

Proposed Testimony and Notes for Kareem Crayton, JD, PhD
House Judiciary Committee
September 5, 2019
Memphis, TN

Thank you for the opportunity to present testimony on this important topic. I am the Executive Director of the Southern Coalition for Social Justice, which is a non-profit social justice organization based in Durham, North Carolina. Our work brings together multidisciplinary talent to address long range structural problems across the South that have kept certain communities on the outside of opportunity.

We work in partnership with community organizations to identify the policy and legal issues that they view as most significant and to develop comprehensive strategies that address these concerns in a long-range manner. We do so with an emphasis on racial equity, which we think is a key feature in the formula for enacting lasting change in the South.

As I mentioned, I am grateful for the chance to share thoughts about the ongoing barriers to voting that Americans continue to face, particularly in the South. Our work has afforded us with a very keen vantage point to consider them, as my own scholarly work before assuming this role has provided.

There are multiple perspectives that I am sure will be brought to bear on the topic today, so I will limit my formal comments to three specific examples of the barriers to voting that I hope that will inform this committee and its work going forward to craft legislation that addresses an election system that endeavors to entrench equality but too often falls far short. In some ways, these are not entirely new tactics, but it is fair to say (to borrow from the music scene) the tunes vary along a pretty constant theme.

A. Voter ID Rules

Since the Supreme Court adopted a standard that permits the enactment of requirements to produce photo ID at the polls, states have taken multiple efforts to challenge the boundaries of their power to regulate participation. This experimentation poses serious concerns for voters who do not have a driver's license or a passport, which research frequently reveals more frequently includes the poor, the young, the disabled, women, and people of color. While advocates of this policy frequently

herald the availability of free photo ID, they tend to overlook both the paltry financial support for making free ID available and, more important, the blatant selectivity in which forms of ID are favored.

The Southern Coalition successfully litigated to strike down a very heinous 2014 statute in North Carolina affectionately known as the Monster Voting Bill. A bipartisan panel of federal judges eventually found that in adopting this bill that favored gun licenses but disfavored public school ID's, the state had engaged in intentional racial discrimination "with almost surgical precision." The General Assembly responded by crafting this requirement into a state constitutional amendment, which passed with 55% of the votes cast in 2018.

Our legal team is now challenging the implementing law under this new provision in state court as inconsistent with North Carolina's core state constitutional principles, and we remain committed to demonstrating the continuing threats that this policy has on the full and fair exercise of the franchise. The crucial point to recognize about this issue is that this litigation takes time to complete, and elections will be held in the interim. The risk of excluding people who have a history of participating as well as the even more likely level of confusion about changing rules – both by the voters and those who manage the polls are extremely troubling consequences of this policy.

B. Criminalization of the Ballot Box

In recent years, several individuals (often women and people of color) across the country have been targeted by state actors and private citizens for their efforts to become more engaged in the political process. These strategies are not entirely new to the American political landscape, but they are quite effective at curtailing the exercise of the franchise. The rationale of using criminal law to stop voter fraud has its moorings in the 19th Century effort to undermine the progress of the American Reconstruction by harassing and intimidating formerly enslaved people who sought to vote. Research by J. Morgan Kousser has nicely described the pattern of behavior of intimidation (to the point of violence) in ways that targeted precisely those areas where nascent African American political activity had the potential for great effect.

Then, as now, voters face the concerning possibility of retribution that can include private harassment and public investigation or accusations of fraud due to good faith efforts

of registering or voting. In the current era, both state and federal actors have raised the specter of "illegal voting" to intimidate newer voters from entering the political marketplace. The Southern Coalition has led efforts in Virginia and North Carolina to seek legal accountability for private actors that have wrongfully attempted to intimidate voters and has defended individuals prosecuted for felonies under a state law that does not account for good-faith mistakes. In America's most diverse electorate in history, where the country's rate of participation currently lags behind other developed democracies, discouraging new voters in this way threatens not only the personal security and liberty of those who are targeted but also a deeper societal trust in our electoral system by their friend and neighbors.

C. Voter Purges/Removals

A relatively more emergent issue that is becoming a widespread tactic of undermining the ability of infrequent voters to participate is the use of purges and removals. Multiple state administrators have, pursuant to their preferred reading of the Help America Vote Act have adopted a policy to (in their view) protect the voter rolls against fraud. Their intervention is to provide notice to voters they identify as infrequent and therefore likely to

There are clear speech questions at issue with this policy, since our constitutional doctrine for speech – including political speech recognizes protections for the right to speak as well as the right NOT to speak. Effectively penalizing a person who chooses not to participate during a particular election cycle would significantly depart from traditions of privileging both the content of speech and the decision whether to issue speech. And to my mind, the unmoored assertions of preventing fraud this way are far too specious from the real and well-documented effects on the large segments of our population that tends to show up to vote for national elections but perhaps not as frequently for more local races.

The depth of the harm associated with this policy is even more severe if one considers the significance of registering to vote. The United States is an outlier among developed democracies in its demand that a citizen needs to take a distinct step to qualify to vote in addition to actually traveling to the polls on Election Day. Political science research has made clear that registration as a process serves as its own barrier to participating. While the present system may be defended by

traditionalists, what is exceedingly difficult to accept is any system that would place voters back at square one simply because they choose to remain silent in one too many elections.