



**Remarks by Judith Browne Dianis
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**Committee on House Administration, Elections Subcommittee
Field Hearing on Voting Rights and Election Administration in Florida
May 6, 2019
Broward County Commissioner's Office**

Thank you Chairwoman Fudge and to the House Administration Committee, Subcommittee on Elections for holding today's important Field Hearing on Voting Rights and Election Administration. I am honored to provide remarks on voting rights in Florida. My name is Judith Browne Dianis and I am the Executive Director of Advancement Project's National Office. Advancement Project is a national racial justice organization that works in deep partnership with grassroots organizations to inspire and 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 Florida who are fighting these battles on the ground every day – including partners like the Florida Rights Restoration Coalition, New Florida Majority, Dream Defenders, NAACP, Service Employees International Union, and others.

My work on voting rights in Florida goes back nearly two decades. As one of the first responders on the ground in Florida following the 2000 elections, Advancement Project worked with community partners to challenge discriminatory voting practices that undermined the principles of law, equality and fairness in that presidential election. While others were focused on how to count hanging chads, our team was investigating and gathering evidence of voting irregularities that made it disproportionately more difficult for voters of color to exercise their right to vote. We heard directly from voters in community meetings in church basements, community centers, union halls, college campuses and front porches to uncover barriers facing Floridians of color. We heard from voters met by police presence blocking roads near polling places in Black and Brown communities. We met with voters who were turned away at the polls without casting a ballot based on reprehensibly inaccurate voting lists. Poll workers were required to use the state's flawed databases, created by private enterprises, that incorrectly designated eligible voters as ineligible. Eligible voters were improperly purged from the rolls based on an intentionally over-inclusive list that inaccurately designated individuals as having prior felony convictions. The strategy relied heavily on excessive false-positives. We heard stories of people who registered but were not on the voter rolls, along with other election administration failures, voter confusion and intimidation. In a state where a margin of 537 votes determined the outcome of a U.S. presidential election, each and any of these problems impacted electoral outcomes. After the dust cleared and the U.S. Supreme Court's ruling in *Bush v. Gore* settled the election results, we went to work to battle the systemic barriers voters of color faced in Florida, bringing half a dozen lawsuits over the

ensuing years, advocating with elections officials, and lobbying lawmakers. Advancement Project's voting rights work with our partners in Florida over the last 20 years showcases the range of systemic barriers to voting faced by communities of color and the genius and perseverance of our partners to fight for their rights in the courthouse, the statehouse, the streets and ultimately at the ballot box. The story of voting rights in Florida is a harbinger of voting rights in our nation and speaks compellingly for the need for Congress to take decisive action to protect the right to vote throughout the country.

Ever since the chaos of the 2000 presidential election, Florida has been ground zero in battles for access to the polls. After Congress passed the Help America Vote Act of 2002, ostensibly intended to streamline statewide voter registration systems,¹ Florida implemented rigid matching requirements for voter registration that could disenfranchise eligible voters based on a typo or other minor mismatch error. In 2006 and 2007, Florida's law disenfranchised tens of thousands of otherwise eligible voters, disproportionately Latinx, Haitian Americans, and African Americans.² During this period, 65 percent of the unmatched rejected applicants were either Latinx or African American, even though Latinx communities comprised only 15 percent of the applicant pool and African Americans only 13 percent of the pool. Of the rejected voter applicants, 39 percent were Latinx, and 26 percent were African American. On behalf of the Florida NAACP, the Haitian-American Grassroots Coalition, and the Southwest Voter Registration Education Project, along with co-counsel, we brought a federal lawsuit, *NAACP vs. Browning*. As a result, on the eve of the registration deadline, 16,000 unmatched voter applicants were added to the rolls, an amendment to the law that eased some of the burdens on voters was enacted, and considerable public attention to the issue was generated. This public attention and ensuing advocacy prompted dozens of supervisors of elections to act within their discretion to allow voters to correct errors and minimize the numbers turned away.³ Over those years, our legal challenges to Florida's statutory burdens on voter registration, including the state's restrictive verification requirements, unnecessary requirements on voter registration forms, and burdensome regulation of voter registration drives, while receiving mixed results in court, were instrumental in spurring progressive legislative reforms.⁴ Advancement Project targeted key counties – including Broward, Palm Beach, Miami-Dade, Hillsborough, Orange, Osceola, Volusia and Duval – to work closely with election administrators and local coalition partners to protect the rights of potential voters by improving poll worker training and resource distribution, as well as improving registration administration.

Some of those early 2000's reforms – like expansions in early voting and court injunctions allowing increased opportunities for voter registration – improved access to the ballot box. Voters, particularly voters of color, used early voting in high numbers in the 2008 elections. But then those measures came under attack, and in 2011 Florida lawmakers passed H.B. 1355 - legislation cutting early voting (and

¹ 42 U.S.C. § 15483(a)(5), See, Nat'l Comm'n on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* 29 (2001).

² See *NAACP v. Browning*, 1163 F.3d 1153,1176 (11th Cir. 2008)

³ On Election Day in 2008, at least 29 of Florida's 67 counties – including Broward, Miami-Dade, Orange, and Pinellas – allowed voters to correct matching problems at the polls.

⁴ From 2004-2008, Advancement Project represented voters in four lawsuits relating to voter registration in Florida: (1) *Diaz v. Cobb*, 475 F. Supp.2d 1270 (S.D. Fla. Feb. 27, 2007); 541 F. Supp.2d 1319 (S.D. Fla. 2008) (challenging the registration form's unnecessary check boxes and the burdensome registration correction deadlines; the claim against the checkbox was dismissed in 2007 and judgment was entered in favor of the state as to the other claim in 2008); (2) *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006) (preliminarily enjoining enforcement of third party registration laws as unconstitutional) (3) *League of Women Voters v. Browning*, 575 F. Supp.2d 1298 (S.D. Fla. 2008) (refusing to preliminarily enjoin amended laws governing third party registrations); and (4) *NAACP v. Browning*, 523 F.3d 1153 (11th Cir. 2008) (challenging HAVA matching requirements).

eliminating the final Sunday before election day, when Souls to the Polls programs expanded African American voter turnout), placing onerous restrictions on third party voter registration efforts and creating additional hurdles for voters who had moved – measures that all had a disparate impact on voters of color.⁵ The restrictions led some voter registration groups – including the League of Women Voters – to cease voter registration operations until the lawsuit was settled mere months before the 2012 elections. Social scientists concluded that H.B.1355’s onerous voter registration restrictions lead to a precipitous drop in voter registrations leading into the 2012 elections, particularly among underrepresented populations.⁶ The law’s cuts to early voting led to long lines and massive wait times on Election Day that year – wait times that were two to three times longer in African American and Latino precincts than in white precincts.⁷ We helped uplift the story of 102-year old Desiline Victor, a determined Haitian-American voter who was forced, due to unequal polling place resources, to wait more than three hours at her precinct to vote in 2012. Her tenacity and the barriers she faced were later highlighted by President Barak Obama in the 2013 State of the Union address, where he challenged the nation to make it easier to vote.⁸

Florida also employed yet another flawed data matching process when it used faulty and outdated motor vehicle and immigration databases as a proxy to remove non-citizens from the voter rolls in advance of the 2012 elections, a move that instead wrongly targeted thousands of eligible citizen voters – disproportionately voters of color – due to the databases’ inaccuracies and problematic matching protocols. Nevertheless, the Secretary of State continued the program to purge voters, even within prohibited blackout dates. In 2012 we joined forces with LatinoJustice PRLDEF and other partners to bring suit to stop Florida’s mass purge.⁹ Our research found that 87 percent of the people on Florida’s purge list were people of color and more than 50 percent were Latinx.¹⁰ And this flawed program impacted more than those who were wrongly removed from the rolls – it spurred intimidation throughout entire communities that further chilled participation. Florida’s Latinx and Haitian communities reported that they were afraid that police would show up at their homes, and go through their documents just because they had the audacity to register for the right to vote.

Keep in mind that all of this occurred *before* the U.S. Supreme Court gutted the preclearance provisions in the Voting Rights Act that had ensured protection for key jurisdictions in Florida covered under the preclearance mandate. Not only did the *Shelby v. Holder* 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

⁵ Herron, Michael C. and Daniel A. Smith, “Florida’s 2012 General Election under HB 1355: Early Voting, Provisional Ballots, and Absentee Ballots,” Executive Summary, <https://electionsmith.files.wordpress.com/2013/01/lwv-pr-herron-smith.pdf> (“minority voters and African Americans in particular were most burdened in the 2012 General Election by recent legal changes in Florida’s electoral environment.”)

⁶ Herron, Michael C., and Daniel A. Smith. “The Effects of House Bill 1355 on Voter Registration in Florida.” *State Politics & Policy Quarterly*, vol. 13, no. 3, 2013, pp. 279–305. *JSTOR*, www.jstor.org/stable/24711106.

⁷ Herron, Michael C., and Daniel A. Smith. “Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election.” *Political Research Quarterly*, vol. 67, no. 3, 2014, pp. 646–665. *JSTOR*, www.jstor.org/stable/24371899. (“Florida’s decision to truncate early voting may have diminished participation rates of those already least likely to vote”)

⁸ Carli Teproff, “Woman who earned praise from Obama after “waiting in line for hours to vote dies at 106,” *Miami Herald*, Oct. 1 2017.

⁹ *Arcia, et al. v. Florida Secretary of State*, No. 12-15738 (11th Cir. 2014)

¹⁰ Advancement Project, “Segregating American Citizenship: Latino Voter Disenfranchisement in 2012,” (Sept. 12, 2012), https://b3cdn.net/advancement/18ff5be68ab53f752b_0tm6yjgsj.pdf

advocates. Since then, without the law's stopgaps, the burden has fallen even more heavily on impacted voters to challenge denials of their fundamental right to vote.

Through grassroots organizing, legal, legislative and electoral strategies and deep tenacity, groups have impacted access to democracy in Florida in meaningful ways. For more than a decade, Desmond Meade and the Florida Rights Restoration Coalition (FRRRC) have been working to dismantle Florida's draconian felony disenfranchisement law – leading to the historic passage in November of Amendment 4, the largest expansion of the state's electorate since Reconstruction. As far back as 2002 we were calling for restoration of voting rights for returning citizens in our report, *Re-enfranchisement: A Guide for Individual Restoration of Voting Rights in States that Permanently Disenfranchise Former Felons*. Advancement Project was the only national group invited to be a founding member of FRRRC and we've been working with FRRRC since its inception – when no one thought Florida's law could be changed.

Florida was among four states that permanently denied civil rights to every citizen with a felony conviction. Ten percent of the Florida's voting age population was excluded from voting – and one in five African Americans in the state was denied the vote. The vast majority of those barred from voting due to a criminal record are not incarcerated. They live, work, and pay taxes in our communities. In advance of the 2018 elections, we released *Democracy Disappeared*, research illustrating how Florida's law – a law born out of hostility to Reconstruction¹¹ – created a web of disempowerment for Florida's Black neighborhoods. The report showed how felony disenfranchisement silenced the voices of returning citizens and thwarted their ability to make change in their neighborhoods – neighborhoods that are disproportionately Black and/or poor when compared to the state average.¹² For returning citizens, democracy had truly disappeared. Now, with Amendment 4, it has the opportunity to rise.

The passage in November of Amendment 4 by nearly 65 percent of Florida's voters opened the doors of democracy to 1.4 million returning citizens in the state. But now these newfound rights are under attack by Florida lawmakers who just days ago, voted to undue the will of the voters – through legislation that would expand the law's exemptions and make it harder for returning citizens to be eligible to register to vote. Among other problematic measures, the legislation would continue the disenfranchisement of otherwise eligible returning citizens with outstanding costs, even if those fines, fees, and restitution obligations are reduced to a civil judgment and not part of the criminal case. The measure also places arduous administrative burdens on local election supervisors to individually check state, federal or outstate court records to determine whether an applicant has ever been convicted of a felony in any state or federal court, and if so, to verify whether the applicant has completed all terms of their sentence. At the time of submission of this testimony, lawmakers were poised to reconcile the legislation and send it to Governor DeSantis for his signature, laying the path for it to become effective on July 1, 2019. The fight for an inclusive democracy in Florida continues.

This past mid-term election cycle has shown us the power of communities of color. People of color turned out and were engaged. But we must not confuse that turnout to suggest that we have overcome voting barriers. The fact that some voters persevere to overcome barriers to voting doesn't mean that the

¹¹ Tim Elfrink, "The long, racist history of Florida's now-repealed ban on felons voting," Washington Post, Nov. 7, 2018, https://www.washingtonpost.com/nation/2018/11/07/long-racist-history-floridas-now-repealed-ban-felons-voting/?utm_term=.324ae92847cb

¹² Advancement Project, "Democracy Disappeared, How Florida Silences the Black Vote through Felony Disenfranchisement," (Oct. 2018), <https://advancementproject.org/democracydisappeared>

barriers are not unlawful.¹³ Moreover, many voters are dissuaded by voter suppression. It was estimated that more than 200,000 Floridians did not vote in 2012 due to long lines resulting from cuts to early voting.¹⁴

Under the current administration, the Justice Department's political appointees have retreated on the Department's legal oversight of discriminatory voting laws – in some cases, even switching sides. They have fanned the flames of ignorance, fear, hate and racism by lying about voters of color, portraying Latinx and Black people as those who are not entitled to the franchise, but deserve investigations in “urban areas” and phony integrity panels instead.

These attacks show that Congress must take affirmative steps to protect the right to vote. The full protections of the Voting Rights Act are necessary to ensure that the promises of the Reconstruction Amendments are kept. One thing we learned in Florida in 2000 is that 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 democracy for generations.

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 all-out assaults on our lives, dignity and freedom on multiple fronts. Black and Brown people are fighting back against police brutality in our streets and in our schools. Our immigrant neighbors are profiled, criminalized, thrown in cages and kicked out of the country as if they were less than human. Amid these attacks on our humanity and our voice, we are fighting the same battle that the freedom fighters led during the civil rights movement. The attack on the right to vote continues – at stake is our very voice, and indeed our very dignity.

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

We know most Americans believe that elections should be free, fair and accessible. Instead of being a partner in that work, the current administration fans unfounded fears of “voter fraud” in order to demonize the growing American majority. These efforts to delegitimize voters of color are paving the way for further restrictions on voting – and Florida's example over the last 20 years shows how dangerous these are. Without the preclearance provisions in the Voting Rights Act that were gutted by the *Shelby* ruling, and without explicit protection for the Right to Vote in the U.S. Constitution, voting still largely remains the province of state and local election authorities, where it is more vulnerable to attack by politicians and courts – as we are seeing right now in the Florida legislature. The Supreme Court's gutting of the Voting Rights Act in *Shelby* - and the ensuing decisions in its wake - makes challenging these laws' discriminatory effects more difficult.

¹³ Polling conducted in advance of the 2018 elections by Advancement Project in collaboration with the NAACP and African American Research Collaborative showed that voters of color were driven to vote by widespread attacks on people of color and their access to democracy. <https://www.africanamericanresearch.us/survey-results>

¹⁴ Scott Powers and David Damron, “Analysis: 201,000 in Florida didn't vote because of long lines,” *Orlando Sentinel*, Jan. 29, 2013, <https://www.orlandosentinel.com/business/os-xpm-2013-01-29-os-voter-lines-statewide-20130118-story.html>

Thank you Congresswoman Fudge and members of the committee for holding these hearings. 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.