



June 26, 2019

The Honorable Steve Cohen  
Chairman  
House Judiciary Committee  
Subcommittee on the Constitution,  
Civil Rights, and Civil Liberties

The Honorable Mike Johnson  
Ranking Member  
House Judiciary Committee  
Subcommittee on the Constitution,  
Civil Rights, and Civil Liberties

Dear Chairman Cohen and Ranking Member Johnson:

On behalf of ADL (the Anti-Defamation League), we write to urge the House Judiciary Committee to take prompt action to protect Americans' fundamental right to vote by approving H.R. 4, the Voting Rights Advancement Act of 2019 (VRAA). We ask that this statement be included as part of the official hearing record for the subcommittee's June 25, 2019 hearing on "Continuing Challenges to the Voting Rights Act Since Shelby County."

Since the enactment of the Voting Rights Act (VRA) in 1965, a central part of ADL's mission – "to stop the defamation of the Jewish people, and to secure justice and fair treatment to all"—has been devoted to helping to ensure that all Americans have a voice in our democracy. Answering Dr. King's call for "religious leaders from all over the nation to join us...in our peaceful, nonviolent march for freedom," ADL lay leaders and staff joined more than 3,000 Americans in "peaceful demonstration against blind violence, in 'gigantic witness' to the constitutionally guaranteed right of *all* citizens to register and vote in 1965."<sup>1</sup>

ADL continues to work today to ensure that all eligible Americans can exercise their fundamental right to vote through advocacy in the courts, legislatures, and communities.<sup>2</sup> We are proud to have stood with leaders such as Dr. King and Rep. John Lewis in 1965 to fight for every citizen's right to vote and we remain equally committed to this goal today. Recognizing the this landmark law as one of the most important and most effective pieces of civil rights legislation ever enacted, ADL has strongly supported the VRA and its extensions since its passage more than 50 years ago, including by filing a brief in [\*Shelby County v. Holder\*](#).<sup>3</sup>

In the years and decades following the enactment of the Voting Rights Act of 1965, the law quickly demonstrated its essential value in ensuring rights and opportunities. Between 1964 and 1968 – the presidential elections immediately before and after passage of the VRA respectively – African American

---

<sup>1</sup> "A Look Back: ADL's Role in Selma and the Voting Rights Act," ADL 2015. <https://www.adl.org/news/article/a-look-back-adls-role-in-selma-and-the-voting-rights-act>

<sup>2</sup> "Safeguarding the Right to Vote" ADL <https://www.adl.org/resources/tools-and-strategies/safeguarding-the-right-to-vote>

voter turnout in the South jumped by seven percentage points.<sup>4</sup> The year after passage of the VRA, Edward Brooke became the first African American in history elected to the United States Senate by popular vote, and the first African American to serve in the Senate since Reconstruction.<sup>5</sup> By 1970, the number of African Americans elected to public office had increased fivefold.<sup>6</sup> Today there are more than 10,000 African American elected officials at all levels of government.<sup>7</sup>

To be sure, Section 2 of the VRA, which prohibits discrimination based on race, color, or membership in a language minority group in voting practices and procedures nationwide, has helped to secure many of these advances. Yet it is undeniable that Section 5 of the VRA, which requires certain states and political subdivisions with a history of discriminatory voting practices to provide notice and “pre-clear” any voting law changes with the federal government, played an essential and invaluable role in the VRA’s success. Between 1982 and 2006, pursuant to Section 5, the Department of Justice (DOJ) blocked 700 proposed discriminatory voting laws, the majority of which were based on “calculated decisions to keep minority voters from fully participating in the political process.”<sup>8</sup> Proposed laws blocked by Section 5 included discriminatory redistricting plans, polling place relocations, biased annexations and de-annexations, and changing offices from elected to appointed positions, similar to many of the tactics used to disenfranchise minority voters before 1965.<sup>9</sup> In addition, states and political subdivisions either altered or withdrew from consideration approximately 800 proposed voting changes between 1982 and 2006, indicating that Section 5’s impact was much broader than the 700 blocked laws.<sup>10</sup>

Despite decades of success and extensive documentation of the law’s effectiveness in preventing discriminatory restrictions on the right to vote, on June 25, 2013 the U.S Supreme Court, in a sharply divided 5-4 ruling in *Shelby County v. Holder*, struck down Section 4(b) of the VRA. In doing so, the Court substituted its views for Congress’s own very extensive hearings and findings conducted in 2006 when Congress almost unanimously voted to reauthorize the VRA for another 25 years. The ruling invalidated the formula used to determine which states and political subdivisions would be subject to preclearance under Section 5 but did not evaluate the merits of the preclearance provision itself. The majority only held that “the formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.”<sup>11</sup>

While *Shelby County* has done irreparable damage to voting rights in the United States, Congress is not powerless to mitigate this damage and restore the original force of the VRA. In fact, the Court specifically noted that “Congress may draft another formula based on current conditions”<sup>12</sup> and reinstate the preclearance provision in Section 5. The Voting Rights Advancement Act of 2019 introduces a new, rolling preclearance formula based on current need that would restore the preemptory force of the VRA. The recent onslaught of restrictive voting laws enacted across the country is evidence that litigation pursuant to Section 2 is entirely inadequate to prevent unconstitutional voting practices and

---

<sup>4</sup> U.S. Bureau of the Census, *Current Population Reports*, Series P-20, No. 192, “Voting and Registration in the Election of 1968,” 1 (1969).

<sup>5</sup> United States Senate, *Ethnic Diversity in the Senate*, <https://www.senate.gov/senators/EthnicDiversityintheSenate.htm>

<sup>6</sup> 4 See H.R. Rep. No. 109-478, at 18, 130 (2006), reprinted in 2006 U.S.C.C.A.N. 618.

<sup>7</sup> Juliet Eilperin, “What’s Changed for African Americans Since 1963, by the Numbers.” *The Washington Post*, August 2013. [https://www.washingtonpost.com/news/the-fix/wp/2013/08/22/whats-changed-for-african-americans-since-1963-by-the-numbers/?utm\\_term=.c931638accfe](https://www.washingtonpost.com/news/the-fix/wp/2013/08/22/whats-changed-for-african-americans-since-1963-by-the-numbers/?utm_term=.c931638accfe)

<sup>8</sup> *Shelby County*, 133 S. Ct. at 2639 (Ginsburg, J. dissenting) (citing H.R. Rep. 109-478 at 21).

<sup>9</sup> H.R. Rep. No. 109-478, at 36.

<sup>10</sup> *Shelby County*, 133 S. Ct. at 2639 (Ginsburg, J. dissenting).

<sup>11</sup> *Id.* at 2631.

<sup>12</sup> *Id.*

discrimination.<sup>13</sup> Since 2010, over 25 states have enacted restrictive voting laws. Half the country now faces stricter voting regulations than they did in 2010.<sup>14</sup>

Perhaps the most illustrative case for the ongoing necessity of a preclearance process is the battle over a Texas voter ID law. In 2011, Texas passed S.B 14, the strictest voter ID law ever enacted in the United States. Because Texas was required under Section 4 of the VRA to seek preclearance for its voting laws, the law was initially blocked from going into effect. The three-judge panel that reviewed the law found that “based on the record of evidence before us, it is virtually certain that these burdens will disproportionately affect racial minorities. Simply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote.”<sup>15</sup>

Within hours of the Court’s decision in *Shelby County*, Texas Attorney General Greg Abbott announced that S.B 14 would go into effect immediately.<sup>16</sup> Following the Attorney General’s announcement, multiple civil rights groups and Texas voters filed suit under Section 2 of the VRA. In 2014, a district court held that “SB 14 was enacted with a racially discriminatory purpose, has a racially discriminatory effect, is a poll tax, and unconstitutionally burdens the right to vote.”<sup>17</sup> On appeal, a court of appeals stayed the district court’s decision and allowed the law to take effect.

For more than two years and over the span of two election cycles, SB 14 prevented eligible voters from casting a ballot while litigation was ongoing. By the time the law was finally invalidated in 2016 by a 9-2 vote of the entire Court of Appeals for the D.C Circuit (sitting *en banc*), no fewer than seven federal judges had concluded the law was discriminatory. Yet because Section 5 of the VRA was not in effect, this patently unconstitutional law was permitted to disenfranchise untold numbers of minority voters, over two election cycles. The consequences of disenfranchisement are not fully quantifiable but are certainly lasting. Elections cannot be undone, and no judicial relief can restore the confidence in our democracy that was unfairly taken from thousands of disenfranchised voters.

Texas is not the only state to adopt strict voter ID laws. The National Conference of State Legislatures identifies 10 states with “strict” voter ID laws and finds that 11% of all Americans lack the necessary

---

<sup>13</sup> In one of the first constitutional challenges to the VRA, the Court upheld §5 as a necessary means to prevent discriminatory voting laws from taking effect. In *South Carolina v. Katzenbach* (383 U.S 301, 328 (1966)), the court recognized that in 1965 “Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits.” In this case, the Court found that “Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 manhours spent combing through registration records in preparation for trial. Litigation [is] exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings.” Meanwhile, unconstitutionally discriminatory laws are permitted to take effect while litigation progresses, jeopardizing the legitimacy of elections and the ability of marginalized communities to have their voice heard.

<sup>14</sup> “New Voting Restrictions in America” *Brennan Center for Justice* (2019) <https://www.brennancenter.org/new-voting-restrictions-america>

<sup>15</sup> *Tex. v. Holder*, 888 F. Supp. 2d 113, 141 (D.D.C. 2012)

<sup>16</sup> Zachary Roth, That Was Quick: Texas Moves Ahead with Discriminatory Voting Laws, MSNBC (Jun. 25, 2013), <http://www.msnbc.com/msnbc/was-quick-texas-moves-ahead-discri>.

<sup>17</sup> *Veasey v. Abbott*, 830 F. 3d 216, 225 (D.D.C 2016) citing *Veasey v. Perry*, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014)

government ID that these laws require.<sup>18</sup> Voter ID laws have been found on multiple occasions to disproportionately affect marginalized communities, low-income and elderly Americans, and students.

Nor is Voter ID the only tool states are using to disenfranchise voters for political gain. In Georgia, then Secretary of State Brian Kemp enforced new election code policies for the 2018 election (in which he was a candidate for Governor) which invalidated a voter's registration if there was any discrepancy in their registration paperwork. Of the 53,000 voters whose registration status was arbitrarily questioned, roughly 70% were African American.<sup>19</sup> In Ohio, a "use it or lose it" law caused hundreds of thousands of voters to be purged from the 2018 voter rolls because they did not vote in the last presidential election.<sup>20</sup> Gerrymandering, voter intimidation and harassment, cuts to early voting opportunities, polling place manipulation and closure, and felony disenfranchisement efforts are just some of the other voter suppression tactics that have become prevalent since *Shelby County* and were used to disenfranchise voters in the 2018 election.

Indeed, we have seen the reversal of half a century of voting rights advancements since *Shelby County*. While Section 5 of the VRA surely could not have prevented all of these evils, there is no question that this country's democratic institutions would be stronger and our electoral processes more representative if the VRA were in full effect. Following this incredible damage done to the most fundamental of our rights as Americans, Congress now finds itself in the position to act.

The Voting Rights Advancement Act (VRAA) of 2019 is an important first step in restoring voter trust in America's elections and preventing states from enacting additional discriminatory measures to suppress the vote. Just over a decade ago, as Congress was debating the most recent reauthorization of the VRA, committees held 21 hearings and compiled over 20,000 pages of records as evidence of the success of Section 5, the prevalence of ongoing voting discrimination, and the constitutionality of the law.<sup>21</sup> As a result, the reauthorization passed with overwhelming bipartisan support: 390 to 33 in the House of Representatives and 98-0 in the Senate.<sup>22</sup> Congress now has both the power and the imperative to pass the Voting Rights Advancement Act and restore the critical voting protections that quite recently received overwhelming bipartisan approval.

In the face of federal inaction, many states have taken the lead on expanding and securing the right to vote for all people. In 2018, Maryland, New Jersey, and Washington adopted automatic voter registration, a policy which would significantly increase access to the ballot. Since 2016, six states have limited or reversed their felon disenfranchisement laws and 16 states have enacted reforms such as same-day registration, online voter-registration, and expanded early voting opportunities that make it easier to register and vote.<sup>23</sup> Despite the absence of Congressional leadership, there is substantial momentum behind expanding ballot access and preserving America's voting rights.

S. 1945, the VRAA, creates a modern, flexible, rolling formula to determine which states and political subdivisions will have to pre-clear their laws with the federal government. The formula will not require preclearance in all the political subdivisions that have moved to restrict voting rights in the past six years, including some of the examples above, but, over time, the rolling formula will sweep in many of the most

---

<sup>18</sup> "Voter Suppression During the 2018 Midterm Elections" *Center for American Progress* (Citing <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>)

<sup>19</sup> <https://www.atlantamagazine.com/news-culture-articles/53000-pending-voters-georgia-still-vote-what-to-know/>

<sup>20</sup> CAP 2018 Voter Suppression Overview, 4

<sup>21</sup> 6 Kristen Clarke, *The Congressional Record Underlying the 2006 Voting Rights Act: How Much Discrimination Can the Constitution Tolerate?* 43 *Harvard C.R.-C.L.L. Rev.*, 386, 402 (2008).

<sup>22</sup> Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, H.R. 9, 109th Cong., (2006) (enacted).

<sup>23</sup> "The State of Voting 2018" *Brennan Center for Justice* <https://www.brennancenter.org/publication/state-voting-2018>

problematic jurisdictions. It will restore critical safeguards, preventing enactment of discriminatory voting laws by once more “shift[ing] the advantage of inertia and time from the perpetrators of the evil to the victims.”<sup>24</sup>

The Fifteenth Amendment to the U.S. Constitution proclaims that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”<sup>25</sup> Section 2 of the Amendment expressly declares that “Congress shall have the power to enforce this article by appropriate legislation.”<sup>26</sup> As the Supreme Court has recognized, “by adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in Section 1,”<sup>27</sup> and “Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.”<sup>28</sup> Passage of the Voting Rights Advancement Act is not only rational. It is critical to enforcing the constitutional prohibition on racial discrimination in voting and protecting the fundamental right to vote for all Americans.

We strongly welcome these hearings on the devastating legacy of *Shelby County* and appreciate the opportunity to present ADL’s views. We urge the Committee to promptly approve the Voting Rights Advancement Act of 2019.

Sincerely,



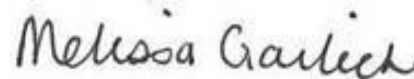
Eileen B. Hershenov  
Senior Vice President, Policy



Steven M. Freeman  
Vice President, Civil Rights



Erika L. Moritsugu  
Vice President, Government Relations,  
Advocacy, and Community Engagement



Melissa Garlick  
Civil Rights National Counsel

---

<sup>24</sup> *S.C. v. Katzenbach*, 383 U.S. 301, 328 (1966)

<sup>25</sup> U.S. CONST. amend. XIV, §1

<sup>26</sup> *Id.* at §2.

<sup>27</sup> *Katzenbach*, 383 U.S. at 325-26

<sup>28</sup> *Id.* at 324.