

TESTIMONY OF BRYAN P. TYSON, ESQ.
Partner, Taylor English Duma LLP
Atlanta, Georgia

BEFORE THE U.S. HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON
THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

Hearing on “The Need to Enhance the Voting Rights Act: Practice-Based Coverage”

July 27, 2021

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INTRODUCTION

Chairman Cohen, Ranking Member Johnson, and members of the Committee, thank you for inviting me to testify today about H.R. 4, the Voting Rights Advancement Act of 2019 (VRAA), one of the legislative proposals to update the Voting Rights Act being considered by the Subcommittee. My name is Bryan Tyson. I am a partner at Taylor English Duma LLP in Atlanta, Georgia and have worked as an expert and litigator in redistricting, election administration, and Voting Rights Act litigation for twenty years. My goal today is to share a practitioner’s perspective on the proposed practice-based coverage components of the VRAA and identify several issues for your consideration.

Although my law firm and I represent a number of governmental clients in Voting Rights Act and election litigation, I am speaking today in my individual, personal capacity based on my own perspective and experience. I am not speaking on behalf of the State of Georgia or any other client I represent in election matters.

I. THE VOTING RIGHTS ACT OF 1965.

The Voting Rights Act of 1965 (VRA) is one of the most significant pieces of legislation enacted by Congress to secure the voting rights of minorities across the country. Without the VRA, our nation might not have ever effectively protected the right to vote—our most foundational right—for minority voters.

From 1965 through the Supreme Court’s *Shelby County*¹ decision in 2013—almost fifty years—Section 5 of the VRA required covered jurisdictions to submit any changes in election practices to either the Attorney General or the U.S. District Court for the District of Columbia for preclearance prior to their implementation.² Covered jurisdictions under the VRA included all or part of 16 states. Preclearance was necessary for decades following the enactment of the VRA because of the intentional racial discrimination in which governments of covered jurisdictions were engaging. That intentional conduct was the foundation for a dramatic statute requiring advance federal approval of a state’s actions,³ especially in light of the Constitution’s Elections Clause that gives primary responsibility for elections to the states.⁴

Even after *Shelby County*, the VRA retains significant force. Jurisdictions that engage in intentional racial discrimination can be bailed in under Section 3.⁵ Jurisdictions that dilute minority voting strength in violation of Section 2 face litigation with a strong incentive for plaintiffs: full recovery of attorney and expert fees.⁶

Shelby County recognized that “Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions.”⁷

I have previously testified to the subcommittee on the problems presented by the VRAA’s

¹ *Shelby County v. Holder*, 570 U.S. 529, 133 S. Ct. 2612 (2013).

² 52 U.S.C. § 10304.

³ See, e.g., *South Carolina v. Katzenbach*, 383 U.S. 301, 334, 86 S. Ct. 803, 822 (1966) (“exceptional conditions” justified VRA); *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 211, 129 S. Ct. 2504, 2516 (2009) (recognizing “extraordinary” nature of preclearance).

⁴ U.S. CONST., art. I, § 4, cl. 1.

⁵ 52 U.S.C. § 10302(c).

⁶ 52 U.S.C. § 10301; 10310(e).

⁷ 570 U.S. at 553.

proposed formula to cover states. Today’s hearing is focused on the practice-based provisions of the VRAA that apply to every jurisdiction in the country, apparently with the design to avoid singling out certain jurisdictions. But, as we will discuss, the extremely broad definition of “voting rights violation” in proposed Section 4(b) and the limitations to certain jurisdictions with defined populations in proposed Section 4A lead to an overbroad coverage that far exceeds what is congruent and proportional to the needs of enforcing voting rights.

A. Burden of preclearance.

Proposed Section 4A requires all States and political subdivisions to submit certain defined categories of electoral changes for preclearance to the Attorney General or the D.C. District Court. As a practitioner who has submitted multiple preclearance submissions on behalf of jurisdictions, I want to be sure the committee understands the complicated and difficult nature of these submissions.

The Department of Justice requires the following information for *each* submission:

1. A copy of the document embodying the proposed change affecting voting.
2. A copy of the document showing the state of the law, regulation, or practice prior to the proposed change.
3. A statement of the difference between existing law and the proposed change.
4. The contact information for the individual making the submission.
5. The name of the jurisdiction responsible for the change.
6. The identification of the body or person responsible for the change.
7. The statutory or other authority that allows the jurisdiction to decide to undertake the change, along with a description of the procedures required.
8. The date of the adoption of the change.

9. The date the change is to take effect.
10. An affirmation that the change has not yet been enforced or administered.
11. An explanation of the scope of the change.
12. A statement of the reasons for the change.
13. A statement of the anticipated effect of the change on minority groups.
14. A statement of any past or pending litigation involving the change.
15. A statement that the prior practice has been precleared or explaining why it is not subject to preclearance.
16. Any other information required by the Attorney General.⁸

The Department of Justice also includes a list of suggested supplemental information that jurisdictions would be wise to submit with preclearance submissions:

1. Demographic information, including:
 - a. Total and voting-age population of the affected area.
 - b. Registered voters for the affected area by race and language group.
 - c. Estimates of population by race and language group made in connection with the change.
2. Maps showing:
 - a. The prior and new boundaries of the voting unit or units.
 - b. The prior and new boundaries of voting precincts.
 - c. The location of racial and language minority groups.
 - d. Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

⁸ 28 C.F.R. § 51.27.

- e. The location of prior and new polling places.
 - f. The location of prior and new voter registration sites.
3. Election returns showing:
- a. The name of each candidate.
 - b. The race or language group of each candidate, if known.
 - c. The position sought by each candidate.
 - d. The number of votes received by each candidate, by voting precinct.
 - e. The outcome of each contest.
 - f. The number of registered voters for the last 10 years, by race and language group, for each voting precinct for which election returns are furnished.
4. Public notices that show the public had an opportunity to participate including:
- a. Copies of newspaper articles discussing the proposed change.
 - b. Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).
 - c. Minutes or accounts of public hearings concerning the proposed change.
 - d. Statements, speeches, and other public communications concerning the proposed change.
 - e. Copies of comments from the general public.
 - f. Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.
5. For annexations:

- a. The present and expected future use of the annexed land (e.g., garden apartments, industrial park).
- b. An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.
- c. A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review.⁹

And all of the required and suggested information is just for a *single* preclearance submission of a single change in an election practice or procedure.

As an example of these challenges, one county in Georgia had used a school building as a polling place for years. The school was undergoing renovations over the summer, but school officials had assured election officials that the renovations would be complete in time for the next election. But shortly before the election, school officials notified the election staff that the school would not be ready in time. Our firm prepared an emergency preclearance submission to move the polling place from the school undergoing renovations to another school that was right next door and had to include all of the above information. Failing to obtain preclearance ahead of the election would have meant the jurisdiction would be subject to an enforcement action (including payment of the plaintiffs' attorney fees)¹⁰ and would become ineligible for bailout because it enforced a voting change that had not been precleared.¹¹

⁹ 28 C.F.R. § 51.28.

¹⁰ 52 U.S.C. § 10303.

¹¹ 52 U.S.C. § 10303(a)(1)(D).

The burden on jurisdictions is significant because not only must the jurisdiction provide all of this information, it must do so to prove a negative—and the proposed Section 4A(c) on particular practices does not change that reality. Each submission must show that the change would *not* cause a retrogression in the position of minority voters to receive preclearance. Failure to submit sufficient information would lead to a “More Information Request” or a rejection of the request for preclearance. And this burden would be necessary for a State or a political subdivision to obtain advance *federal* approval of a proposed voting change adopted by local policymakers.

B. Past concerns regarding partisan administration.

While necessary in the 1960s and through the 1980s, concerns about partisan administration of the Voting Rights Act in Georgia began to grow in the 1990s. Georgia Democrats in the 1990s were concerned about the “Bush Justice Department” and its rejection of Democrat maps. Georgia Republicans in the 2011 cycle were equally concerned about the “Obama Justice Department.”

The men and women of the Voting Section are professionals who are deeply committed to their work. But concerns about partisan administration influenced how jurisdictions approached preclearance in 2011 cycle and likely will again in the 2021 cycle. For example, Georgia sought preclearance of its 2011 redistricting maps on both statutory tracks simultaneously: filing a declaratory judgment action seeking preclearance in the D.C. District Court and filing for administrative preclearance with the Attorney General.¹² The lawsuit included an alternative claim: if preclearance was not granted, then the formula

¹² *Georgia v. Holder*, Case No. 1:11-CV-01788 (D. D.C.).

imposing preclearance on Georgia was unconstitutional.¹³ Texas used a similar two-pronged strategy when seeking preclearance of its photo identification requirement for voting.¹⁴

Concerns about partisan use of the Department of Justice have not abated, especially when Attorney General Merrick Garland announced the filing of a lawsuit against Georgia's new voting law, Senate Bill 202, just last month.¹⁵ There is no similar litigation against any other state, despite Georgia's new legislation providing more opportunities to vote than a number of other states in the country, including three weeks of early voting, weekend voting, and no-excuse absentee voting.

II. H.R. 4 PRACTICE-BASED PRECLEARANCE.

The VRAA creates a new Section 4A, which is titled "Practice-Based Preclearance." This section does not utilize the new formula for preclearance coverage, but applies to *all* jurisdictions in the entire country. It requires that all jurisdictions obtain preclearance before implementing the following types of changes to elections:

1. Adding seats that are elected at large, if racial groups represent certain percentage thresholds.
2. Converting seats elected from single-member districts to at-large or multi-member districts, if racial groups represent certain percentage thresholds.
3. Any change to jurisdiction boundaries that reduce the minority percentage of a jurisdiction by three points or more.

¹³ *Id.*, Complaint at pp. 19-25 (October 6, 2011) available at <http://redistricting.lls.edu/files/GA%20preclear%2020111006%20complaint.pdf>

¹⁴ *Texas v. Holder*, 888 F. Supp. 2d 113, 117 (D.D.C. 2012) vacated 570 U.S. 928 (2013).

¹⁵ U.S. Department of Justice, *Attorney General Merrick B. Garland Delivers Remarks Announcing Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law*, <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-lawsuit-against-state> (June 25, 2021).

4. Any change in boundaries of election districts where there has been an increase of a minority group of 10,000 or 20% of the voting-age population.
5. Any change in documentation or proof of identity to vote that is more stringent than the non-photo identification provisions of the Help America Vote Act.
6. Any change in documentation require to register to vote that is more stringent than the date of the VRAA's passage.
7. Any change that reduces multilingual voting materials or changes the way they will be distributed if there is no reduction or alteration in English-language materials.
8. Any change that "reduces, consolidates, or relocates voting locations, including early, absentee, and election-day voting locations, or reduces days or hours of in person voting on any Sunday during the period occurring prior to the date of an election," if racial groups represent certain percentage thresholds.
9. Any change to voter-list maintenance that "adds a new basis for removal from the list of active registered voters or that puts in place a new process for removing a name from the list of active registered voters" if racial groups represent certain percentage thresholds.

These election practices are so broad that they encompass almost all of the election changes made by state and local officials, subjecting them to federal control. And the interlocking nature of the VRAA is also extremely problematic—local jurisdictions that fail to obtain preclearance for these changes will subject their states to potential coverage under the new Section 4(b) formula because the VRAA specifically provides that a denial of

preclearance by the Attorney General or a court is a “voting rights violation” that counts against a State for coverage.¹⁶

My testimony will focus primarily on the incredible burden imposed by the practice-based coverage proposals and how this deep intrusion into the area of state and local elections is not congruent and proportional to any need to root out discriminatory practices that remain available under the VRA generally.

III. CONCERNS ABOUT PRACTICE-BASED PRECLEARANCE.

The list of election practices that could lead to objections and subject a state to inclusion under the proposed coverage formula in the VRAA leads to a number of concerns to me as a litigator, especially because the language of the VRAA is an open invitation to further partisanship in the administration of the VRA. This Subcommittee should be extremely concerned when a law as significant as the VRA is turned into a partisan weapon.

A. Addition of states that have never been subject to preclearance.

Proposed Section 4A subjects *all* states and *all* political subdivisions to the requirements of preclearance for its enumerated practices. States with more than 20% minority population for purposes of several of the practices that have never been completely covered by preclearance include Maryland, Delaware, and Hawaii. Preclearance is a burden on local jurisdictions, as explained above, and something as simple as counties or States not recognizing the new burdens placed on them could result in entire States ensnared in a new coverage formula based on local jurisdictions failing to obtain preclearance. That a mere lack of knowledge could lead to coverage is not a valid basis on which to “single out states” as the Supreme Court warned in *Shelby County*.

¹⁶ VRAA, Sec. 3 at 4(b)(3)(C) and (D).

B. Concerns about specific election practices.

1. *Changes to non-district elections.*

The first practice purports to capture situations when a State or local jurisdiction adds at-large seats when minorities are present or changes seats away from single-member districts. Current litigation in Georgia seeks to define statewide elected officials as candidates who are elected “at large,”¹⁷ meaning that adding statewide elected officials potentially could be included. Further, the Supreme Court has made clear that at-large methods of election are not *per se* violations of the Voting Rights Act.¹⁸ Requiring preclearance of all such changes is not narrowly tailored and any potential harm from changing to at-large elections can be easily handled by the existing framework of Section 2 cases, with the incentive for plaintiffs to receive their attorneys’ fees for a successful outcome.

2. *Changes to jurisdiction boundaries.*

The second practice focuses on jurisdictional boundaries but chooses an arbitrary three-point reduction in voting-age population as the benchmark. Again, these are changes that could be easily handled under Section 2 with its existing vote-dilution framework. This provision also flies in the face of the Supreme Court’s recent direction which rejected disparate-impact theories under Section 2 of the Voting Rights Act.¹⁹ Using a disparate-impact standard to impose the burdensome preclearance process on a jurisdiction is not narrowly tailored, especially when existing caselaw provides clear direction about reduction in minority population for purposes of Section 2.

¹⁷ *Rose v. Raffensperger*, Case No. 1:20-cv-02921-SDG (N.D. Ga.).

¹⁸ *Thornburg v. Gingles*, 478 U.S. 30, 46, 48 (1986).

¹⁹ *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321 (2021)

3. *Redistricting.*

The third practice captures virtually all changes to election districts across the country, requiring federal approval for even the slightest change in district boundaries. The limitations on increases in minority population over the past decade do not provide a sufficient boundary, especially when most states will see minority population increases of more than 10,000 individuals of “any racial or language minority group” over the prior decade.

This provision is not a rifle shot, tailored to areas where there may actually be problems—it is a shotgun blast, hitting almost *every* redistricting undertaken by *every* jurisdiction in the country. Given the well-established vote-dilution standards surrounding claims under Section 2 for redistricting plans, there is no need to subject *every* change in district boundaries for *every* jurisdiction to a potential federal-government veto. Nor is there a need to impose the dramatic burden of preclearance filings on jurisdictions for an entire decade when a State’s minority population has increased by 10,001 individuals.

4. *Changes in documentation or qualifications to vote.*

The VRAA next hands the federal government control over the entirety of the registration and voting process by requiring changes to documentation or identity for voting or registration purposes to be precleared. Unlike other changes, there is no racial-category limitation here. If a state like Maine, with a total minority population of seven percent, adds a photo identification requirement, then it must obtain preclearance as to whether that requirement will impact minority voters or not. This is not the narrow tailoring the U.S. Supreme Court requires for dramatic imposition of preclearance on states.

Further, there is no factual basis to demonstrate that photo identification requirements have an impact on minority-voter turnout in jurisdictions.²⁰ And voters of all races and political parties broadly support photo identification laws.²¹ Singling out one portion of the overall administration of elections for special scrutiny—without anything but a partisan basis for doing so—opens up opportunities for partisan administration of the Voting Rights Act and opportunities for the Department of Justice to undermine confidence in elections by targeting certain states.

5. *Changes to multilingual voting materials.*

Section 203 of the Voting Rights Act already requires covered jurisdictions to make voting materials available in languages other than English. The provisions of the VRAA purport to expand that even further—not only must a covered jurisdiction provide voting materials in other languages; it must also never decrease the amount or manner in which those materials are produced. But the broad language of this provision of the VRAA also extends to jurisdictions that are *voluntarily* providing materials in other languages. If those jurisdictions make even a slight reduction in the amount printed or distributed (for example, due to low demand), that decision would be subject to preclearance by the federal government. Not only is this provision not narrowly tailored to any actual harm, it also provides plaintiffs with an ability to bring a variety of enforcement actions where they could receive attorney’s fees against jurisdictions based only on distribution of materials and not on any other voting

²⁰ See Justin Grimmer, *Comment on “Voter Identification Laws and the Suppression of Minority Votes”* (August 7, 2017), available at http://stanford.edu/~jgrimmer/comment_final.pdf; Hood, M. V., and Charles S. Bullock, *Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute*, *State Politics & Policy Quarterly* 12, no. 4 (2012): 394-414, <http://www.jstor.org/stable/24711094> (last accessed July 26, 2021).

²¹ Monmouth University Poll (June 21, 2021), available at https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062121/

practice. Section 203 enforcement actions provide enough teeth to address a jurisdiction failing to provide multilingual materials that assist voters.

6. *Changes in voting locations and opportunities.*

The sixth provision is so broad that it encompasses *every* decision made by election officials about the administration of in-person voting. Not only does it require preclearance of changes in voting locations—it also requires preclearance of changes to voting *hours*.

In Georgia, the Secretary of State plays no role in the provision of voting hours or polling locations.²² All decisions about voting locations and early voting hours, including whether and when to have Sunday voting, are entrusted to local officials.²³ Election experts recognize that polling places may close and consolidate for any number of reasons, often driven by local budgetary considerations.²⁴ Georgia also has an increasing number of voters who vote early, reducing the strain on election-day voting locations and leading some counties to reduce or consolidate polling sites.

Given the multitude of non-discriminatory reasons why voting hours or locations would change, subjecting *every* change in location and *every* reduction in hours to preclearance is not narrowly tailored to address any wider harm. Even the limitations on minority

²² *Fair Fight Action v. Raffensperger*, Case No. Case 1:18-cv-05391-SCJ, Doc. 612, slip op. at 38 (N.D. Ga. Feb. 16, 2021) (“State law explicitly assigns responsibility for determining and changing precincts and polling places to the county superintendents.”).

²³ O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-385(d).

²⁴ Matt Vasilogambros, Carrie Levine & Pratheek Rebala, *National Data Release Sheds Light On Past Polling Place Changes*, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/29/national-data-release-sheds-light-on-past-polling-place-changes> (Pew Stateline Sept. 29, 2020) (“Is this suppression,” he asked, “or is this the reality of providing voting as a government service, given the challenges of providing government services in underserved, minority communities?”)

population do not provide a sufficient reason to interfere with decisions that are entirely local, they are often not even made by the States themselves.

7. *List maintenance changes.*

The final category focuses on voter-list maintenance, which is required by the National Voter Registration Act (NVRA).²⁵ Like other provisions of the VRAA, there is no reason to add to the clear requirements of the NVRA regarding how states may conduct list maintenance. States are already subject to lawsuits under the NVRA for violations.

In addition, the messaging around list maintenance is often presented in draconian terms of “voter purges.”²⁶ But all sides agree that list maintenance is necessary.²⁷ Debates often center around how and why voters are removed.

This policy-based decision on administering voter rolls illustrates why this category is particularly inapt for coverage by preclearance. For example, Georgia has conducted list maintenance for decades for voters that have no contact with election officials. Despite constitutional claims that it was improperly purging voters, Georgia’s process was found to be consistent with the NVRA and constitutional when challenged in court.²⁸ But the VRAA would require even the slightest change to existing list-maintenance processes to be subject to federal approval and essentially give the Attorney General a veto over processes that are reserved to the states and for which options for judicial review are already available. Also, given the number of preliminary injunctions that were filed over Georgia’s process in 2019

²⁵ 52 U.S.C. § 20507(a)(4); *Bellitto v. Snipes*, 935 F.3d 1192, 1194 (11th Cir. 2019).

²⁶ See, e.g., Brennan Center for Justice, *Voter Purge Rates Remain High, Analysis Finds*, <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds> (August 1, 2019).

²⁷ *Id.* (“To be sure, there are many good reasons for a voter to be purged.”).

²⁸ *Fair Fight Action*, supra n. 22, Doc. 617 at 55-56 (“the burden imposed by Georgia’s list maintenance process is not severe.”)

and 2020,²⁹ there is no indication that the pre-enforcement review of preclearance is needed or required for this topic.

C. *The practice-based coverage in the VRAA raises the distinct possibility of politicized enforcement of preclearance.*

The prior preclearance regime focused on the evil still used in Section 3(c)'s bail-in provisions: intentional discrimination. The targeted efforts of election officials to stop minorities from registering and voting, driven by racial animus, was the basis for the “extraordinary circumstances” that made the preclearance process constitutionally valid for decades.

That focus on intentional discrimination is completely upended by the VRAA. Because the VRAA defines a “voting rights violation” as an unsuccessful application for preclearance to the Attorney General or a federal court,³⁰ States which have local governments that do not submit certain practices for preclearance can find themselves on the hook for statewide coverage under the new formula. Because jurisdictions must prove the lack of discrimination in their preclearance submission, allowing a rejection *for any reason* to constitute a voting rights violation grants significant latitude to the Attorney General to force jurisdictions under preclearance by rejecting applications for preclearance for the particular election practices it lists.

The practice-based components are so broad that they empower the Attorney General to object (or file enforcement actions against targeted sub-jurisdictions) in a way that requires an entire state to be covered by the formula outlined in other part of the VRAA. If the

²⁹ *Black Voters Matter Fund v. Raffensperger*, No. 1:20-CV-04869-SCJ, 2020 WL 7394457 (N.D. Ga. Dec. 16, 2020); *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391-SCJ, Doc. 188 (N.D. Ga. Dec. 27, 2019).

³⁰ VRAA, Sec. 4(b)(3)(C)-(D).

Subcommittee is going to proceed with the VRAA, it should at the very least require a finding of intentional discrimination or other changes that would avoid the high likelihood that politics could become a key driver in litigation under the VRAA.

D. The continued politicization of voting litigation adds to concerns about the political use of the VRAA.

The broad definition of “voting rights violations” also raises significant concerns about future political abuse of the VRA because of the current partisan use of litigation and arguments about voting practices. Ignoring the oft-quoted saying, “the plural of anecdote is not data,” today’s voting litigation is often highly organized along partisan lines, frequently combining a variety of scattered events in an attempt to utilize the federal courts to control elections in states.³¹ These types of political efforts to obtain federal-court (and federal government) oversight of state election processes will be heightened by the VRAA’s practice-based preclearance process.

Unlike the crisis situation across the covered states in 1965, complaints about election administration today tend to involve the collection of scattered stories woven into a partisan narrative that is contrary to the data on the election as a whole. For example, Georgia was accused of massive voter suppression during the 2018 elections. Claims alleged that Georgia election officials held up over 50,000 voter registration applications, closed polling places, and targeted minority voters with overly restrictive database-matching processes and have been almost entirely rejected by federal courts reviewing challenges.³² Georgia offers automated

³¹ See Brennan Center, *Voting Rights Litigation Tracker 2020 (Georgia)*, <https://www.brennancenter.org/our-work/court-cases/voting-rights-litigation-tracker-2020#Georgia> (chronicling cases brought by Democratic Party entities and affiliated groups against Georgia prior to the 2020 election).

³² *Fair Fight Action*, supra n.22, n.28 (summary judgment orders rejecting almost all of the claims).

voter registration, no-excuse absentee voting, and at least three weeks of in-person advance voting—and all of those practices were in place for the 2016 and 2018 elections.³³ The Brennan Center for Justice identified Georgia’s automated voter registration program as the most successful in the country, almost doubling the rate of voter registration.³⁴ Georgia’s recent election legislation expanded weekend voting.³⁵

Decisions regarding enforcement of the VRA—and especially which practices should be subject to preclearance—should be driven by data, not by partisan considerations.

IV. CONCLUSION.

Protecting voting rights is critically important. But the VRAA as currently written will ultimately undermine the purposes of the VRA. It includes a number of provisions that will adversely affect the ability of states and local jurisdiction to effectively operate elections, codifies a federal takeover of elections, and opens the door to the partisan use of legislation designed to protect voting rights.

The Subcommittee should strongly consider amending the legislation to address intentional discrimination, but at the very least eliminate the practice-based coverage components from the bill. Existing law covers those areas well and there are not extraordinary

³³ See History of AVR & Implementation Dates. *Brennan Center for Justice*. <https://www.brennancenter.org/analysis/history-avr-implementation-dates> (last visited July 26, 2021). See also State Laws Governing Early Voting, *National Conference of State Legislatures*, <http://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx> (last visited July 26, 2021) and Absentee and Early Voting, *National Conference of State Legislatures*, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last visited July 26, 2021).

³⁴ Morris, Kevin and Peter Dunphy, AVR Impact on State Voter Registration, *Brennan Center for Justice* (April 2019), <https://www.brennancenter.org/sites/default/files/2019-08/Report AVR Impact State Voter Registration.pdf> (last visited July 26, 2021).

³⁵ SB 202 at 59:1496-1503.

circumstances which must be required to justify the massive federal intervention of preclearance for the practices identified.