

STATEMENT OF

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ON THE COMMISSION'S REPORT

AN ASSESSMENT OF MINORITY VOTING RIGHTS IN THE UNITED STATES

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ELECTIONS OF THE
COMMITTEE ON HOUSE ADMINISTRATION**

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HALIFAX, NC

Chair Fudge and Members, thank you for inviting me to testify. I am Vice Chair of the United States Commission on Civil Rights [hereafter “Commission”], and I come before you today to speak about our 2018 statutory enforcement report entitled, *An Assessment of Minority Voting Rights Access in the United States*.¹ The report is also available in full on the Commission’s website at www.usccr.gov.

Congress has directed the Commission to annually examine “Federal civil rights enforcement efforts.”² Pursuant to this mandate the Commission conducted a day-long briefing and public comment period in Raleigh, North Carolina in February 2018. The decision to come to North Carolina was a bitter-sweet one for me. On the one hand, like Representative Butterfield, I delight in visitors coming to my home state. On the other hand, I suspected that recent political and legislative changes would present North Carolina in less than a favorable light. I understood that the visit was a must for what I believed and in the best interests of my state.

The Commission chose to hold its field briefing in North Carolina, in particular, because North Carolina and Texas felt the immediate impact of the *Shelby County v. Holder* decision.³ In North Carolina, litigation ensued under one of the remaining provisions of the VRA, Section 2, which is the nationwide ban on discriminatory voting procedures.⁴ Although there was discrimination in voting in both states prior to *Shelby County*, data from litigation in both states shows that due to the loss of preclearance after *Shelby County*, elections were held with voting procedures that federal courts of appeals later held to be intentionally racially discriminatory.⁵

The day after the *Shelby County* decision, the North Carolina General Assembly amended a pending bill to make its voter ID law stricter, and added other provisions eliminating or restricting opportunities to vote that had been beneficial to minority voters.⁶ Federal courts later found these actions in both states to be intentionally racially discriminatory, after years of litigation.⁷ But in the intervening years before the litigation process led to their being struck down, the discriminatory provisions went into effect in elections.⁸

The report examines the current and recent state of voter access and voting discrimination for communities of color, voters with disabilities, and limited-English proficient citizens. It also examines the enforcement record of the United States Department of Justice regarding the

¹ U.S. Commission on Civil rights, *An Assessment of Minority Voting Rights Access in the United States*, Sept. 12, 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf [hereafter “Report”].

² Report at 7; see also, 42 U.S.C. § 1975a(c)(1).

³ *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 565 (2013); see also, Report at 10.

⁴ Report at 10.

⁵ Report at 10.

⁶ Report at 60.

⁷ Report at 60.

⁸ Report at 60.

provisions of the Voting Rights Act of 1965 since the Act’s last reauthorization in 2006, and particularly since the Supreme Court decision in *Shelby County v. Holder* in 2013.⁹

In states across the country, voting procedures that wrongly prevent some citizens from voting—including but not limited to: voter identification laws, voter roll purges, proof of citizenship measures, challenges to voter eligibility, and polling places moves or closings—have been enacted and have a disparate impact on voters of color and poor citizens.¹⁰

The Commission unanimously voted for key recommendations, including that:

- Congress should amend the Voting Rights Act to restore and/or expand protections against voting discrimination that are more streamlined and efficient than existing provisions of the Act.¹¹
- In establishing the reach of an amended Voting Rights Act coverage provision, Congress should include current evidence of voting discrimination as well as evidence of historical and persisting patterns of discrimination.¹²
- A new coverage provision should account for evidence that voting discrimination tends to recur in certain parts of the country. It also should take account of the reality that voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination since minority populations shift and efforts to impose voting impediments may follow.¹³
- Importantly, Congress should provide a streamlined remedy to review certain changes with known risks of discrimination before they take effect—not after potentially tainted elections.¹⁴

The Commission heard testimony from 23 voting rights experts, 33 members of the public, and received 31 post-briefing written statements in connection with this investigation.¹⁵ The Commission invited officials from relevant offices within the DOJ, but they declined the Commission’s invitation to testify at our field briefing.¹⁶ However, the Department provided data and documents, and comments to a draft version of the report.¹⁷ The Commission draws this report from the above-referenced sources and independent research. Further, the report draws from the voting rights reports from its State Advisory Committees (SACs).¹⁸

The thirty-three members of the public spoke during the briefing’s public comment period that occurred during the early evening when we suspected that the public would be most available to attend in person. This is a time when the Commission invites members of the public to speak on

⁹ Report at Letter of Transmittal.

¹⁰ Report at 13.

¹¹ Report at 13.

¹² Report at 13.

¹³ Report at 13-14.

¹⁴ Report at 14.

¹⁵ Report at 7.

¹⁶ Report at 7.

¹⁷ Report at 7.

¹⁸ Report at 7.

the topic. Here, I will focus on the stories we heard during our public comment period specifically regarding voting suppression efforts in North Carolina.¹⁹ There were common refrains such as “democracy works better when more people participate,” “a concerted, coordinated effort is under way to undermine democracy,” and a “monster piece of legislation is to blame.” Let me now share portions of some of those public comments.

Mary Elizabeth Hanchey discussed “artful barriers.” She stated,

I would like to submit that we are drowning in artful barriers to access and that our minority communities are particularly subject to these artful barriers to access. They get described in all sorts of ways, which make them sound reasonable and sensible. We get fed frightening information that does not match up with statistics. We get told again and again and again that we're just trying to save money, that we're just moving polls because it makes things easier for someone or some group, and that these artful barriers are often -- described in ways that keep - - that keep the intimidation, that keep the lack of access. I am extremely concerned at having heard people continue to say we can't make this political, we can't make this partisan, we are talking about people's bodies, people's communities, we're talking about their access to ballots to polls, it is wrong to label as inappropriately political the effort to help make sure that all citizens can vote.²⁰

Ajamu Dilahunt spoke about the impact of voter suppression on college students. He spoke of the wave of voter suppression laws also known as the “monster law.” Mr. Dilahunt stated,

It is important to note that the monster law made it so college students had to have a state-issued ID to vote making it so out of state college student were not able to vote and participate in the political process. The monster law was overturned but legislators found a way to disenfranchise voters through gerrymandering. Racial gerrymandering prevents black political power through packing and cracking. The most recent example is the lines that the North Carolina General Assembly drew that split that largest historically black college, North Carolina A&T, down the middle. One part of the campus was in one district while the other was in another. This was a direct attempt to prevent the power of a black student vote. The General Assembly is responsible for suppressing beyond laws and drawing maps. They do this by the people they appoint to the North Carolina Board of Governors that cut programs like the Institute for Civil Engagement and Social Change at North Carolina Central University in 2015. The institute served as an important voter education and voter registration and social justice center on campus.²¹

Janet Hoy also testified about the monster voting bill and stated, “the only way to frame this is that the very foundation of our democracy in North Carolina is at risk.”²²

¹⁹ See U.S. Commission on Civil Rights, *Voting Rights Briefing Transcript*, Feb. 2, 2018, <https://www.usccr.gov/calendar/trnscript/Voting-Rights-Briefing-Transcript-02-22-18.pdf> [hereafter “Briefing Transcript”].

²⁰ Briefing Transcript at 277-279.

²¹ Briefing Transcript at 279-281.

²² Briefing Transcript 284-286.

Juliana Cabrales identified barriers that impede Latino political participation. She stated, Today I would like to touch on two [barriers]: unnecessarily and frequently changing requirements for voter registration and casting ballots and hostility towards and lack of understanding of language assistance protections in polling places. As language assistance needs grow in North Carolina and across the county jurisdictions need to be proactive in accommodating Spanish language voters. As you know, Section 208 of the Voting Rights Act states that everyone has right to be have assisted by a person of his or her choice, yet a recent report by a local partner here in North Carolina highlights a story from 2016 on how a Latina in Johnston County that was helping individuals in need language assistance was asked to leave the polling place. This type of incident is concerning. As the number of Puerto Ricans moving to the mainland increases, it is critical that election administration officials are aware of the protections under the voting rights act. Section 4(e) to ensure that Americans of Puerto Rican origin are able to cast informed ballots regardless of their ability to speak English. As we heard from many witnesses today, unnecessary administrative requirements in the voting process disproportionately affect underrepresented voters. As such, we strongly recommend that election officials and policymakers reinstate proactive protections against discriminatory voting policies.²³

Greg Flynn spoke about the general difficulties in obtaining a photo ID when a photo ID is required for voting. Mr. Flynn stated,

In North Carolina photo ID, a hot topic, these proposals have gone far beyond the need to secure the vote and have elements that unnecessarily restrict voters. The name on my own driver license is not the name on my birth certificate and the nationality on my birth certificate is not the same as my U.S. passport. I recently renewed my license. It required proof of citizenship, proof of Social Security number and two proofs of address. It took several hours at the DMV. I didn't have my Social Security card. I had to take more time to obtain a new one, but it worked out for me. My wife had a little more trouble. She needed second proof of address. She didn't have it at the time. Called me frantically. The DMV office forgot to mention that her vehicle registration was a valid proof of address, but these are the kinds of things that happen to people randomly to create obstacles to obtaining ID when a photo ID is a requirement for voting. I'm lucky I didn't live in Bertie County. That's a majority African American county in Eastern North Carolina, beset my storms, destroying people's personal documents and the county is only served periodically by a mobile DMV for a driver's license.²⁴

Olinda Watkins of the Moore County NAACP spoke of the ways that voters are purged from voter rolls. She discussed a recent investigation into voter purging.

In Beaufort County where two-thirds of the voters were challenged were black. One of the challenged voters was Miss Grace Bail Hardison. Ms. Hardison, who is a hundred-year-old black woman who lived in Belhaven, North Carolina had

²³ Briefing Transcript at 286-288.

²⁴ Briefing Transcript at 292-294.

her entire life and has voted regularly for decades even though she feels it is difficult to leave her house. She insisted on leaving her house to cast a ballot each election day because her right to vote is so important to her. Weeks before the president election Ms. Hardison's voter registration was challenged based on a post card that was sent in a mass mailing by a local challenge. The Moore County NAACP was honored to join Ms. Hardison to file a lawsuit to fight this suppression.²⁵

As you can hear from this small snippet of North Carolina voting rights stakeholders, there is growing and continuous concern for the voting rights of Americans. The distressing data from our report further adds to the urgency of Congress to restore and/or expand voter protections.²⁶

²⁵ Briefing Transcript at 294-295.

²⁶ Report at 285-286.