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COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

HEARING ON: “OVERSIGHT OF THE VOTING RIGHTS ACT: A CONTINUING RECORD OF DISCRIMINATION”

CISCO WEBEX
THURSDAY, MAY 27, 2021
9:00 A.M. (CENTRAL)



- Thank you, Chairman Cohen and Ranking Member Johnson, for convening this timely and important hearing on “Oversight of the Voting Rights Act: A Continuing Record.”
- Let me welcome our witnesses and thank them for taking time out of their busy schedules to share with us their perspectives and views on the federal government’s efforts to remedy voter discrimination, which continues to persist and evolve in form despite the passage of the Voting Rights Act:

Janai S. Nelson

Associate Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF);

Wendy Weiser

Vice President, Democracy, Brennan Center for Justice;

Jon Greenbaum

Chief Counsel & Senior Deputy Director, Lawyers Committee for Civil Rights Under Law; and

(Minority Witness) T. Russell Nobile, Senior Attorney, Judicial Watch.

- Mr. Chairman, the Supreme Court has described the right to vote as the one right that is preservative of all others.
- However, since the enactment of the Voting Rights Act of 1965 (“VRA”)—considered the most effective civil rights statute ever enacted by Congress—the right to vote has been under constant assault.
- The VRA was enacted at a time when many African Americans in southern states had been denied the right to vote, and when attempting to register, organize or even assist others in their attempt to register to vote meant risking their jobs, homes, and racial violence.
- Prior to the enactment of the VRA, litigation initiated under the Civil Rights Acts of 1957 and 1960 failed to eliminate discrimination in voting because jurisdictions simply shifted to different tactics in order to disenfranchise African Americans.
- Section 5 of the VRA was structured to keep ahead of those tactics by barring the worst offenders from adopting new election laws until they first proved to the Department of Justice or a federal district court in Washington, D.C. that those laws would not discriminate – a provision known as the “preclearance” requirement.
- Section 4 of the VRA established a coverage formula - based in large part on whether a particular jurisdiction had a history of discrimination in voting - to determine which jurisdictions were required to comply with, among other things, the Section 5 preclearance obligations.

- Mr. Chairman, I am here today to remind the members of this committee that the right to vote – that “powerful instrument that can break down the walls of injustice” – faces grave threats.
- The threat stems from the decision issued in June 2013 by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 193 (2013), which invalidated Section 4(b) of the VRA, and paralyzed the application of the VRA’s Section 5 preclearance requirements.
- According to the Supreme Court majority, the reason for striking down Section 4(b) was that “times change.”
- Now, the Court *was* right; *times have changed*.
- But what the Court did not fully appreciate is that the positive changes it cited are due almost entirely to the existence and vigorous enforcement of the Voting Rights Act, and that is why the Voting Rights Act is still needed.
- As Justice Ruth Bader Ginsburg stated in *Shelby County v. Holder*, “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”
- My constituents remember very well the Voter ID law passed in Texas in 2011, which required every registered voter to present a valid government-issued photo ID on the day of polling in order to vote.
- The Justice Department blocked the law in March of 2012, and it was Section 5 that prohibited it from going into effect.
- At least it did until the *Shelby* decision, because on the very same day that *Shelby* was decided officials in Texas announced they would immediately implement the Photo ID law, and other election laws, policies, and practices that could never pass muster under the Section 5 preclearance regime.
- The Texas Photo ID law was challenged in federal court and the U.S. Court of Appeals for the Fifth Circuit upheld the decision of U.S. District Court Judge Nelva Gonzales Ramos that Texas’ strict voter identification

law discriminated against blacks and Hispanics and violated Section 2 of the Voting Rights Act.

- Following this decision, the governor of Texas then signed into law a requirement that voters without an ID must provide a current utility bill, a bank statement, or paycheck, and sign declaration that explained why they lacked one of seven acceptable forms of identification.
- Protecting voting rights and combating voter suppression schemes are two of the critical challenges facing our great democracy.
- Without safeguards to ensure that all citizens have equal access to the polls, more injustices are likely to occur and the voices of millions silenced.
- And this is exactly what we have seen over this past year.
- After voters of color helped flip key states into the Democrats' column during the presidential election, Republicans have channeled their myth that the election was stolen into legislative pushback in state capitols across the United States.
- In Texas and nationally, the Republican campaign to change voting rules in the name of "election integrity" has been largely built on concerns over widespread voter fraud for which there is little to no evidence, and one major effort has been to implement Voter ID laws.
- Those of us who cherish the right to vote justifiably are skeptical of Voter ID laws because we understand how these laws, like poll taxes and literacy tests, can be used to impede or negate the ability of seniors, racial and language minorities, and young people to cast their votes.
- Consider the demographic groups who lack a government issued ID:
 - African Americans: 25%
 - Asian Americans: 20%
 - Hispanic Americans: 19%
 - Young people, aged 18-24: 18%
 - Persons with incomes less than \$35,000: 15%

- And over the past year, we have seen other attempts at abridging or suppressing the right to vote, including:
 - Curtailing or eliminating early voting
 - Ending same-day registration
 - Not counting provisional ballots cast in the wrong precinct on Election Day will not count.
 - Eliminating adolescent pre-registration
 - Shortening poll hours.
- These thinly disguised but intentionally discriminatory attempts seek a return to the days of Jim Crow and a restoration of the badges and vestiges of slavery.
- In April 2021, the Texas Senate passed SB 7, which focuses on increased voting regulations in diverse, urban areas, by setting rules for the distribution of polling places in only the handful of counties with a population of at least 1 million — most of which are either under Democratic control or won by Democrats in recent national and statewide elections.
- Texas Senate Bill 7 targets initiatives championed in Harris County to make it easier for more voters to participate in elections.
- Senate Bill 7 limits extended early voting hours, prohibit drive-thru voting and make it illegal for local election officials to proactively send applications to vote by mail to voters, even if they qualify.
- The legislation is at the forefront of Texas Republicans’ crusade to further restrict voting in Texas, which saw the highest turnout in decades in 2020, with Democrats continuing to drive up their vote counts in the state’s urban centers and diversifying suburban communities.
- Texas Republicans falsely claim SB 7 “standardizes and clarifies” voting rules so that “every Texan has a fair and equal opportunity to vote, regardless of where they live in the state.”
- SB 7 would make wholesale changes to address isolated — and rare — incidents of fraud at the expense of voting initiatives that were particularly successful in reaching voters of color.

- SB 7 originally limited early voting hours from 7 a.m. to 7 p.m., curtailing the extended hours offered last year in Harris County and other large counties where voting ran until 10 p.m. for several days to accommodate people, like shift workers, for whom regular hours don't work. The bill was rewritten before it reached the Senate floor to allow for voting only between 6 a.m. and 9 p.m.
- SB 7 prohibits the day of 24-hour voting, like the one Harris County offered last November.
- SB 7 would also outlaw the drive-thru voting set up at 10 polling places in the county for the general election.
- **The Harris County election office has estimated that Black and Hispanic voters cast more than half of the votes counted both at drive-thru sites and during extended hours.**
- Texas Republicans disingenuously claim drive-thru and overnight voting prevents poll watchers' oversight, characterizing them as the "eyes and ears of the public," when they are in fact not public watchdogs but instead inherently partisan figures, appointed by candidates and political parties to serve at polling places.
- And poll watchers did have access to observe drive-thru and 24-hour voting last year.
- SB 7 broadens poll watchers' access at polling places, even giving them power to video record voters receiving assistance in filling out their ballots if the poll watcher "reasonably believes" the help is unlawful, which raised the real likelihood of intimidation of voters who speak languages other than English, as well as voters with intellectual or developmental disabilities who may require assistance.
- Despicably, SB 7 as originally drafted would have required voters citing a disability to provide proof of their condition or illness, including written documentation from the Social Security Administration or a doctor's note, to qualify for the latter.

- SB 7 is now in a conference committee made up by members from both chambers who are expected to work out the differences in each chamber's version of the bill — both of which remain opposed by civil rights groups with long histories of fighting back voting laws that could harm voters of color.
- Additionally, in March 2021, the Republican Georgia Governor signed SB202, which changes the state's election code to prevent a repeat of what occurred in November 2020 and January 2021, when the state voted Democratic for president for the first time in 28 years and for the U.S. Senate for the first time since 2000 by intentionally erecting barriers designed to make burden the rights of African Americans, Latinx, other persons of color, young persons, and seniors and the disable to exercise the most precious and fundamental of all rights, the right to vote.
- This new rebel Georgia election law would require Georgia voters to provide their driver's license or state ID number, or a photocopy of another accepted identification if the requesting an absentee ballot.
- The law provides that secure ballot drop boxes can only be placed inside advance voting locations and only accessible when those locations are open, which means voters could not use them during the three days preceding an election or on Election Day -- the period when returning an absentee ballot by mail is most risky since it must arrive by 7 p.m. on Election Day to count.
- Under the new Georgia law, counties would no longer have the ability to stop counting ballots until they are finished and accelerates the deadline by four days by which counties must complete certification, a change that will most impact the large, metro counties that typically certify on or close to the current deadline.
- Perhaps the most odious provision of the bill, and the one that most reveals the invidious discrimination motivating it, is Section 33, which makes it a crime for someone who is not an election worker to give food or beverage to any elector waiting in line to vote – even where they had been waiting in line for up to eight hours, as was the case in last summer in some of Georgia's most Democratic areas.

- None of these actions would have survived the preclearance process of Section 5 of the Voting Rights Act of 1965 that would be in place except for the U.S. Supreme Court's infamous decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), which struck down the coverage formula in Section 4 of the VRA.
- Although attacks on our most sacred of rights, like Texas SB 7 and Georgia SB 202, have increased in fervor over the past year, they are not new.
- For this reason, in each Congress since 2006, I have introduced the Coretta Scott King Mid-Decade Redistricting Prohibition Act, most recently as H.R. 44 in the 116th Congress.
- This bill would ban redistricting at any time other than immediately following a Census.
- The only exception allowed is if a federal court mandates a mid-decade redistricting in order to comply with the Constitution or the Voting Rights Act.
- And I am proud that the Coretta Scott King Mid-Decade Redistricting Prohibition Act has been incorporated in its entirety in Sections 2401 and 2402 of H.R. 1.
- After the Census which occurs every 10 years, states redraw their congressional districts to maintain the district populations' evenness, as well as adjust if any members need to be added or subtracted based on a state's share of the national population.
- However, on rare occasions a state will redistrict a second time within the decade.
- This is almost always done by a party gaining complete control of a state, and creating more favorable conditions for their party to win more of the state's seats in Congress.

- Now, there are some who might claim that such redistricting should be permitted because it is simply part of the rough and tumble of political combat waged by Republicans and Democrats.
- But remember the African proverb: “when the bull elephants fight, the ground get trampled on.”
- And guess what is the ground being ‘trampled on’ when these bull elephants fight like is currently happening Texas with SB 7?
- It is the voting rights of African-Americans, Hispanics, Asian Americans and Pacific Islanders, and other minorities.
- There is simply no good reason for a state with a documented history of discrimination against minorities in voting to redraw its legislative or congressional districts more than once in a decade.
- Texas SB 7, along with the law passed in Georgia and the 361 bills to restrict or curtail voting rights introduced in 47 states, illustrates the critical importance of Senate passage, and the signing by President Biden, of the *John Lewis Voting Rights Advancement Act* and the already House-passed H.R. 1, the “*For The People Act*,” which, among other things, would protect and make it easier to vote in federal elections, end congressional gerrymandering, and increase safeguards against foreign interference.
- The *John Lewis Voting Rights Advancement Act*, introduced as H.R. 4 in the 116th Congress and soon to be reintroduced, responds to current conditions in voting today by restoring the full protections of the original VRA, which was gutted by the Supreme Court in 2013.
- The legislation provides the tools to address these discriminatory practices and seeks to protect all Americans’ right to vote and creates a new coverage formula that applies to all states and hinges on a finding of repeated voting rights violations in the preceding 25 years.
- States that have repeated and persistent violations will be covered for a period of 10 years, but if they establish a clean record moving forward, they can come out of coverage.

- The *John Lewis Voting Rights Advancement Act* establishes a targeted process for reviewing voting changes in jurisdictions nationwide, focused on measures that have historically been used to discriminate against voters, such as voter ID requirements or the reduction of multilingual voting materials.
- The *John Lewis Voting Rights Advancement Act* would also allow a federal court to order states or jurisdictions to be covered for results-based violations, where the effect of a particular voting measure (including voter ID laws) is to lead to racial discrimination in voting and to deny citizens their right to vote and allows the Attorney General authority to request federal observers be present anywhere in the country where there is a serious threat of racial discrimination in voting.
- Finally, the *John Lewis Voting Rights Advancement Act* increases transparency by requiring reasonable public notice for voting changes and revises and tailors the preliminary injunction standard for voting rights actions to recognize that there will be cases where there is a need for immediate preliminary relief.
- H.R. 1, the “*For The People Act*” would usher in a host of changes that protect and revitalize our democracy, would ban several practices that have been used to suppress or minimize the voting power of African Americans, communities of color, and young persons, and would expand the right to vote in the following ways:
 - incorporate the *Coretta Scott King Mid-Decade Redistricting Prohibition Act*, to ban redistricting at any time other than immediately following a Census.
 - establish uniform rules that every state would have to follow when drawing congressional districts, including enhanced protections to make sure the political effectiveness of communities of color is not diluted;
 - prohibit mid-decade redistricting as Section 2402, by incorporating the “*Coretta Scott King Mid-Decade Redistricting Prohibition Act*,” introduced as H.R. 164 by Congresswoman Sheila Jackson Lee;
 - prohibit knowing and intentional communication of false and misleading information — including about the time, place, or manner of elections, public endorsements, and the rules governing voter eligibility and voter registration — made with the intent of preventing eligible voters from casting ballots and

establishes federal criminal penalties for deceiving or intimidating voters; and

- restricts states from purging eligible voters and outlaws voting caging; and
- prevent states from prohibiting any person from distributing mail-in ballot applications, or from prohibiting election officials from distributing voter registration applications.

- Mr. Chairman, it is the responsibility and sacred duty of all members of Congress who revere democracy to preserve, protect, and expand the precious right to vote of all Americans
- Before concluding there is one other point I would like to stress.
- In his address to the nation before signing the Voting Rights Act of 1965, President Johnson said:

“Presidents and Congresses, laws and lawsuits can open the doors to the polling places and open the doors to the wondrous rewards which await the wise use of the ballot.

“But only the individual Negro, and all others who have been denied the right to vote, can really walk through those doors, and can use that right, and can transform the vote into an instrument of justice and fulfillment.”

- In other words, political power – and the justice, opportunity, inclusion, and fulfillment it provides – comes not from the right to vote *but in the exercise of that right.*
- And that means it is the civic obligation of every citizen to both register and vote in every election, state and local as well as federal.
- Because if we can register and vote, but fail to do so, we are guilty of *voluntary* voter suppression, the most effective method of disenfranchisement ever devised.

- Mr. Chairman, for millions of Americans, the right to vote protected by the Voting Rights Act of 1965 is sacred treasure, earned by the sweat and toil and tears and blood of ordinary Americans who showed the world it was possible to accomplish extraordinary things.
- So today, let us rededicate ourselves to honoring those who won for us this precious right by remaining vigilant and fighting against both the efforts of others to abridge or suppress the right to vote and our own apathy in exercising this sacred right.
- Thank you again for convening this important hearing and I look forward to hearing the testimony of our witnesses.
- Thank you, Mr. Chairman, I yield back my time.