

³ Steve Phillips, *Brown is the New White: How the Demographic Revolution Has Created a New American Majority* 5 (The New Press, 2016), citing U.S. Census data. (According to the latest Census data, the nation's citizen voting age population has reached over 220 million eligible voters. Of these, over 27 million (12.3%) are African-American, over 23.6 million (10.7%) are Latino, 8.7 million (4.0%) are Asian and Pacific Islander, and among others, 155.8 million (70.8%) are white) In 2012, people of color were 28% of all voters, and this percent is likely to be higher in 2016.

v. *Holder* in 2013.⁴ North Carolina has not stood alone. Since 2008, at least 22 states have enacted new statewide voter suppression laws and in 2017, at least 99 additional bills proposing such measures were introduced in 31 states.

When North Carolina's 15 electoral college votes went to America's first black President in 2008, this sent shockwaves through a racially polarized, white-dominated Republican Party that had, since the time of Nixon, banked on winning elections in Southern states through campaign strategies that stoked racial tensions in order to appeal to white voters. When this "Southern Strategy" failed to deliver in 2008 and was instead defeated by the strength of a multiracial fusion coalition in North Carolina, right-wing extremists scrambled to invest unprecedented sums of money in state legislative races, resulting in an extremist takeover of North Carolina's government in 2010.

The majority that took over the North Carolina General Assembly quickly redrew both state legislative districts and U.S. congressional districts in their favor, illegally using race as a primary indicator of voters who opposed their agenda. "Stacking and packing" black voters in as few districts as possible, the extremists who had hijacked the Republican party consolidated power, illegally gerrymandering congressional seats and a state legislative supermajority for themselves by 2012. The 2011 districts segregated white and black voters by mechanically adding black voters to election districts in concentrations not authorized or compelled under the Voting Rights Act, thereby "bleaching" adjacent districts of voters of color and frustrating their ability to vote in alliance with a growing, multiracial fusion electorate that bridges racial divides and mitigates the effects of racially polarized voting.

The unconstitutional racial gerrymander in this case, indeed, created a governing body in North Carolina brimming with the very legislators against which the Supreme Court has cautioned: legislators who believed their "primary obligation is to represent only the members' of a particular racial group,"⁵ namely, a polarized base of white voters divided from the multiracial community. It did not surprise us then, and will not surprise you now, to learn that one of the first items on the agenda of this extremist supermajority was a bill to restrict access to the ballot, which came to be known as the "monster voter suppression law."⁶

Eventually, in June 2017, after years of heroic fighting both in the streets and in the courts by the Forward Together Moral Movement, a unanimous U.S. Supreme Court would issue a remarkable *per curiam* decision affirming the striking down as a sweeping unconstitutional racial gerrymander the maps that created this unaccountable supermajority,⁷ and in November 2018, the people of North Carolina would finally hold long-awaited elections under court-ordered remedial maps. But in 2012, the only safeguard protecting voters of color in North Carolina from the whims

⁴ *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

⁵ *Shaw v. Reno*, 509 U.S. 630, 648 (1993).

⁶ N.C. Sess. L. 2013-381 (Aug. 12, 2013), *invalidated by NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

⁷ *North Carolina v. Covington*, 198 L. Ed. 2d 110 (U.S. 2017) (*per curiam*) (affirming lower court holding that 28 North Carolina state legislative districts were unconstitutional racial gerrymanders). The U.S. Supreme Court also the striking down as unconstitutional racial gerrymandering North Carolina's congressional districts in *Cooper v. Harris*, 137 S. Ct. 1455 (2016).

of this illegally-constituted state legislature was the law that so many in the civil rights movement had fought, bled, and died for: the Voting Rights Act.

It was therefore devastating when, in 2013, the Supreme Court gutted the heart of that critical piece of civil rights legislation in *Shelby County v. Holder*, leaving previously-covered jurisdictions vulnerable to voter suppression efforts, despite the fact that they remained live sites of struggle for voting rights.⁸ For example, in the 30 years prior to the *Shelby County* ruling, the U.S. Department of Justice objected more than 60 times to more than 150 voting changes in North Carolina on grounds that they were racially retrogressive. Without the protection of preclearance, the many Voting Rights Act violations from that period would have resulted in disenfranchisement. With the Voting Rights Act's protections, African-American and Latino voters in the state were instead able to participate in elections at increasing levels.

In dissenting from the majority opinion in *Shelby County*, Justice Ginsberg wrote that, "[t]hrowing out preclearance 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."⁹ Here in North Carolina, without preclearance protections, we were – and continue to be – soaked in a deluge of torrential voter suppression efforts.

In just a matter of hours after the 2013 *Shelby County* ruling was handed down, leadership of the North Carolina General Assembly announced that because *Shelby County* had rid them of the "headache" of the Voting Rights Act's preclearance protections, they could now move forward with the "full bill."¹⁰ They rolled out a sweeping, omnibus voter suppression bill that erected a slate of stringent, racially discriminatory barriers to the ballot. The law eliminated same-day registration, pre-registration for 16- and 17-year olds, out-of-precinct ballots, the first week of early voting, and instituted one of the nation's most stringent voter ID requirements. This "monster voter suppression law" – the worst of its kind in the nation – was only possible because preclearance protection was no longer in place.

In response, the Forward Together Moral Movement's "Moral Mondays" erupted as a weekly protest outside our statehouse, resulting in the arrest of over 1,200 people for engaging in nonviolent civil disobedience to protest the General Assembly's suppressive and regressive laws. After years of organizing victories and legal battles led by the NC NAACP and the Forward Together Moral Movement, the "monster voter suppression law" was eventually struck down as intentionally racially discriminatory. In July 2016, a unanimous panel of the U.S. Court of Appeals for the Fourth Circuit held that the law "target[ed] African Americans with almost surgical precision" and "impose[d] cures for problems that did not exist."¹¹ This landmark decision became final when, in May 2017, the Supreme Court denied the leadership of the North Carolina General Assembly's petition for certiorari in the case.

⁸ At the date of the *Shelby County* decision, fifteen states were covered by Section 5 in whole or part, and nine of those were Southern states from the former Confederacy: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas and Virginia. Forty counties in North Carolina were subject to Voting Rights Act federal preclearance requirements, which covered statewide elections.

⁹ *Shelby Cty.* 133 S. Ct. at 2650 (J. Ginsburg, dissenting).

¹⁰ Jim Rutenberg, *Disenfranchised: A Dream Undone*, N.Y. TIMES (July 27, 2009), available at: <https://www.nytimes.com/2015/07/29/magazine/voting-rights-act-dream-undone.html>.

¹¹ *NC NAACP v. McCrory*, 831 F.3d. 226 (4th Cir. 2016), cert. denied, 581 U.S. ___, 137 S.Ct. 1399 (2017).

As I have detailed in Congressional testimony in further detail in the past, showing no chagrin at the Fourth Circuit's finding of intentional race discrimination, extremists continued to attempt to suppress the vote in North Carolina during the 2016 General Election, as North Carolina, along with states across the country, entered the first presidential election in 50 years without the full protections of the Voting Rights Act.

For example, despite the Fourth Circuit's ruling requiring the restoration of the first seven days of the early voting period, North Carolina Republican Party Chairman Dallas Woodhouse produced and distributed a memo to Republican members of the county boards of election (who were then in the majority in each county in the state), instructing them to make "party-line" decisions in drafting new early voting plans, including voting **against** Sunday hours for voting and maintaining decreased numbers of hours and sites particularly on weekends.¹² This directive was given—and to large degree carried out—withstanding the Fourth Circuit's clear instruction in *NC NAACP v. McCrory* that "using race as a proxy for party . . . constitutes discriminatory purpose."¹³ The NC NAACP protested the reduced early voting plans before the North Carolina State Board of Elections, but the Board—then controlled by a Republican majority—in too many instances refused to use its considerable discretionary power to remedy the counties' suppressive early voting schedules.¹⁴

During the 2016 presidential election, we also saw the resurgence of another age-old voter suppression scheme in the form of mass mailings used to sweep up and purge eligible African-American voters from the voter registration rolls. Just days prior to the start of the 2016 early voting period, Grace Bell Hardison, a 100-year-old African-American woman who was disenfranchised for decades under Jim Crow laws but had been a faithful voter for decades, received notice that her registration was being challenged by a white neighbor, and that the county board of elections would be holding a hearing on her eligibility to vote. Further investigation quickly uncovered that thousands of eligible voters in at least three counties in North Carolina were being removed through similar mail-based challenges, in violation of the National Voter

¹² Colin Campbell, *NC Republican Party seeks 'party line changes' to limit early voting*, NEWS & OBSERVER (Aug. 17, 2016) available at: <http://www.newsobserver.com/news/politics-government/election/article96179857.html>

¹³ For example, in Guilford County, where over 30% of voters are African American, voters had 16 early voting sites available to them in the first week of early voting in 2012, but in 2016, only one site was open, resulting in lines reported of over 3 hours. Zachary Roth, *NBC News Analysis: North Carolina Counties That Cut Early Voting Sites See Lower Turnout*, NBC NEWS (Oct. 2016), available at: <https://www.nbcnews.com/politics/2016-election/analysis-north-carolina-counties-cut-early-voting-sites-see-lower-n671246>. In Winston-Salem, Greensboro, and Durham, early voting sites previously available on or near Historically Black Colleges and Universities, either were not opened at all in 2016 or only open on Election Day. In Nash County, a polling site that served disproportionately African American voters in Rocky Mount was not included in the first week early voting plan, over significant protests by the African-American community.

Overall, in just the 40 counties in North Carolina that were formerly covered by preclearance, there were at least 158 fewer polling places open during the 2016 presidential election than in 2012, despite the fact that the state's population has grown. Leadership Conference Education Fund, *THE GREAT POLL CLOSURE* (Nov. 2016) at 10, available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

¹⁴ NC NAACP letters to the North Carolina State Board of Election, on file with the NC NAACP.

Registration Act. On the eve of the election, Ms. Hardison and the NC NAACP filed suit and won an emergency injunction to stop the illegal purges and restore the removed voters.¹⁵

In other counties in North Carolina, efforts to prevent eligible voters from casting a ballot were even more blatantly hostile. In Chatham County, when the local NAACP branch and African-American churches organized a “Moral March” to the polls during the early voting period, they found “KKK,” “White Power,” and a swastika painted on the street leading to the A.M.E. church hosting the march. On the day of the event, onlookers shouted derogatory phrases parroting slogans from President Trump’s campaign and photographed the voters participating in the event. This happened in the county that historically lynched more African Americans than any other in North Carolina during the Jim Crow era. The NC NAACP documented this and other instances of intimidation based on race across the state during one of the most contested elections in our history.

The resurgence of voter suppression in North Carolina did not end there. As we head into the 2020 presidential election cycle, North Carolina is beset once again with the scourge of a discriminatory photo voter ID requirement. In the summer of 2018, undeterred by the federal courts’ 2016 ruling striking its previous attempt to enact photo voter ID as *intentionally racially discriminatory* and the federal courts’ 2017 ruling that it was the product of one of the largest unconstitutional racial gerrymanders “ever encountered,”¹⁶ a General Assembly tainted by racially discriminatory intent used its stolen power to put a photo voter ID requirement in the North Carolina Constitution.

It did so by using its illegal supermajority to place the proposed photo voter ID constitutional amendment on the 2018 ballot in one of the last acts of the final regular session of its six-year run. Then, after the vaguely and misleadingly-worded voter ID constitutional amendment was passed by statewide vote in the 2018 election, instead of allowing the newly-elected legislature to take their seats, the same tainted and illegally-constituted legislature convened a December 2018 lame-duck special session to enact implementing legislation for the voter ID amendment, N.C. Sess. L. 2018-144, over a gubernatorial veto.

In a twist that one might call ironic if shameful and immoral were not more accurate descriptors, the General Assembly took these extreme and unconstitutional steps to enact a photo voter ID law, which they could not justify with any evidence of in-person voter fraud – even as they all but ignored the now-notorious, sweeping *election* fraud operation in North Carolina’s Congressional District 9, which involved the illegal collecting, manipulating, and submitting of mail-in absentee ballots to benefit a Republican candidate for U.S. House. Many shocking revelations have become public as a result of this scandal, but none is more so than the General Assembly’s hypocrisy in continuing to pursue a legislative “fix” for a phantom in-person voter fraud problem, of which there is no evidence, while actual fraud upon the people and our democracy in this state remained unaddressed.

¹⁵ *NC NAACP v. NC State Bd. Of Elections*, 1:16CV1274, 2016 U.S. Dist. LEXIS 153249 (M.D.N.C. Nov. 4, 2016); see also Ari Berman, *North Carolina Republicans Tried to Disenfranchise a 100-Year-Old African-American Woman*, THE NATION (Oct. 17, 2016), available at <https://www.thenation.com/article/north-carolina-republicans-tried-to-disenfranchise-a-100-year-old-african-american-woman/>.

¹⁶ *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2019).

As we sit here today, North Carolina's discriminatory photo voter ID requirement, as enshrined in the state constitution and implemented through law, are, once again, being fought by the people of North Carolina in the courts. On February 22, 2018, in a remarkable ruling, the Wake County Superior Court ruled for the NC NAACP in a state case challenging the voter ID constitutional amendment. The court voided the 2018 voter ID amendment, holding that the General Assembly may only propose amendments to the state constitution "insofar as it has been bestowed with popular sovereignty," and struck down the challenged amendments on the ground that "the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state constitution before an amendment proposal can be submitted to the people for a vote, breaking the requisite chain of popular sovereignty between North Carolina citizens and their representatives."¹⁷ While this order, the effect of which has since been stayed, remains pending before the state appellate courts, challenges to the photo voter ID implementing legislation as illegal both in its racially discriminatory intent and racially discriminatory results remain pending before federal and courts, as well.¹⁸

North Carolinians also await the U.S. Supreme Court's ruling in *Rucho v. League of Women Voters*, which we pray brings justice to the long saga of gerrymandered congressional districts in this state. In early 2016, after being caught for their 2011 unconstitutional racial gerrymander of both congressional and state legislative maps, the extremist, Republican leadership of the General Assembly, in responding to the court's order to draw remedial congressional maps, explicitly bragged that they would again manipulate districts, this time by drawing the maps to maximize Republican seats. To be exact, as Representative Lewis notoriously put it during the legislative process, "I propose we draw the maps to give a partisan advantage to ten Republicans and three Democrats, because I do not believe it's possible to draw a map with eleven Republicans and two Democrats."¹⁹ The resulting 2016 "remedial" maps are thus, quite literally, the most extreme gerrymander that extremists in this state could imagine and an absolute assault on our democracy and on the fundamental right to vote.

As these examples make clear, voters in North Carolina and across the South are caught in a voter suppression thunderstorm without the cover of preclearance and have had to depend on costly, protracted, and difficult litigation to ensure our most fundamental rights. We are certainly proud of the victories we have won. In this state, thousands have stood together, regardless of race, color, economic status, or political party to defend the sacred right to vote – at times following in the footsteps of those who came before us and putting our bodies on the line in acts of nonviolent civil disobedience. We know this is a deeply moral issue that affects us all. **But these are battles that should never have occurred at all** and justice delayed too often results in justice denied. Our electoral system should not depend on whether or not we can find the means to take those who would undermine our democracy to court, time and time again.

¹⁷ *NC NAACP v. Moore*, 18 CVS 9806 Order (Wake Cty. Super. Ct. Feb. 22, 2019).

¹⁸ See *NC NAACP v. Cooper*, 18-cv-01034 (M.D.N.C. filed Dec. 20, 2018); *Holmes v. Moore*, 18CV15292 (Wake Cty. Super. Ct. filed Dec. 18, 2018).

¹⁹ Anne Blythe, *NC congressional districts struck down as unconstitutional partisan gerrymanders*, NEWS & OBSERVER (Jan. 9, 2018), available at <https://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article193814154.html>.

County-by-county across the South, old voter suppression schemes have found new champions. These champions – state actors and private parties alike – have been emboldened by the erosion of those institutions that have been historically entrusted with protecting access to the ballot, and by the utter demolition of the preclearance protections that were at the heart of the Voting Rights Act.

They are emboldened by the fact that, because Congress has refused to restore the Voting Rights Act, the U.S. Attorney General and the U.S. Department of Justice have less power to protect voting rights now than they would have had in 1965. Without preclearance protections, extremists in these states have attempted and will continue to attempt to disenfranchise voters of color in ways that are difficult to stop.

Southern states hold 160 of 538 electoral votes and 138 of 435 Congressional House seats, as well as the highest concentrations of people of color of any region in the country. We must recognize that the South, due to our unique history, is still a distinctive region and remains uniquely susceptible to voter suppression abuses where racially polarized voting persists and where the poverty and systemic racism remain intertwined. The end of the Southern Strategy based on racial division is at hand. But we have to address systemic voter suppression if we are to realize the promise of our democracy.

There has never been a more critical moment for expanding Americans' access to the ballot box and for reducing the corrupting influence of big money in politics. Our experience in North Carolina makes absolutely clear that the right to vote remains under attack and that it is imperative upon us to eliminate the discriminatory and burdensome barriers to the ballot box so that we can have full participation in the important issues of our day.

The protections of the Voting Rights Act – for which our ancestors bled and died – have never been more critical in this renewed and emboldened era of voter suppression that has swept North Carolina, the South, and this country. The premise of Shelby – that there is no longer a need for preclearance of voting changes – has been proven woefully wrong in North Carolina and many other formerly covered jurisdictions. The facts compel immediate, full restoration of the Voting Rights Act.

If there is any further information that I can provide to this Commission to aid in its work to consider the impact of this grave issue, I stand sincerely and steadfastly ready to assist.