



**Remarks of Denise D. Lieberman, Esq.  
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**Committee on House Administration, Elections Subcommittee  
Hearing on “Voting Rights and Election Administration in America”  
October 17, 2019  
Longworth House Office Building, Washington D.C.**

Thank you Chairwoman Fudge and to the House Administration Committee, Subcommittee on Elections for holding today’s important Hearing on Voting Rights and Election Administration. I am honored to provide remarks on the People’s Panel. My name is Denise Lieberman and I am Senior Attorney and Director of the Power & Democracy Program at Advancement Project’s National Office. Advancement Project is a national racial justice organization that works in deep partnership with grassroots organizations in the states to develop community-based solutions inspired by the tactics and courage that produced the landmark civil rights victories of earlier eras. We are proud to stand beside our many partners in who are fighting battles for racial justice on the ground every day. The need could not be greater – we are faced today with the greatest battle for the solvency of our democracy since the post-reconstruction era when the promise of a robust democracy was deliberately and violently thwarted.

As Director of Advancement Project’s Power & Democracy Program, I oversee our Voter Protection Program and Right to Vote initiatives. My legal work on voting rights goes back two decades, starting in my home state of Missouri with class action litigation during the 2000 elections and extending nationwide. I have litigated voting challenges in states around the country including Missouri, North Carolina, Florida, Wisconsin, Louisiana, Pennsylvania and others. We are working with partners in Florida, Louisiana and Virginia and others to address the collateral consequences of mass incarceration and advance broad rights restoration efforts. I am also an adjunct professor of political science and law at Washington University in St. Louis, where I teach courses including Voting Rights & Election Law.

I am particularly honored to speak today on the “People’s Panel” – because our fight to protect the right to vote – and the need for Congress to take definitive action to secure the right to vote for all citizens – lies in the lived experiences of the people for whom protection is most needed and the people whose voices are most often silenced. Because the right to vote is about self-determination, the right of all people to have agency over their own destinies. It confers dignity. It is society’s structural mechanism that tells people they count – literally. When the right to vote is abridged, it says that you don’t count. This has a direct correlation to the ability of people to build power to exercise self-determination over the issues that impact them the most. It is no accident that Advancement Project’s voting rights work is framed as Power & Democracy. It is about building power in order to protect democracy. Make no mistake – the right to vote is the way for communities of color, and other communities too often left

without a voice, to build power – and that is precisely why many who wield disproportionate power in our society are threatened by a robust democracy.

Moreover, we know that any action Congress takes to restore provisions of the voting rights act and ensure federal protection for the right to vote – measures that are sorely needed – will need to be justified in legal challenges based on the specific ways in which voters of color are impacted on the ground in their ability to register to vote, cast a ballot and have their ballots counted.

So Advancement Project has been pleased to work in collaboration with other members of the Racial Equity Anchor Collaborative to support the House Administration Committee’s Field Hearings over the last eight months documenting the state of voting rights in jurisdictions around the country. Anchor collaborative members – Advancement Project, Asian & Pacific Islander American Health Forum, Demos, Faith in Action, NAACP, National Congress of American Indians, National Urban League, Race Forward and Unidos US – are dedicated to advancing a voting system that is free, fair and accessible to all people regardless of race, ethnicity, ability or language proficiency. The stories we captured over this year

In addition to helping identify leaders on the ground to testify at the House Administration Committee’s Field Hearings, the Anchor Collaborative partners embarked on a robust grassroots effort to lift up the voices of everyday voters of color and their experiences accessing the right to vote. To complement this Committee’s Field Hearings, we conducted “People’s Hearings” in select states and gathered first-hand accounts of voter suppression through those hearings and through creation of the #WeVoteWeCount website where voters across the country can share their voting experiences. At these People’s Hearings, witnesses testified to the erosion of equal access to voting and the ferocity of post-*Shelby* election related discrimination in states like Alabama, North Carolina, Ohio, North Dakota, South Dakota, Georgia, Florida and Texas – from measures that make it harder for citizens to register to vote, to cast a ballot, and to have those ballots counted. Witnesses attested to, among other things, having to wait in long lines to cast a ballot, being denied bilingual ballots or language assistance at the polls, having to restore their registration status after an illegal voter purge, and having to stand up against last-minute changes to polling locations and hours of operation, misinformation and voter intimidation. Additionally, the reports capture the impact of voter ID laws, improper voter purges, cuts to early voting, and increasingly scarce polling places with ever-changing locations, which present burdens for those without easy access to transportation and inflexible work schedules.

In the post-*Shelby* era, voters of color confront renewed barriers to casting a ballot. Our soon-to-be-released report on this effort, *We Vote, We Count: The Need for Congressional Action to Secure the Right to Vote for All Citizens*, includes testimonies from African Americans, Asian Americans, Native Hawaiian, Pacific Islanders, Hispanics and Native Americans, whose first hand accounts provide a glimpse into the inner workings of voter suppression across the country. Voters testified to onerous and confusing limitations to access to access to the ballot, limitations that disproportionately impact voters of color, including:

- An increase in the number of voting rights violations since the *Shelby* decision.
- An increase in the costs and burdens to access the right to vote, and increased costs associated with challenging constitutional violations.
- An increase in the costs of litigating violations of the voting rights act
- Evidence of discrimination in voting

- A need for transparency, notice and federal protection for the right to vote.

These People’s Stories demonstrate why the Voting Rights Act and federal protection for the right to vote remains necessary to combat widespread voter suppression today – to ensure communities of color across the nation can be heard. Long ago, the Supreme Court proclaimed that the right to vote is “regarded as a fundamental political right, because [it is] preservative of all rights.”<sup>1</sup> Yet we have never lived up to this ideal. Historically we have limited access to the ballot by enacting laws that intentionally disenfranchise people of color, and have maintained efforts to keep communities of color from the electoral process.

Current efforts to suppress the vote bear resemblance to the voter suppression practices of the civil rights era, prior to passage of the Voting Rights Act, in placing hurdles and barriers to accessing the vote that disproportionately fall on voters of color. In the words of the late Rosanell Eaton, lead plaintiff in our litigation challenging North Carolina’s monster voter suppression law passed in the immediate wake of the *Shelby* ruling: “You know, all of this is coming back around before I could get in the ground. I was hoping I would be dead before I’d have to see all this again.”<sup>2</sup> Today’s methods of disenfranchisement are far reaching and have real impact on communities of color and their ability to access the franchise.

*“I...am an elderly semi-disabled citizen of Miami Gardens, Florida. A native of Columbus, Georgia, I remember the era when suppression was visible in many areas of life itself. I recall the marches, the violence, the cotton fields, the maids. I remember the black and white bathrooms and fountains. However, this last voting term [2018], I was taken back to what’s been embedded in the black culture: long lines, no assistance for elderly and even handicapped. I witnessed several people being turned away for several reasons. No matter how hard I tried to remember the song and believe in it, it would quickly escape me. And that is, WE SHALL OVERCOME ONE DAY.”*

- *Annie Ruth Passmore, born March 31, 1936, a witness at the North Miami, Florida, People’s Hearing, May 2019.*

In conducting the People’s Hearings, we found that witnesses framed the right to vote in primarily two ways: 1) the right to be regarded and recognized as an eligible voter and 2) the right to cast a ballot without undue burden.<sup>3</sup> These frameworks were prevalent themes throughout stories collected via the Field and People’s Hearings. Indicating that, for communities of color, the right to be recognized as an eligible voter and the right to vote without undue burden are the components of the concept of the “right to vote” most severely contested or undermined in the modern day fight to vote. The right to vote confers dignity and builds power. Winnie Tang, President for Asian Services, testified during the Florida People’s Hearing of the dignity conferred when bilingual services are available: “So, what we are doing in the community to have translating. We’re in Chinese, then we bring the voter to interpreter in Chinese

<sup>1</sup> *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)

<sup>2</sup> Woman who faced Jim Crow takes on North Carolina’s powers over voting rights, *The Guardian*, available at: <https://www.theguardian.com/world/2014/sep/25/north-carolina-voter-id-law-jim-crow-african-american>.

<sup>3</sup> See, Morley, Michael T. "PROPHYLACTIC REDISTRICTING? CONGRESS' SECTION 5 POWER AND THE NEW EQUAL PROTECTION RIGHT TO VOTE. (Special Issue on Gerrymandering)." *William and Mary Law Review* 59, no. 5 (April 1, 2018): 2053. Accessed April 20, 2019. <https://www.questia.com/library/journal/1G1-541811728/prophylactic-redistricting-congress-section-5-power>.

to have them to read it to vote so they can feel their power, so they will not feel reluctance in their own way.”<sup>4</sup>

*“As you know, in 2017, North Dakota passed a law that was designed to reduce the tribal vote. The state law requires IDs to have the current residential street address. This goes beyond the typical voter registration requirements. Our rural reservations and housing systems were not set up that way. Many of our members use a PO Box for their addresses. We recently began developing community streets and housing with residential addresses, but our reservation is mostly rural. The state knew this, and they used it to suppress tribal voters.”*

*— Roger White Owl, Chief Executive Officer of the Mandan, Hidatsa, and Arikara Nation*

Ever since the Supreme Court significantly weakened the Voting Rights Act in the landmark *Shelby* ruling in 2013, states across the country have revived and implemented new restrictions on the right to vote - measures are akin to Jim Crow 2.0.

*“We have been battling for 2023 days today, five years, nine months and 24 days since the Voting Rights Act was gutted in 2013. This monster voter suppression law was the worst of its kind after Shelby in the nation, and it was only possible because the preclearance protection was no longer in place. It, in fact, has been the worst we have seen since Jim Crow. We heard the lawyer who was leading the effort say in court that retrogression was okay now that the Voting Rights Act was no longer in place.”*

*— Rev. William Barber, President, Poor People’s Campaign*

Stories offered during the Alabama, Florida and North Carolina People’s hearings highlighted how, for example, voter ID laws created conditions eerily analogous to circumstances during the Jim Crow era. Alabama Commissioner Sheila Tyson, for example, testified to the impact of Alabama’s ID requirement impacting more than 300,000 voters in the state without state ID, exacerbated by the fact that a fourth of those individuals lacked access to a car, combined with the closure of more than 30 DMV offices in primarily African American and poor counties. “You have to drive four hours to get a driver’s license but you can’t vote without a driver’s license or some type of state ID. But then you turn around at close [the voter ID offices.]”<sup>5</sup> In North Dakota, Charles Walker, Judicial Committee Chairman of the Standing Rock Sioux Tribe, noted the challenges, in a county with a 35.9 percent poverty rate, “that the nearest driver’s license site is about 40 miles away.”<sup>6</sup>

Historian Alexander Keyssar notes, “It’s against [the] background of immigration and African American empowerment in some places that the nation witnessed the passage of innumerable state laws designed to limit the political power of African Americans and immigrants and immigrant workers. Literacy tests, understanding clauses, detailed registration requirements, proof of citizenship laws, as have shown up again in recent years, all of these things that have appeared in the late 19th and early 20th century, and

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<sup>4</sup> Testimony of Winnie Tang, Florida People’s Hearing, 2019

<sup>5</sup> Testimony of Commissioner Sheila Tyson, Alabama People’s Hearing, 2019

<sup>6</sup> Testimony of Charles Walker, the Judicial Committee Chairman Standing Rock Sioux Tribe

they worked in a lot of places, and, again, not just in the south where we do know the dreadful story. I don't think that these historical parallels are coincidence...”<sup>7</sup>

Today, the increase in political participation among voters of color, the increase in immigration and the influx of voter suppression mirrors other periods of American history. We saw similar backlash to growing political power by immigrants and African Americans during Reconstruction and the Pre-Civil War era. Each era of growth in political power of voters of color has been met with new laws limiting access to the vote. The lived experiences of voters reveal these parallels.

Efforts to make voting harder for people of color during this and other important times in our country's history is not an accident, but a pervasive and effective effort to prevent or dissuade people of color from freely participating in the political process and building power. This moment of greater participation by people of color and greater voter suppression are in a constant battle for the heart of America's democracy.

The stories we collected make clear that current levels of voter suppression unduly burden the right to vote and disproportionately impede access for voters of color. Measures that abridge the right to vote – especially for communities of color – are on the rise since *Shelby*. (In the first year after *Shelby*, 73% of previously covered jurisdictions introduced restrictive voting laws.) Not only did the *Shelby* decision open the door to discriminatory practices that would have been halted at the outset under the preclearance, but it made it more difficult to challenge such laws, placing the burden on already under-represented voters of color and their advocates. Since then, without the law's stopgaps, the evidentiary burdens – and costs associated with such challenges – has fallen even more heavily on impacted voters to challenge denials of their fundamental right to vote.

But our People's Hearings also revealed – yet again, as we have seen throughout history -- the determination of impacted communities in the face of efforts to shut out their voices to uplift the strategic imperative of the right to vote. Ella Baker refers to the genius of ordinary people, and that is what we see in these stories. This Committee should heed their words. What we are seeing around the country is that people are rising up and demanding action to combat the rise in voter suppression. Through grassroots organizing, legal, legislative and electoral strategies and deep tenacity, groups have demanded and are continuing to impact access to democracy in meaningful ways – for example with the passage of Amendment 4 in Florida and Act 636 in Louisiana to restore voting rights to people with felony convictions – campaigns led by impacted individuals. But now those measures are being met with their own legislative and administrative backlash; the battle for access to the vote continues to fall on the backs of those most impacted.

More than half a century after hard fought civil rights struggles lead to the passage of the Voting Rights Act, the urgency of that movement today could not be clearer. Communities of color are resisting assaults on their lives, dignity and freedom on multiple fronts. The *Shelby* decision emboldened attacks on the right to vote - assaults designed to curtail the growing political power of voters of color as they emerge into the new American majority. Today nearly a third of eligible voters are voters of color, and those numbers are only growing – producing a backlash against the growing American electorate.

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<sup>7</sup> Testimony of Dr. Alexander Keyssar at the U.S. Commission on Civil Rights, August 18, 2017, p. 66. Dr. Keyssar is the Matthew W. Stirling Jr. Professor of History and Social Policy at the Harvard Kennedy School of Government. He is an historian who has written several books including the acclaimed, *The Right to Vote: The Contested History of Democracy in the United States* (2000).

Sometimes the courts see through the ruse, but in the post-*Shelby* world, the protections may be short lived.

The stories we captured demand that Congress act to ensure that the right to vote is a reality for all citizens. The full protections of the Voting Rights Act are necessary to ensure that the promises of the Reconstruction Amendments are kept. Discriminatory voting measures and practices cannot be effectively challenged after the fact. A lost vote can never be reclaimed, and the collective legacy of these lost votes leaves a lasting scar on those individuals, their families, and our very democracy for generations.

Thank you Congresswoman Fudge and members of the committee for holding these hearings, and in particular for including a “People’s Hearing.” These stories show that it is time for Congress to act by reinstating the pre-clearance provisions of the Voting Rights Act. Moreover, we must enshrine an explicit Right to Vote at the federal level. Legal protection for voters is needed now more than ever, both to safeguard hard-fought progress and to defeat persistent and ongoing attempts to narrow the franchise.