A STRONG VOTING RIGHTS ACT IS NEEDED NOW MORE THAN EVER

By Rep. Sheila Jackson Lee, Chair of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
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Eight years ago yesterday, June 25, 2013, the Supreme Court handed down its infamous decision in *Shelby County v. Holder, 570 U.S. 529 (2013),* which immobilized the Department of Justice from subjecting discriminatory voting and election law changes to prior review and approval, or "preclearance." It was predicted at the time by me and other defenders of the precious right to vote that the Court's misguided and naïve decision would usher in a wave of state and local initiatives intended to suppress and nullify the rights of black Americans, persons of color, young adults, and marginalized communities to exercise the most basic act in the political process: voting.

As we have seen, this prediction has tragically come to pass. In recent months, a reactionary bill passed the Texas Senate, and 253 bills to restrict or curtail voting rights, have been introduced in 43 states, all of which illustrates the fierce urgency of Congress passing, and the signing by President Biden, of H.R. 4, the *John Lewis Voting Rights Advancement Act* and the already House-passed H.R. 1, the *"For The People Act,"* which, among other things, would protect and make it easier to vote in federal elections, end congressional gerrymandering, and increase safeguards against foreign interference.

In *Shelby*, the justification relied upon by the conservative majority of the Supreme Court to strike down Section 4 of the Voting Rights Act today essentially comes down to this: "Times change." Chief Justice Roberts was right, times have changed. What he neglected to add is that the change was due almost entirely to the existence *and vigorous enforcement* of the Voting Rights Act.

In the same way that the vaccine invented by Dr. Jonas Salk in 1953 eradicated the crippling effects but did not eliminate the cause of polio, the Voting Rights Act succeeded in stymying the practices that resulted in the wholesale disenfranchisement of African Americans in the southern region of our country but not in eliminating the motivations underlying them. And that is why the vaccine of the Voting Rights Act is needed as much today as Dr. Salk's vaccine is needed to prevent another polio epidemic.

Before the Voting Rights Act was passed in 1965, the right to vote did not exist in practice for most African Americans. And until 1975, most American citizens who were not proficient in English faced significant obstacles to voting, because they could not understand the ballot. Even though the Indian Citizenship Act gave Native Americans the right to vote in 1924, state law determined who could actually vote, which effectively excluded many Native Americans from political participation for decades. Asian Americans and Asian immigrants also suffered systematic exclusion from the political process.

In 1964, the year before the Voting Rights Act became law, there were approximately 300 African-Americans in public office, including just three in Congress. Few, if any, black elected officials were elected anywhere in the South. By 2013, because of the Voting Rights Act, there were more than 9,100 black elected officials, including 43 members of Congress, the largest number ever. The Voting Rights Act opened the political process for many of the approximately 6,000 Latino public officials that have been elected and appointed nationwide, including 263 at the state or federal level, 27 of whom serve in Congress. Native Americans, Asians and others who have historically encountered harsh barriers to full political participation also have benefited greatly.

In his *Shelby* opinion, the Chief Justice applauded this remarkable progress and concluded that the Voting Rights Act was so successful in preventing the states with the worst and most egregious records of voter suppression and intimidation from disenfranchising minority voters that those states should no longer be subject to the federal supervision that was responsible for the success he celebrates.

In concluding that in determining which states would be subject to pre-clearance, Congress was only concerned about states with a "recent history of voting tests and low voter registration and turnout," Chief Justice Roberts confused the symptom with the disease. Congress used registration and turnout data to select which states should be subject to federal pre-approval of voting changes *because that was the most efficient way to identify those places with the longest and worst history of voter disfranchisement and entrenched discrimination and blatant racism by recalcitrant jurisdictions.*

Congress understood that while a multitude of formulas could be conjured to identify which governmental units would be subject to preclearance, there was and could be only one way for a covered jurisdiction to overcome the need to pre-clear its election laws, and that was by satisfying an independent federal judiciary that it had renounced its discriminatory past and could be trusted not to employ any artifice that would result in a return to those days of shame.

But in a record exceeding 15,000 pages in length compiled after holding 21 hearings and receiving testimony from more than 150 witnesses, Congress carefully and meticulously documented why the covered states could not yet be trusted to refrain from a return to their days of shame. And because of Section 5, they could not do so if they tried.

That is why opponents of the Voting Rights Act long chafed at the pre-clearance provisions of Section 5, repeatedly tried to have it repealed legislatively or invalidated judicially, celebrated the Court's *Shelby* decision by putting into place that very day schemes like photo ID to suppress, prevent, or dilute the vote of black Americans and marginalized communities.

Section 5 is the "anchor" providing the federal government the power to protect the right to vote guaranteed by the 15th Amendment, section 2 of which imbues Congress with special "power to enforce . . . by appropriate legislation." Without Section 5, Congress recognized that many of the advances of the past decades could be wiped out overnight with new schemes and devices, such as the mid-decade redistricting that was conducted in my home state of Texas, which the U.S. Supreme Court struck down in part in *LULAC v. Perry, 546 U.S. 399 (2006)* and would be banned by the *For The People Act.*

Nearly 15 years ago, on July 12, 2006, when the legislation renewing the Voting Rights Act was being debated, I addressed the House and said:

> "With our vote today on H.R. 9, each of us will earn a place in history. Therefore, the question before the House is whether our vote on the Voting Rights Act will mark this moment in history as a "day of infamy," in FDR's immortal words, or will commend us to and through future generations as the great defenders of the right to vote, the most precious of rights because it is preservative of all other rights. For my part, I stand with Fannie Lou Hamer and Rosa Parks and Coretta Scott King, great Americans who gave all and risked all to help America live up to the promise of its creed."

I was proud to vote to reauthorize the Voting Rights Act for the next 25 years, but I am not proud of the Supreme Court's ruling in the *Shelby County* case holding Section 4 of the Voting Rights Act to be unconstitutional and I predict that in time this decision will take its place alongside the Court's decisions in *Dred Scott, Korematsu, and Plessy* as among the most shameful and intellectually dishonest in its history.

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