

STATEMENT OF

CATHERINE E. LHAMON

**CHAIR
U.S. COMMISSION ON CIVIL RIGHTS**

ON THE COMMISSION'S REPORT

AN ASSESSMENT OF MINORITY VOTING RIGHTS IN THE UNITED STATES

BEFORE THE

**U.S. HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES**

TUESDAY MARCH 12, 2019

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Chair Nadler, Chair Cohen, Ranking Member Johnson, and Members, thank you for inviting me to testify. I chair the United States Commission on Civil Rights, and I come before you today to speak about our report released just last September, *An Assessment of Minority Voting Rights Access in the United States*.¹

With this report, the Commission returned to a topic that was a core basis for Congress' creation of our Commission now 62 years ago: advising the U.S. Congress, the President, and the American public about the status of voting rights, among other civil rights, and making recommendations for improved federal policy. We at the Commission are proud to have supported the basis for the 1965 Voting Rights Act ("VRA"), to have provided evidence on which the Supreme Court relied to approve its constitutionality, and to have issued 20 previous reports over our 62 years specifically focused on voting rights.

This report offers an independent, comprehensive, detailed analysis of the current status of voter access and voting discrimination in the United States and of the efficacy of United States Department of Justice ("DOJ") enforcement of the Voting Rights Act since Congress' 2006 Reauthorization and in particular, since the Supreme Court's June 2013 decision in *Shelby v. Holder*.

The conclusions the report draws are bleak, leading to unanimous Commission findings, including that, during the time period studied:

- Race discrimination in voting has been pernicious and endures today.
- Likewise, voter access issues and discrimination continue today for voters with disabilities and limited English proficient voters.
- The right to vote, which is a bedrock of American democracy, has proven fragile and to need robust statutory protection in addition to Constitutional protection.

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 [hereinafter "Report"]. The Commission produced this report under the direction of Katherine Culliton-Gonzalez, Esq., Director of Office of Civil Rights Evaluation, who performed principal research and writing with Dr. LaShonda Brenson, Civil Rights Analyst.

- Following the Supreme Court’s decision in *Shelby County*, in the absence of the preclearance protections of Section 5 of the Voting Rights Act, voters in jurisdictions with long histories of voting discrimination faced discriminatory voting measures that could not be stopped prior to elections because of the cost, complexity and time limitations of the remaining statutory tools.²
- The *Shelby County* decision had the practical effect of signaling a loss of federal supervision in voting rights enforcement to states and local jurisdictions.³

The report summarizes the current status of voting rights: “the umbrella of protection has been taken down, and voters are being drenched in jurisdictions that have attempted (and temporarily succeeded) to discriminate in their election procedures.”⁴

As a result, the Commission recommends:

- Congress should amend the VRA to restore and/or expand protections against voting discrimination that are more streamlined and efficient than existing provisions of the Act.
- This new coverage provision should take account of the reality that (1) voting discrimination tends to recur in certain parts of the country and (2) voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination.
- The DOJ should pursue more VRA enforcement, recognizing that VRA litigation requires significant resources that only the federal government is able to expend.⁵

These findings and recommendations, and the report itself, are also informed by investigations and memoranda from 13 State Advisory Committees (“SAC”) to the Commission, each of whom analyzed voting discrimination in their states: Alabama, Alaska, Arizona, California, Illinois, Indiana, Kansas, Louisiana, Maine, New Hampshire, Ohio, Rhode Island, and Texas.⁶

Current Condition of Voter Access

Drawing from Commission research and the work of the SACs, this report documents current conditions evidencing ongoing discrimination in voting. On every measure the Commission

² Report at 12-13.

³ Report at 12, 279.

⁴ Report at 235.

⁵ Report at 13-14.

⁶ Each of the Commission’s Advisory Committee reports, advisory memoranda, and briefing transcripts are available on the Commission’s website at <https://www.usccr.gov/pubs/sac.php>. A compendium of the reports and memoranda published at the time of the Commission’s report release is available at <https://www.usccr.gov/pubs/2018/20181031-Notice-SAC-Compendium.pdf>.

The bipartisan expert volunteers who are SAC members, and the Commission regional staff who support these committees’ work, performed invaluable service to their states and to the Commission in excavating voting rights challenges specific to their states.

evaluated – litigation success, data regarding discrimination incidents, investigations from SACs, Commission testimony from 23 bipartisan voting rights experts and advocates, and in-person and written public comment – the information the Commission received underscores that discrimination in voting persists.

Our report found that at least 23 states have enacted newly restrictive statewide voter laws since the *Shelby County* decision in 2013.⁷ These statewide voter laws range from strict voter identification laws; voter registration barriers such as requiring documentary proof of citizenship, allowing challenges of voters on the rolls, and unfairly purging voters from rolls; cuts to early voting; to moving or eliminating polling places.⁸

Some examples from the extensive information in the 275-page report:

- The number of successful lawsuits brought pursuant to the VRA nationwide prohibition of “any” voting practices and procedures that discriminate on the basis of race or membership in a language minority group has **more than quadrupled** in the 5 years since *Shelby County* (23 total cases), compared to the 5 years that precede it (5 total cases).⁹ These federal court findings of discrimination follow extensive evidence and rigorous litigation.
- The report documents ongoing, repetitive voting discrimination in states such as Alaska, Florida, Georgia, North Carolina, and Texas.¹⁰ The Commission found that Texas has the highest number of recent VRA violations in the nation.¹¹ Loyola Law Professor Justin Levitt characterized Texas as “an unrepentant recidivist” regarding racial misconduct in voting rights during his Commission testimony.¹² The Commission also investigated and documented that while the litigation challenging Texas’ strict voter ID law was still pending – a law that a court ultimately found to be intentionally discriminatory against black and Latino voters – Texas elected almost 500 officials, as NAACP LDF Director Counsel Sherrilyn Ifill testified to the Commission: “a U.S. Senator in 2014, all 36 members of the Texas delegation to the U.S. House of Representatives, Governor, Lieutenant Governor, Attorney General, Controller, various statewide Commissioners, four Justices of the Texas Supreme Court, candidates for special election in the state Senate, state boards of education 16 state senators, all 150 members of the state House, over 175 district judges, and over 75 district attorneys.”¹³
- Bishop Barber from Repairers of the Breach testified during our briefing in North Carolina in February about “visible presence of KKK members and swastikas on streets

⁷ Report at 82.

⁸ Report at 83-183.

⁹ Report at 227.

¹⁰ Report at 234.

¹¹ Report at 74.

¹² Report at 80-82.

¹³ Report at 80 (quoting U.S. Comm’n on Civil Rights Briefing Meeting Transcript, Feb. 2, 2018, at 90 (statement by Sherrilyn Ifill)).

near pro-voting marches as well as derogatory comments from bystanders” in North Carolina elections following the *Shelby County* decision.¹⁴

- In New York State in 2015, 30 Chinese American voters, many of whom were college students, suffered baseless citizenship and voter registration challenges, impeding their right to vote.¹⁵ As Jerry Vattamala from the Asian American Legal Defense and Education Fund told the Commission: “Racist sentiment towards Asian Americans is not a passing adversity but a continuing reality” necessitating strong voting rights protection.¹⁶
- The Commission received significant testimony regarding voting rights challenges specific to Native American voters and communities, including long distances to travel to polling places¹⁷ and lack of access to ballots resulting from rural residences without physically deliverable mailing addresses.¹⁸
- The report documents widespread problems with inaccessibility for voters with disabilities, including for example that 100% of voters with disabilities were unable to vote privately and independently in municipal elections in New Hampshire in 2013 because none of the polling locations had set up an accessible voting system.¹⁹

The Commission’s report, as well as news reports²⁰ leading up to and following the 2018 midterm elections that problematic practices identified by the Commission – including strict voter identification laws, unfair purging, cuts to early voting, and eliminating polling places – were in use in many states and jurisdictions throughout the country, prompted the Commission to reiterate some of its most urgent recommendations regarding voting rights to the 116th Congress.²¹ The Commission’s North Dakota State Advisory Committee also issued a statement in light of a Supreme Court decision allowing a new voter ID requirement to take effect, even though it had the potential to particularly adversely affect Native American voters living on

¹⁴ Report at 73.

¹⁵ Report at 140-41.

¹⁶ Report at 191-192.

¹⁷ Report at 178-179.

¹⁸ Report at 182.

¹⁹ Report at 195.

²⁰ See, e.g., Amy Gardner and Beth Reinhard, *Voting problems emerge across the country on Election Day*, Washington Post, Nov. 6, 2018, <https://www.mercurynews.com/2018/11/06/as-country-goes-to-the-polls-voting-problems-emerge/>; Peggy Lowe, *Missouri Voters Report Long Lines, Broken Machines and Confusion Over Photo ID Law*, KCUR 89.3, Nov. 6, 2018, <https://www.kcur.org/post/missouri-voters-report-long-lines-broken-machines-and-confusion-over-photo-id-law#stream/0>; Mark Nichols, *Closed voting sites hit minority counties harder for busy midterm elections*, USA TODAY, Oct. 30, 2018, <https://www.usatoday.com/story/news/2018/10/30/midterm-elections-closed-voting-sites-impact-minority-voter-turnout/1774221002/>; Johnny Kauffman, *6 Takeaways From Georgia’s ‘Use It Or Lose It’ Voter Purge Investigation*, NPR, Oct. 22, 2018, <https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation>.

²¹ U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation*, Dec. 7, 2018, <https://www.usccr.gov/press/2018/12-07-Priorities-for-116th-Congress.pdf> at 3.

reservations, as many do not have residential addresses.²² The Committee expressed its concern that the restrictive voter ID law targeted Native American voters, and also pointed out that the change in law for the general election, from the law in place for the primary election, would likely result in confusion and “serious risk of large-scale disenfranchisement.”²³

DOJ Enforcement Efforts

Notwithstanding the recurrence of this ongoing discrimination in voting, the report shows that DOJ enforcement lags behind even available tools. Whereas the DOJ has statutory authority to enforce VRA and congressional appropriations annually to staff such enforcement, the DOJ’s actual enforcement work in this area well lags private enforcement that is much more expensive and onerous to mount.²⁴

Since the *Shelby County* decision in 2013, the DOJ has filed four of the 61 Section 2 cases filed, one language access case, and zero cases about the right to assistance in voting.²⁵ The ACLU alone has brought more Section 2 cases than the DOJ;²⁶ so has the Lawyers’ Committee for Civil Rights Under Law.²⁷ The DOJ has shown a sharp decline in the number of language access cases it has filed, filing only one such case since the *Shelby County* decision, in contrast to an ongoing need for language access protections.²⁸ The DOJ has not filed any cases to enforce Section 208 of the VRA, which provides for voters’ rights to assistance, including for voters with disabilities and limited-English proficiency, since 2009.²⁹

These distressing data and information regarding ongoing voting discrimination form the basis for my fellow Commissioners’ and my unanimous call for Congress to improve our voting protections and for the DOJ to increase its enforcement to ensure that ours is a real democracy.

²² North Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Statement of the North Dakota Advisory Committee Concerned by Potential for Voter Suppression*, Oct. 26, 2018, <https://www.usccr.gov/press/2018/20181026-North-Dakota-Voting-Rights.pdf>.

²³ *Id.*

²⁴ Report at 254-56.

²⁵ Report at 10. The Section 2 cases were filed in 2013 and 2017 and the language access case in 2016. Report at 253, 259.

²⁶ Report at 80, 265.

²⁷ Report at 265.

²⁸ Report at 259.

²⁹ Report at 260-62.