

**Written Testimony of Barbara R. Arnwine, Co-Chair, National Commission for Voter  
Justice  
before the  
U.S. House of Representatives  
Committee on House Administration, Subcommittee on Elections  
“Voting Rights and Election Administration in America”**

Chairwoman Fudge, Ranking Member Davis, Members of the Subcommittee, thank you for the opportunity to testify today on this important topic of voting rights and election administration in America.

My name is Barbara R. Arnwine and I am the Founder and President of the Transformative Justice Coalition, a national non-profit organization devoted to racial, gender and economic justice, which commenced operations in 2015. I am also the immediate Past President and Executive Director of the Lawyers' Committee for Civil Rights Under Law where I proudly served for 26 years. Today I sit before you in my capacity as a Co-Chair of the National Commission for Voter Justice.

Conceived by the Rev. Jesse L. Jackson Sr., this non-partisan Commission was formed in July 2017 originally to respond to the myriad of voter suppression measures in the rise of voter suppression in the post-**Shelby v. Holder**<sup>1</sup>Era. Also, many will recall that President Donald Trump's manifold assertions post-election of pervasive voter fraud and his subsequent creation of the now defunct Presidential Advisory Commission on Election Integrity. We felt there was an urgent need to counteract the President's erroneous and dangerous narrative and instead provide a truthful account of the urgent need for the protection of our Democracy from the insidious threat of the modern era of voter suppression which had become manifest in our nation since January, 2011. In April, 2011, I created the Map of Shame which was the first national tool to expose and educate the American public about the rise of contemporary voter suppression in the states. Since, I released the Map of Shame, there has been erected a formidable and substantial regime of disenfranchising barriers to the ballot box and to the ability to have votes counted for millions of eligible but vulnerable voters.

On January, 2018, the NCVJ was officially launched with a press conference on the steps of the Supreme Court of the United States to emphasize the on-going need to address its decision in **Shelby v. Holder**, decided June 25, 2013<sup>2</sup>. The work of the Commission is designed to highlight, document, and address the scourge of voter suppression across the country, while advancing electoral reform and civic engagement to promote an inclusive and robust U.S. Democracy. This non-partisan and diverse commission is composed of prominent civil rights leaders, voting rights experts, scholars, elected officials, lawyers, students and community activists. The Commission has undertaken a schedule of work centered around independent research, hearings and listening sessions in the states to hear directly from U.S. citizens; publications of findings, recommendations and strategies; and direct organizing and collaboration with community-based organizations to enhance voter engagement. The National Commission for Voter Justice has compiled, reviewed and distilled existing reports published by the federal government, states, major research institutions, civil rights, voting rights and civic engagement organizations as well as prior private and public commissions. Collaboration with non-partisan institutions and other

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<sup>1</sup> 570 U.S. 529 (2013).

<sup>2</sup> Supra.

commissions focusing on voting rights issues and vulnerable communities have been actively pursued.

“When it comes to voting rights, America is facing its Second Civil War”. This statement was the testimony of Donald Jones, Professor of Law at the University of Miami, during the Commission’s Florida hearing in June 2018. This statement set the tone for the outlook of the Commission, and must become the lens through which Congress and this Nation view the modern fight against voter suppression. This reality of an active war against the rights of American citizens to exercise their right to vote and have their votes counted is supported by mounting evidence when we consider: the myriad of voter suppression laws passed in the states; the multitude of voting rights cases filed in the state and federal courts; the numerous reports documenting actions by the states which have impaired the rights of citizens to vote and have their vote counted<sup>3</sup>; and the continuing negative cases from this Supreme Court including its decisions in *Husted v. A. Philip Randolph*<sup>4</sup>, and *Brakebill v. Jaeger*<sup>5</sup>; and a new insidious threat of Russian use of social media as documented by the Select Senate Committee Investigation Report.

Despite the valiant efforts of lawyers, organizations and individuals to fight against this new wave of state and local government sponsored voter suppression, there is no substitute for aggressive Congressional action to protect the rights of voters now under attack. Indeed, while we laud Congress’ formation of the Subcommittee on Elections, we are also cognizant of how pressing and urgent the need is to provide redress to protections lost in this modern voter suppression era. In *Shelby v. Holder*, in the majority opinion written by Chief Justice John Roberts, the Court acknowledged that racial discrimination still exists but asserted that Congress had not done its job in carefully constructing a contemporary coverage formula based on modern day conditions. Notably, at the time of the writing of this decision, this modern era of voter suppression had only been underway for 18 months. Now 8 years into this era, Congress possesses substantial more information and knowledge about these current conditions. Only Congress can formulate and adopt appropriate legislation which adequately responds to the challenge propounded by the SCOTUS by proposing a new coverage formula and other modern measures to address this extreme period of voter denial and voter suppression.

In its two years of existence, the work of the National Commission for Voter Justice has been extensive:

- In 2018, the NCVJ held 11 field hearings covering the states of MI, SC, GA, FL, CA (southern), WI, PA, TX, and OK. The NCVJ also held one hearing devoted to youth voting, and one hearing at the 2018 CBCF ALC.
- In advance of field hearings, a professional report was prepared on each state which outlined voting rights and electoral reform issues since the year 2000.
- These reports were prepared by a combination of third year law student fellows and with the pro bono assistance of the law firm of Morrison & Foerster, LLP.

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<sup>3</sup> The Brennan Center Report, “Purges: A Growing Threat to the Right to Vote”; Leadership Conference Report, “Democracy Diverted: Polling Place Closures and the Right to Vote”

<sup>4</sup> 584 U.S. \_\_\_\_ (2018).

<sup>5</sup> 586 U.S. \_\_\_\_ (2018).

- In addition, The Commission conducted research and prepared full briefing books on voting rights in MD, NC, OH, NJ and Alabama.
- The Transformative Justice Coalition (TJC) conducted voter empowerment programming in NC (2018), and assisted with the Selma Jubilee for the 54th Anniversary of Bloody Sunday in Alabama (2019).
- Every hearing was videotaped and shared via Facebook Live. As such, there exists testimony, data, reports, etc., available from the hearings. Written testimony and documents also exist.
- The Commission has partnered with over 100 organizations in 21 states.

From the first listening session conducted in Michigan in January of 2018 and forward, it became obvious that invidious voter suppression is a profound reality in every single state in which we conducted a hearing or prepared research. This disenfranchisement can often be directly linked to the deliberate actions of state legislatures, state and local boards of elections and some private anti-democracy forces. In addition to actual legislative and procedural barriers to the vote, states have engaged in voter discouragement by failing to educate voters about new barriers imposed by their legislatures which impair their ability to vote and have their vote counted.

Based on these hearings and research, I have created a new document entitled “61 Forms of Voter Suppression” which reveals the depth of this regimen. Originally this document only included 30 forms of voter suppression but the states and local jurisdictions have become ever more determined to impose devious, confusing and disenfranchising laws and procedures.

We are preparing an initial report for the public of our findings and recommendations, to date, to be published this fall. We are not finished with all of our hearings and research but want to provide insight regarding our initial work. We also intend to continue to work and support organizations and voters in the states with the worst voter suppression.

## **MAJOR FINDINGS AND RECOMMENDATIONS OF THE NATIONAL COMMISSION FOR VOTER JUSTICE:**

- States and local jurisdictions, especially previously Section 5 covered jurisdictions, are prolific, creative and determined to block the vote of vulnerable voters including African Americans, Latinos, Native Americans, Asian Americans, low income voters, voters with disabilities, student voters, formerly incarcerated persons, newly naturalized citizens, voters displaced by natural disasters and homeless voters.
- There exists no substitute for the powerful instrumentality of Section 5 preclearance coverage. No other law has the ability to comprehensively intercept, review, object, deter and prevent unlawful discrimination.
- The restoration of the pre-clearance framework in the *Voting Rights Advancement Act* would be a fundamental and critical tool in the protection of voters. As we discovered during our hearings and state-based research, our worst fears have been actualized post-Shelby.
- Voter suppression measures we heard from witnesses included targeted poll closures, exact match requirements, refusal to place polling sites on student campuses, voter

registration non-processing, voter caging, voter purging, onerous voter ID, failure to follow state procedures, abuses of provisional balloting, disparate impact between white and people of color jurisdictions created by the failure to provide adequate election equipment and staff, racial gerrymandering, cuts to early voting, eliminating souls to the polls Sunday voting, barriers to language assistance, disability accommodation failures and so many more disenfranchising which should have been intercepted and reviewed for racially discriminatory impact prior to their enactment.

- In this post-**Shelby** era, our nation has labored under a clumsy and ineffective system of severely weakened voting rights protection. This is best exemplified by the numerous lawsuits filed seeking to enjoin scores of these outrageous voter denial schemes. Many of these lawsuits have been successful but when they come on the eve or during elections their efficacy has been dulled. Often court ordered remedial actions impose additional burdens on voters who have to be identified, contacted and they must take action to rectify any errors.
- Powerful decisions from our highest courts have spoken to this new era of voter denial, most notably, **NAACP v. McCrory**, 4th Circuit, 2016<sup>6</sup>. Other Courts have spoken in recent decisions of voter suppression and voter denial.
- There is a tremendous necessity for the National Notice Provision of the VRAA. In every single hearing conducted by the Commission, voters complained about the lack of public notice of election changes. This provision would provide voters with the opportunity to defend themselves from negative legislative, administrative and procedural practices.
- Congress, the President, and Department of Homeland Security must take action to protect African American communities from the targeted voter suppression and voter discouragement campaigns being undertaken by foreign governments.
- For the record, the NCVJ supports many of the provisions of the *For The People Act* especially hand marked paper ballots and greater election security.

### **Beyond the VRAA and the *For The People Act*:**

The National Commission for Voter Justice urges Congress to consider the need for Permanent Independent Voting Rights Infrastructure. During our hearings we heard repeatedly about the lack of teaching of civics, the lack of support groups to assist voters, the absence of voter education, the obstacles of low income, student, elderly and homeless voters to afford transportation on election days, and so many other needs that this infrastructure could address. The NCVJ would like to work with the House Administration Committee further on propounding this proposal.

### **CONCLUSION**

There is nothing more critical to our Democracy than the right of every citizen to cast a ballot and have it counted. Congress must take fully address the Shelby challenge in a tailored, careful and thoughtful manner. These hearings help to further that objective.

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<sup>6</sup> 831 F.3d 204 (4<sup>th</sup> Cir. 2016).

We would like to formally adopt into the record the “61 Forms of Voter Suppression” and the supporting letter from Reverend Jesse L. Jackson Sr., which provides the historical context to the long fight against voter suppression.

Thank you again for this opportunity to testify and I look forward to answering your questions.