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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

VIRTUAL HEARING ON:
"OVERSIGHT OF THE VOTING RIGHTS ACT: POTENTIAL LEGISLATIVE REFORMS"

CISCO WEBEX
MONDAY, AUGUST 16, 2021
10:00 A.M. (EDT)

- Thank you, Chairman Cohen and Ranking Member Johnson, for convening this hearing on the *"Oversight of the Voting Rights Act: Potential Legislative Reforms."*

- Let me welcome our witness:

- **FIRST PANEL**

- The Honorable Kristen Clarke, Assistant Attorney General for Civil Rights, United States Department of Justice (DOJ).

- **SECOND PANEL**

  - Wade Henderson, Interim President and CEO, Leadership Conference for Civil and Human Rights;

  - Thomas A. Saenz, President and General Counsel, Mexican American Legal Defense and Educational Fund, Inc.;

  - Wendy Weiser, Vice President, Democracy, Brennan Center for Justice, New York University Law School;

  - Peyton McCrary, Professorial Lecturer in Law, George Washington University Law School;

  - Jon Greenbaum, Chief Counsel and Senior Deputy Director, Lawyers' Committee for Civil Rights Under Law;

  - Sophia Lin Lakin, Deputy Director, Voting Rights Project, American Civil Liberties Union;

  - Samuel Spital, Director of Litigation, NAACP Legal Defense and Educational Fund.

  - *[Minority Witness] Hans von Spakovsky, Senior Legal Fellow, Heritage Foundation;*
  - *[Minority Witness] Maureen Riordan, Litigation Counsel, Public Interest Legal Foundation.*

- Thank you for your participation and I look forward to discussing with you potential legislative reforms to restore protections around the right to vote to undo the serious damage to the precious right to vote occasioned by decades of right-wing attacks, including by the conservative majority on the Supreme Court.

- The Supreme Court majority has simply never understood, or refuses to accept, the fundamental importance of the right to vote, free of discriminatory hurdles and obstacles.

- Mr. Chairman, were it not for the 24th Amendment, I venture to say that this conservative majority on the Court would subject poll taxes and literacy tests to the review standard enunciated in *Brnovich v. DNC.*

- Their predecessors on the Court understood this, going back at least as far as 1938, when the Supreme Court held in Chief Justice Hughes' famous *Footnote 4* in *United States v. Carolene Products, 304 U.S. 144 (1938),* that government action alleged to discriminate against "discrete and insular minorities" would be subject to "strict scrutiny" by reviewing courts.

- Mr. Chairman, you might be asking who are these 'discrete and insular minorities' about whom the Court was referring?

- The answer is they were and are persons "excluded from "those political processes ordinarily to be relied upon to protect" them, racial and language minorities, and aliens, all of whom were denied the single most important tool for protecting and advancing one's interests in a democracy: the right to vote.

- That is why is the concept of "practice-based" preclearance coverage is such an attractive addition to needed modifications and amendments to the Voting Rights Act.

- From its inception, the Voting Rights Advancement Act targeted those states with a long, deep, and documented history of using virtually any means necessary, including terrorism and violence, to prevent African Americans, racial, and language minorities from exercising the right to vote guaranteed by the 15th Amendment to the Constitution.

- Because of the then-national consensus in support of strengthening and expanding voting rights, there was not then a need to target for prohibition practices that could be used to disenfranchise and discriminate against newly emerging minority populations in states and localities with no prior history of voting rights violations.

- But now there is.

- As we have discussed in our prior hearings on the VRA, an alarming number of jurisdictions that do not have a documented history of voting rights violations have nonetheless responded to surges in the minority population by turning to practices historically utilized to discriminate against or disenfranchise minority voters, practices like changing single-member to at-large districts, redistricting, photo ID laws, and consolidating or relocating polling places.

- Mr. Chairman, we must address these attacks on our democracy and introduce legislation that will include:
    - A broad geographic coverage formula to determine which jurisdictions should be subject to the VRA's preclearance requirement;
    - A practice-based coverage formula to complement the geographic coverage formula in order to cover jurisdictions where, because of demographic changes, the risk of voting discrimination is heightened even in the absence of a history of voting discrimination and to cover practices that are historically associated with voting discrimination;
    - A statutory standard for vote denial claims under Section 2 of the VRA in light of the Supreme Court's recent decision in *Brnovich v. Democratic National Committee*;
    - The inclusion of a non-retrogression standard in Section 2;
    - The creation of an explicit private right of action under the VRA;
    - The expansion of the causes of action available under the VRA to include violations of a broader spectrum of voting discrimination-related constitutional and statutory provisions;
    - A revision of the preliminary injunction standard applicable to actions under the VRA to make it easier for plaintiffs to obtain such relief;
    - A fix for federal courts' misapplication of the *Purcell* doctrine, which counsels courts against granting preliminary injunctions or making other changes to election rules too close to an election;
    - Greater notice and transparency requirements;
    - Expanded bases for the assignment of federal election observers; and
    - Expanded bail-in preclearance jurisdiction for federal courts.

- I ask unanimous consent to include in the record of this hearing, a June 26, 2021 op-ed authored by me entitled *"A Strong Voting Rights Act Is Needed Now More Than Ever."*

- It is useful, Mr. Chairman, to recount how we arrived at this day.

- Fifty-six years ago, in Selma, Alabama, hundreds of heroic souls risked their lives for freedom and to secure the right to vote for all Americans by their participation in marches for voting rights on "Bloody Sunday," "Turnaround Tuesday," or the final, completed march from Selma to Montgomery.

- Those "foot soldiers" of Selma, brave and determined men and women, boys and girls, persons of all races and creeds, loved their country so much that they were willing to risk their lives to make it better, to bring it even closer to its founding ideals.

- The foot soldiers marched because they believed that all persons have dignity and the right to equal treatment under the law, and in the making of the laws, which is the fundamental essence of the right to vote.

- On that day, Sunday, March 7, 1965, more than 600 civil rights demonstrators, including our beloved former colleague, the late Congressman John Lewis of Georgia, were brutally attacked by state and local police at the Edmund Pettus Bridge as they marched from Selma to Montgomery in support of the right to vote.

- "Bloody Sunday" was a defining moment in American history because it crystallized for the nation the necessity of enacting a strong and effective federal law to protect the right to vote of every American.

- No one who witnessed the violence and brutally suffered by the foot soldiers for justice who gathered at the Edmund Pettus Bridge will ever forget it; the images are deeply seared in the American memory and experience.

- On August 6, 1965, in the Rotunda of the Capitol and in the presence of such luminaries as the Rev. Dr. Martin Luther King, Jr. and Rev. Ralph Abernathy of the Southern Christian Leadership Conference; Roy Wilkins of the NAACP; Whitney Young of the National Urban League; James Foreman of the Congress of Racial Equality; A. Philip Randolph of the Brotherhood of Sleeping Car Porters; John Lewis of the Student

Non-Violent Coordinating Committee; Senators Robert Kennedy, Hubert Humphrey, and Everett Dirksen; President Johnson addressed the nation before signing the Voting Rights Act:

> *"The vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."*

- The Voting Rights Act of 1965 was critical to preventing brazen voter discrimination violations that historically left millions of African Americans disenfranchised.

- In 1940, for example, there were less than 30,000 African Americans registered to vote in Texas and only about 3% of African Americans living in the South were registered to vote.

- Poll taxes, literacy tests, and threats of violence were the major causes of these racially discriminatory results.

- After passage of the Voting Rights Act in 1965, which prohibited these discriminatory practices, registration and electoral participation steadily increased to the point that by 2012, more than 1.2 million African Americans living in Texas were registered to vote.

- 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, African Americans held elective office anywhere in the South.

- Because of the Voting Rights Act, in 2007 there were more than 9,100 black elected officials, including 46 members of Congress, the largest number ever.

- Mr. Chairman, the Voting Rights Act opened the political process for many of the approximately 6,000 Hispanic public officials that have been elected and appointed nationwide, including more than 275 at the state or federal level, 32 of whom serve in Congress.

- Native Americans, Asians and others who have historically encountered harsh barriers to full political participation also have benefited greatly.

- As I indicated, the crown jewel of the Voting Rights Act of 1965 is Section 5, which requires that states and localities with a chronic record of discrimination in voting practices secure federal approval before making any changes to voting processes.

- Section 5 has protected minority voting rights where voter discrimination has historically been the worst.

- Between 1982 and 2006, Section 5 stopped more than 1,000 discriminatory voting changes in their tracks, including 107 discriminatory changes right here in Texas.

- Passed in 1965 with the extraordinary leadership of President Lyndon Johnson, the greatest legislative genius of our lifetime, the Voting Rights Act of 1965 was bringing dramatic change in many states across the South.

- But in 1972, change was not coming fast enough or in many places in Texas.

- In fact, Texas, which had never elected a woman to Congress or an African American to the Texas State Senate, was not covered by Section 5 of the 1965 Voting Rights Act and the language minorities living in South Texas were not protected at all.

- But thanks to the Voting Rights Act of 1965 and the tireless voter registration work performed in 1972 by Hillary Clinton in Texas, along with hundreds of others, including her future husband Bill, Barbara Jordan was elected to Congress, giving meaning to the promise of the Voting Rights Act that all citizens would at long last have the right to cast a vote for person of their community, from their community, for their community.

- Mr. Chairman, it is a source of eternal pride to all of us in Houston that in pursuit of extending the full measure of citizenship to all Americans, in 1975 Congresswoman Barbara Jordan, who also represented this historic 18th Congressional District of Texas, introduced, and the

Congress adopted, what are now Sections 4(f)(3) and 4(f)(4) of the Voting Rights Act, which extended the protections of Section 4(a) and Section 5 to language minorities.

- During the floor debate on the 1975 reauthorization of the Voting Rights Act, Congresswoman Jordan explained why this reform was needed:

> "There are Mexican-American people in the State of Texas who have been denied the right to vote; who have been impeded in their efforts to register and vote; who have not had encouragement from those election officials because they are brown people.
>
> "So, the state of Texas, if we approve this measure, would be brought within the coverage of this Act for the first time."

- When it comes to extending and protecting the precious right vote, the Lone Star State – the home state of Lyndon Johnson and Barbara Jordan – could be the leading state in the Union, one that sets the example for the nation.

- But to realize that future, Texas must turn from and not return to the dark days of the past.

- By embracing the discriminatory Texas SB7 and the 'Big Lie' that the 2020 election, by all accounts adjudged the most secure and inclusive in American history, was riven by voter fraud, Texas Republicans are making the wrong choice to their eternal shame.

- Texans must remain ever vigilant and oppose all schemes that will abridge or dilute the precious right to vote, like the odious Texas SB7 recently passed by the Texas State Senate but killed, but not yet permanently, by the unity and courage of Democrats in the Texas State House of Representatives.

- Mr. Chairman, I applaud the House Democrats of the Texas General Assembly for being on the front lines, fighting in opposition to Texas SB7 on the House floor and I join with them in calling upon the U.S. Senate to eliminate the filibuster and to bring voting rights legislation to the floor for debate and vote.

- We must all do our part to preserve this most important heritage because it was earned with the sacrifices and the lives of our ancestors.

- The right to vote is a "powerful instrument that can break down the walls of injustice" and must be protected against attack from all enemies, foreign and domestic, using all the legal tools at our disposal.

- I look forward to the discussion of these matters with our witnesses.

- Thank you, Mr. Chairman, I yield back my time.