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STATEMENT OF
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"FROM SELMA TO SHELBY COUNTY: WORKING TOGETHER TO RESTORE THE PROTECTIONS OF THE VOTING RIGHTS ACT"

SENATE COMMITTEE ON THE JUDICIARY

JULY 17, 2013

Chairman Leahy, Ranking Member Grassley, and Members of the Committee: I am Wade Henderson, President and CEO of the Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit testimony for the record on the need to restore the protections of the Voting Rights Act (VRA).

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference's more than 200 national organizations represent persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

The Leadership Conference is committed to building an America that is as good as its ideals – an America that affords everyone access to quality education, housing, health care, collective bargaining rights in the workplace, economic opportunity, and financial security. The right to vote is fundamental to the attainment and preservation of each of these rights. It is essential to our democracy. Indeed, it is the language of our democracy.

The VRA has been one of the most successful pieces of civil rights legislation, and has enjoyed broad, bipartisan support every time it has come up for reauthorization. In fact, since it was passed in 1965, the last four reauthorizations of the VRA were signed into law by Republican Presidents. In each instance, members of both parties recognized the ongoing importance of protecting minority voters from discrimination and during the most recent renewal in 2006, they worked together to amass an extensive record to establish the ongoing need for these protections.

Numerous, repeated, and deeply disturbing instances of discrimination and discriminatory laws compel the need for swift bipartisan congressional action to restore the efficacy of the VRA. Although the days of poll taxes, literacy tests, and brutal physical intimidation are behind us,

efforts at disenfranchisement of voters of color continue to this day. These modern day efforts include such strategies as mandatory voter identification laws and racially-biased gerrymandering that disproportionately impact communities of color. That is why the Supreme Court's ruling in *Shelby County v. Holder* was devastating not only to communities who have been protected by Section 5, but also to our nation's democratic process. The Court undermined Congressional authority and wrongly gutted one of the most important protections the VRA contains. By striking down Section 4(b) of the Act—the coverage formula—the Court effectively removed the ability of Section 5 to do its job. Section 2 alone is insufficient to protect the rights of minorities and other marginalized groups. Accordingly, we now must look to Congress to renew its efforts to ensure that all voters are able to participate in the democratic process.

I. Introduction

Voting changes such as strategic redistricting to minimize the influence of black and Latino voters, shortened early voting periods, limits on poll worker assistance, proof of citizenship requirements, and restrictions on community-based registration, disproportionately impact communities of color and are examples of tools used to abridge the right to vote today.

The VRA—specifically Section 5 and its coverage formula under Section 4(b) – was able to keep many of these changes at bay, but the Supreme Court's recent holding in *Shelby County* has put at risk much of what we have accomplished over the course of the past half-century. Notably, in *Shelby County*, the Supreme Court did not invalidate Section 5's preclearance requirements; however, the majority did hold unconstitutional Section 4(b).[1] Without a formula by which to identify jurisdictions where Section 5 will be applied, the protections of that section will go unenforced.

According to the Court, Section 4(b) exceeded Congress' power to enforce the Fourteenth and Fifteenth Amendments because the formula was based on old data that was not rationally related to the present day.[2] The majority took note of the great improvement in voter registration racial parity between 1965 and 2004. Despite recognizing that these changes were "in large part *because* of the Voting Rights Act," it used them as a basis upon which to weaken the Act.[3] In addition, by focusing solely on statistics, the Court ignored an extensive record compiled by Congress, including dozens of deeply disturbing incidents indicating very real discrimination and the very real need for the VRA. Justice Ginsburg's dissent supplies a long list of such examples, including cases in which counties attempted to purge voter rolls of Black voters, suspend or postpone elections in which Black candidates were expected to win, and selectively prosecute Black candidates.[4]

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[1] *See Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612, *24 (2013).
[2] *Id.* at *17.
[3] *Id.* at *15.
[4] *Id.* at *15-17 (Ginsburg, J., dissenting).

It was only through Section 5 that these efforts were stopped before they could taint the electoral process; other provisions, such as Section 2, which the Court did not strike down, would not have been effective in preventing racial discrimination at the outset. Although Section 2 provides some protections for voters throughout the country against discrimination, these cases are long, expensive, and complex. In some instances, it can take years before a remedy is provided, well after the law has been implemented and has had a negative impact on voters. By contrast, Section 5's pre-clearance provision stops discriminatory voting laws before they can take effect.

In applying Section 5 to areas of the country with a history of discrimination, using the formula prescribed in Section 4(b), Congress ensured that its strongest remedy was reserved for the places it was most needed. As Justice Ginsburg wrote, "just as buildings in California have a greater need to be earthquake proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination."[5]

II. The Importance of the VRA – Section 4(b) and 5

In 2010, state legislators across the country introduced and passed an unprecedented number of voting measures that threatened our democracy by suppressing voter participation. Photo ID requirements, shortened early voting periods, and community-based registration, among other barriers, have been estimated to disenfranchise more than five million Americans, and disproportionately impact communities of color.[6]

In 2011, the Department of Justice blocked South Carolina's strict voter ID law, which required that any person wishing to vote present a government-issued ID In response to Section 5 litigation, South Carolina revised its law to create exemptions and reduce its discriminatory impact. Without Section 5, thousands of people of color would have continued to be disenfranchised. The law had already prevented many voters from exercising their right to vote – including 82-year-old Hanna White, who never had a birth certificate, and was therefore unable to get a state-issued ID.

Likewise, during Texas' redistricting process in 2011, lawmakers sought to draw political boundaries that discriminated against Latino and African-American voters. Over the course of the past decade, Texas' population has grown by 4.2 million people, 89 percent of which was the result of an increase in its racial minority population. Despite this, the Texas legislature drew the boundaries of its congressional districts in such a way as to minimize the number of seats in which Latinos or African Americans could elect a candidate of their choice. Thanks to Section 5, however, a district court denied preclearance to the plan, and the state's discriminatory plan was not used in the 2012 election cycle.

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[5] *Id.* at *21 (Ginsburg, J., dissenting).
[6] Wendy R. Weiser and Lawrence Norden, *Voting Law Changes in 2012* (Brennan Center for Justice at New York University School of Law 2012). *Available at*: http://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/Brennan_Voting_Law_V10.pdf.

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As a result of the Supreme Court decision in *Shelby County*, however, the voting rights of millions of minority voters are in danger. Any doubt that Latinos, African Americans, and other groups would face disenfranchisement without Section 5 of the VRA has been laid to rest as numerous state and local governments have already begun implementing policies that would have otherwise not been allowed to take effect.

In addition to promulgating new legislation, since the decision in *Shelby County*, some states previously covered under Section 4(b) have announced their intent to enforce legislation previously blocked by the Justice Department. For example, in the lead-up to the 2012 election, the state of Texas passed the most severe and discriminatory voter ID law in the country. The law would have placed a significant burden on all voters, and in particular, racial minorities, by requiring that any person wishing to vote produce one of three types of government-issued photo identification. While a handgun license would have been an acceptable form of identification under the law, neither a college ID nor a state employee ID would have been accepted. All told, the law would have precluded 795,000 voters from participating in the election. However, Texas was covered under Section 4(b) and thus subject to pre-clearance, allowing the Justice Department to block the law's implementation and thereby preventing tens of thousands of Latino and African-American voters from being disenfranchised in the 2012 election. Immediately after the Supreme Court issued its decision in *Shelby County*, however, Texas officials announced that they would begin strictly enforcing that very law.[7]

Texas is the first example of how the striking down of the coverage formula under Section 4(b) has not only impacted the ability to use Section 5 as a tool to stop the implementation of discriminatory voting legislation, but has also eliminated the deterrent effect that it had on state and local governments. Thus, we can expect even more efforts than before to prevent underrepresented groups from exercising their right to vote.[8]

III. Conclusion

The VRA has been incredibly successful at protecting minority voters from discrimination, in large part because of the pre-clearance provision in Section 5.[9] For decades, Section 4(b) and Section 5 of the VRA have been vital to combating some of the most egregious violations of the right to vote. In large measure as a result of those sections, in most states in the South, African Americans and Whites have reached parity in voter registration. The Supreme Court's decision in *Shelby County* has now put at risk the very progress it used to justify its opinion.

Without congressional action, decades of progress in combating racial discrimination in our electoral system is now at risk. Time and again, Congress has reauthorized the VRA on a

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[7] Matt Vasilgambros, *That Was Quick: Texas Moves Forward With Voter ID Law After Supreme Court Ruling*, THE NATIONAL JOURNAL, (June 25, 2013, 12:59 PM), http://www.nationaljournal.com/politics/that-was-quick-texas-moves-forward-with-voter-id-law-after-supreme-court-ruling-20130625

[8] Myrna Perez and Vishal Agraharkar, *If Section 5 Falls: New Voting Implications* (Brennan Center for Justice at New York University School of Law 2013). *Available at*: http://www.scribd.com/doc/147170166/If-Section-5-Falls-New-Voting-Implications.

[9] *Shelby Cnty*, 113 S. Ct.. at *3 (Ginsburg, J., dissenting).

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bipartisan basis – most recently in 2006. At that time, both parties worked together to thoroughly investigate the use of and need for the VRA. The two houses of Congress together held a total of 21 hearings on the VRA and received numerous investigative reports and other documentation. In total, the legislative record filled more than 15,000 pages.[10] This is an effort this Congress must reproduce in order to protect one of the most basic rights in a democracy – the right to vote.

We look forward to working with members of both parties to achieve this result. Thank you for your leadership on this crucial issue.

[10] *Id.* at *7 (Ginsburg, J., dissenting).