STATEMENT OF

CATHERINE E. LHAMON

CHAIR
U.S. COMMISSION ON CIVIL RIGHTS

ON THE COMMISSION'S REPORT

AN ASSESSMENT OF MINORITY VOTING RIGHTS IN THE UNITED STATES

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION, SUBCOMMITTEE ON ELECTIONS

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Chair Fudge, Chair Lofgren, Ranking Member Davis, and Members, thank you for inviting me to testify. I chair the United States Commission on Civil Rights, and I come before you today to speak about the Commission's current work on studying voter access and voting rights, including our report released in September 2018, *An Assessment of Minority Voting Rights Access in the United States*.[1]

With that report, the Commission returned to a topic that was a core basis for Congress' creation of our Commission now 62 years ago: advising the U.S. Congress, the President, and the American public about the status of voting rights, among other civil rights, and making recommendations for improved federal policy. We at the Commission are proud to have supported the basis for the 1965 Voting Rights Act ("VRA"), to have provided evidence on which the Supreme Court relied to approve its constitutionality, and to have issued 20 previous reports over our 62 years specifically focused on voting rights.

This report offers an independent, comprehensive, detailed analysis of the current status of voter access and voting discrimination in the United States and of the efficacy of United States Department of Justice ("DOJ") enforcement of the Voting Rights Act since Congress' 2006 Reauthorization and in particular, since the Supreme Court's June 2013 decision in *Shelby v. Holder*.

The conclusions the report draws are bleak, leading to unanimous Commission findings, including that, during the time period studied:

- Race discrimination in voting has been pernicious and endures today.
- Likewise, voter access issues and discrimination continue today for voters with disabilities and limited English proficient voters.
- The right to vote, which is a bedrock of American democracy, has proven fragile and to need robust statutory protection in addition to Constitutional protection.

[1] U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, Sept. 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf [hereinafter "Report"]. The Commission produced this report under the direction of Katherine Culliton-Gonzalez, Esq., Director of Office of Civil Rights Evaluation, who performed principal research and writing with Dr. LaShonda Brenson, Civil Rights Analyst.

- Following the Supreme Court's decision in *Shelby County*, in the absence of the preclearance protections of Section 5 of the Voting Rights Act, voters in jurisdictions with long histories of voting discrimination have faced discriminatory voting measures that could not be stopped prior to elections because of the cost, complexity and time limitations of the remaining statutory tools.[2]

- The *Shelby County* decision had the practical effect of signaling a loss of federal supervision in voting rights enforcement to states and local jurisdictions.[3]

The report summarizes the current status of voting rights: "the umbrella of protection has been taken down, and voters are being drenched in jurisdictions that have attempted (and temporarily succeeded) to discriminate in their election procedures."[4]

As a result, the Commission recommends:

- Congress should amend the VRA to restore and/or expand protections against voting discrimination that are more streamlined and efficient than existing provisions of the Act.

- This new coverage provision should take account of the reality that (1) voting discrimination tends to recur in certain parts of the country and (2) voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination.

- The DOJ should pursue more VRA enforcement, recognizing that VRA litigation requires significant resources that only the federal government is able to expend.[5]

These findings and recommendations, and the report itself, are also informed by investigations and memoranda from 13 State Advisory Committees ("SACs") to the Commission, each of whom analyzed voting discrimination in their states: Alabama, Alaska, Arizona, California, Illinois, Indiana, Kansas, Louisiana, Maine, New Hampshire, Ohio, Rhode Island, and Texas.[6]

Current Condition of Voter Access

Drawing from Commission research and the work of the SACs, the Commission's 2018 report documents current conditions evidencing ongoing discrimination in voting. On every measure

[2] Report at 12-13.
[3] Report at 12, 279.
[4] Report at 235.
[5] Report at 13-14.
[6] Each of the Commission's Advisory Committee reports, advisory memoranda, and briefing transcripts are available on the Commission's website at https://www.usccr.gov/pubs/sac.php. A compendium of the reports and memoranda published at the time of the Commission's report release is available at https://www.usccr.gov/pubs/2018/20181031-Notice-SAC-Compendium.pdf.

The bipartisan expert volunteers who are SAC members, and the Commission regional staff who support these committees' work, performed invaluable service to their states and to the Commission in excavating voting rights challenges specific to their states.

the Commission evaluated – litigation success, data regarding discrimination incidents, investigations from SACs, Commission testimony from 23 bipartisan voting rights experts and advocates, and in-person and written public comment – the information the Commission received underscores that discrimination in voting persists.

Our report found that at least 23 states have enacted newly restrictive statewide voter laws since the *Shelby County* decision in 2013.[7] These statewide voter laws range from strict voter identification laws; voter registration barriers such as requiring documentary proof of citizenship, allowing challenges of voters on the rolls, and unfairly purging voters from rolls; cuts to early voting; to moving or eliminating polling places.[8]

Because the Committee has visited and heard testimony from voters and experts in several states,[9] including testimony from the Commission's Vice Chair, Patricia Timmons Goodson in North Carolina, and the Commission's Advisory Committees in Alabama and Arizona,[10] I will focus my attention on issues of voter access that the Commission and our Advisory Committees found in other states.

Some examples from the extensive information and testimony the Commission and our Advisory Committees received:

- The report documents ongoing, repetitive voting discrimination in states such as Alaska, Florida, Georgia, North Carolina, and Texas.[11]

- The Commission received testimony from multiple states about restrictive voter identification laws, ranging from prohibitive costs to obtaining the necessary paperwork, to a failure of poll workers to recognize appropriate identification under the state law. For instance, in Kansas, our Advisory Committee received testimony about a Native American voter who reported being denied the right to use her tribal ID as acceptable identification when voting – even though tribal ID is acceptable under state law.[12] Our

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[7] Report at 82.
[8] Report at 83-183.
[9] See Committee on House Administration, Subcommittee on Elections, https://cha.house.gov/subcommittees/elections-116th-congress (last visited Oct. 15, 2019) (listing field hearings in Alabama, Arizona, Florida, Georgia, North Carolina, North Dakota, Ohio, South Dakota, and Texas).
[10] Committee on House Administration, Voting Rights and Election Administration in Alabama, https://cha.house.gov/committee-activity/hearings/voting-rights-and-election-administration-alabama (including testimony of Ms. Jenny Carroll, Chair of Alabama Advisory Committee to the U.S. Commission on Civil Rights); Committee on House Administration, Voting Rights and Election Administration in North Carolina, https://cha.house.gov/committee-activity/hearings/voting-rights-and-election-administration-north-carolina (including testimony of Ms. Patricia Timmons-Goodson, Vice Chair of the U.S. Commission on Civil Rights); Committee on House Administration, Voting Rights and Elections Administration in Arizona, https://cha.house.gov/committee-activity/hearings/voting-rights-and-elections-administration-arizona (including tesitmony of Ms. Lorena C. Van Assche, Chair of Arizona Advisory Committee to the U.S. Commission on Civil Rights).
[11] Report at 234.
[12] Kansas Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights and the Kansas Secure and Fair Elections Act*, Mar. 2017, https://www.usccr.gov/pubs/docs/KS-Voting-Rights-Report.pdf at 12.

Indiana Advisory Committee found that "certain racial and ethnic minorities may be disproportionately susceptible to" a "false hit" in Crosscheck, a program widely used to identify voters who may be registered in more than one state.[13]

- The Commission received testimony about racial disparities in the number of polling locations in particular communities. For instance, our Louisiana Advisory Committee received testimony that demonstrated that "a statistical analysis of the data from Louisiana shows that the racial make-up of an area is a predictor of the number of polling locations in that area . . . [t]his [analysis] indicates that there are fewer polling locations per voter in a geographical area if that area has more black residents."[14]

- The Commission received significant testimony regarding voting rights challenges specific to Native American voters and communities, including long distances to travel to polling places[15] and lack of access to ballots resulting from rural residences without physically deliverable mailing addresses.[16] In one notable instance in Alaska, a polling a place was moved away from a village, and thereafter, Native Alaskan voters could only access their polling place by plane.[17] A Department of Justice investigation found that Native Americans had to travel farther distances compared to white voters in a number of states.[18]

- The Commission received testimony – at our own briefing as well as from our State Advisory Committees – of really disturbing instances of voter suppression. For example, in Illinois, "Cook County Cook County Clerk David Orr reported that in Cicero, Illinois, police officers have harassed voters and asked people for voting 'permits'" & testified that "between 60 and 70 off-duty Chicago police officers were armed and present at the polls, intimidating Cicero residents" who are predominately Latino/a and "It took the County Clerk's office between 4 and 5 hours to clear the police officers from the polling place."[19] In Maine in 2012, the then-chair of the Maine Republican party made explicit racialized allegations of voter fraud: he claimed on TV that "there were dozens, dozens of black people who came in and voted on Election Day."[20] He later apologized for that statement and recanted it.

- In New York State in 2015, 30 Chinese American voters, many of whom were college students, suffered baseless citizenship and voter registration challenges, impeding their

[13] Indiana Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Voting Rights in Indiana*, May 2018, https://www.usccr.gov/pubs/2018/07-25-IN-Voting-Rights.pdf at 6.
[14] Louisiana Advisory Committee to the U.S. Commission on Civil Rights, *Barriers to Voting in Louisiana*, Jun. 2018, https://www.usccr.gov/pubs/2018/08-20-LA-Voting-Barriers.pdf at 12.
[15] Report at 178-179.
[16] Report at 182.
[17] Report at 178-79.
[18] Report at 179.
[19] Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Civil Rights and Voting in Illinois*, Feb. 2018, https://www.usccr.gov/pubs/2018/IL-Voting-Rights.pdf at 20.
[20] Maine Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights in Maine*, Apr. 2018, https://www.usccr.gov/pubs/2018/06-29-ME-Voting-Rights.pdf at 10.

right to vote.[21] As Jerry Vattamala from the Asian American Legal Defense and Education Fund told the Commission: "Racist sentiment towards Asian Americans is not a passing adversity but a continuing reality" necessitating strong voting rights protection.[22]

- The report documents widespread problems with inaccessibility for voters with disabilities, including for example that 100% of voters with disabilities were unable to vote privately and independently in municipal elections in New Hampshire in 2013 because none of the polling locations had set up an accessible voting system.[23] In California, voters with disabilities frequently experience inaccessible polling locations including "long walks after parking, obstructions, and inadequate lighting."[24]

The Commission's report, as well as news reports[25] leading up to and following the 2018 midterm elections that problematic practices identified by the Commission – including strict voter identification laws, unfair purging, cuts to early voting, and eliminating polling places – were in use in many states and jurisdictions throughout the country, prompted the Commission to reiterate some of its most urgent recommendations regarding voting rights to the 116th Congress.[26] The Commission's North Dakota State Advisory Committee also issued a statement in light of a Supreme Court decision allowing a new voter ID requirement to take effect, even though it had the potential to particularly adversely affect Native American voters living on reservations, as many do not have residential addresses.[27] The Committee expressed its concern that the restrictive voter ID law targeted Native American voters, and also pointed out that the change in law for the general election, from the law in place for the primary election, would likely result in confusion and "serious risk of large-scale disenfranchisement."[28]

DOJ Enforcement Efforts

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[21] Report at 140-41.
[22] Report at 191-192.
[23] Report at 195.
[24] California Advisory Committee to the U.S. Commission on Civil Rights, *Voting Integrity in California: Issues and Concerns in the 21st Century*, Jun. 2017, https://www.usccr.gov/pubs/docs/07-24-Voting-Integrity-in-CA.pdf at 38.
[25] *See, e.g.,* Amy Gardner and Beth Reinhard, *Voting problems emerge across the country on Election Day*, Washington Post, Nov. 6, 2018, https://www.mercurynews.com/2018/11/06/as-country-goes-to-the-polls-voting-problems-emerge/; Peggy Lowe, *Missouri Voters Report Long Lines, Broken Machines and Confusion Over Photo ID Law*, KCUR 89.3, Nov. 6, 2018, https://www.kcur.org/post/missouri-voters-report-long-lines-broken-machines-and-confusion-over-photo-id-law#stream/0; Mark Nichols, *Closed voting sites hit minority counties harder for busy midterm elections*, USA TODAY, Oct. 30, 2018, https://www.usatoday.com/story/news/2018/10/30/midterm-elections-closed-voting-sites-impact-minority-voter-turnout/1774221002/; Johnny Kauffman, *6 Takeaways From Georgia's 'Use It Or Lose It' Voter Purge Investigation*, NPR, Oct. 22, 2018, https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation.
[26] U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation*, Dec. 7, 2018, https://www.usccr.gov/press/2018/12-07-Priorities-for-116th-Congress.pdf at 3.
[27] North Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Statement of the North Dakota Advisory Committee Concerned by Potential for Voter Suppression*, Oct. 26, 2018, https://www.usccr.gov/press/2018/20181026-North-Dakota-Voting-Rights.pdf.
[28] *Id.*

Notwithstanding the recurrence of this ongoing discrimination in voting, the report shows that DOJ enforcement lags behind even available tools. Whereas the DOJ has statutory authority to enforce VRA and congressional appropriations annually to staff such enforcement, the DOJ's actual enforcement work in this area well lags private enforcement that is much more expensive and onerous to mount.[29]

Our September 2018 report found that since the *Shelby County* decision in 2013, the DOJ had filed four of the 61 Section 2 cases filed, one language access case, and zero cases about the right to assistance in voting.[30] The ACLU alone has brought more Section 2 cases than the DOJ;[31] so has the Lawyers' Committee for Civil Rights Under Law.[32] The DOJ has shown a sharp decline in the number of language access cases it has filed, filing only one such case since the *Shelby County* decision, in contrast to an ongoing need for language access protections.[33] The DOJ has not filed any cases to enforce Section 208 of the VRA, which provides for voters' rights to assistance, including for voters with disabilities and limited-English proficiency, since 2009.[34]

These distressing data and information regarding ongoing voting discrimination form the basis for my fellow Commissioners' and my unanimous call for Congress to improve our voting protections and for the DOJ to increase its enforcement to ensure that ours is a real democracy.

[29] Report at 254-56.
[30] Report at 10. The Section 2 cases were filed in 2013 and 2017 and the language access case in 2016. Report at 253, 259.
[31] Report at 80, 265.
[32] Report at 265.
[33] Report at 259.
[34] Report at 260-62.