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TESTIMONY OF

THE CENTER FOR LAW AND SOCIAL JUSTICE

Before

New York State Senate Standing Committee on Elections

on

New York State Voting Rights Act

March 3, 2020

Prepared by:

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My name is Lurie Daniel Favors and I serve as the Interim Executive Director of the Center for Law and Social Justice. I am a civil rights attorney with 15 years of experience advocating for the protection of the civil rights of Black New Yorkers. The Center for Law and Social Justice (CLSJ) is a unit of Medgar Evers College of The City University of New York. Founded in 1986 by means of a New York State legislative grant, the mission of CLSJ is to provide quality advocacy, conduct research, and advocacy training services to people of African descent and the disenfranchised. CLSJ seeks to accomplish its mission by conducting research, and initiating public policy advocacy projects and litigation on behalf of community organizations and groups of people of African descent and the disenfranchised which promote civil and human rights, and national and international understanding. Because of its unique combination of advocacy services from a community-based perspective, CLSJ is a focal point for progressive activity.

The Historic Struggle for Voting Rights in the United States of America

The legacy of voting rights in America is one that is intimately bound to the American history of race and racial oppression. It is interwoven into the fabric of this nation. The Voting Rights Act of 1965 (1965 VRA) is often upheld as the beginning of voting rights for Americans of African descent and Americans of color. However, this common wisdom is belied by the truth. The 15th Amendment, which was adopted as part of the U.S. Constitution in 1870, was the first time the federal government opened the franchise to non-white voters.

The 15th Amendment reads: “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.”¹

Despite the 15th Amendment’s clear and unambiguous language granting people of African descent the right to vote, upon its adoption, nearly every single state, municipality and political subdivision engaged in rampant racially motivated voter suppression, vote dilution and vote denial. This history of voter disenfranchisement includes actions committed within the political subdivisions of the State of New York.

¹ 15th Amendment

Through the use of literacy tests, poll taxes, violent lynching campaigns and other forms of physical torture, murder and the destruction of entire Black communities, people of African descent were effectively denied the right to vote en masse for nearly 100 years after the adoption of the 15th Amendment. It wasn't until the passage of the 1965 VRA that voters of African descent were able to begin to fully access the right to engage in the electoral process and exercise the right to vote.

The 1965 Voting Rights Act: Changing the Tide of Voter Discrimination

The 1965 VRA was able to accomplish what the 15th Amendment could not: it opened the doors of electoral engagement to millions of Americans of African descent and millions more of Americans of color. The 1965 VRA worked to eliminate the obstacles that prevented Americans of color from participating in federal, state and local elections. It proved to be one of the only tools available to equal the playing field by fully addressing the nearly 100 years of post enslavement voter suppression.

Several key provisions in the VRA played vital roles in protecting the right to vote for racial, ethnic and language minorities. Section 2 of the 1965 VRA created a national private right of action to combat racial discrimination in voting, regardless of the state or municipality in which one lived.² It prohibits voting practices that discriminate against members of certain language minorities, or on the basis of race or color. Section 5 of the 1965 VRA, also known as the preclearance provision, was one of the most powerful provisions of the 1965 VRA, until its effectiveness was gutted by the Supreme Court in the now infamous *Shelby County v. Holder*³ decision. Under the preclearance powers of Section 5, states and political subdivisions that had a history of voting discrimination were required to preclear changes to any of their electoral practices either with the U.S. Department of Justice or with a federal court in Washington, D.C.

The 1965 VRA also includes protections against discrimination on the basis of language: Section 4(e)⁴ and Section 203⁵ require states and political subdivisions to provide language assistance

² 52 U.S.C. § 10301

³ See *Shelby County v. Holder*, 133 S. Ct. 2612 (2013)

⁴ 52 U.S.C. § 10303(e).

⁵ 52 U.S.C. § 10503.

for voters who have limited proficiency in the English language. Further, in Section 11(b) we find a blanket protection for all voters from intimidation regardless of their language minority status, their ethnicity or their race.⁶ Without the protections afforded by this pivotal legislation, voters of African descent, voters of color and voters who are members of language minorities would continue to suffer under the nation's legacy of racially and ethnically motivated voter suppression.

The 1965 VRA's successful reduction of the incidences of voter suppression was unprecedented. In response, those who were committed to re-erecting those obstacles became ever more sophisticated in their attempts to do so. Having more than 100 years of practice at racial discrimination, it is no surprise that they were highly effective. Congress initially responded to the increasingly nuanced approaches to voter suppression by amending the 1965 VRA to prohibit voting laws and practices that had both a discriminatory purpose and a discriminatory effect. These amendments ensured that regardless of whether or not the voting law or practice was discriminatory by design or as a result of unintended consequences, that American minorities would be protected in their exercise of the electoral franchise.

However, the expansion of voter protections was ultimately limited by increasingly restrictive judicial interpretations. As noted *supra*, in *Shelby County v. Holder*, the heart of the 1965 VRA was gutted. The Court made it increasingly difficult for victims of voter suppression to meet the requirements for proving liability under Section 2 and rendered the immense protections provided by Section 5 essentially meaningless. The sheer vastness of voter disenfranchisement that occurred in the post *Shelby* world has been breathtaking in scope. Based on a combination of voter suppression efforts in Republican lead legislatures around the country, the *Shelby* ruling and the judiciary's consistent narrowing of the 1965 VRA's effectiveness, "states with the longest histories of discrimination no longer had to approve their voting changes with the federal government."⁷

⁶ 52 U.S.C. § 10101(b)

⁷ Terry Gross, *Republican Voter Suppression Efforts are Targeting Minorities, Journalist Says*, Oct. 23, 2018, available at <https://www.npr.org/2018/10/23/659784277/republican-voter-suppression-efforts-are-targeting-minorities-journalist-says>.

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The result has been rampant voter disenfranchisement and the suppression of the franchise in ways that mirror the electoral landscape before the 1965 VRA was passed into law. Since the 2010 midterm election, legislatures in 24 states implemented restrictions on voting and a significant portion of those restrictions target voters from vulnerable populations.⁸ According to a poll conducted in 2018, "15% of black respondents and 14% of Hispanic respondents said that they had trouble finding polling places on Election Day, versus 5% of white respondents."⁹ Per the ACLU, voter-suppression efforts which include everything from gerrymandering, felony disenfranchisement and voter ID laws, "...stifle the voices of marginalized groups... it's no coincidence that across the country one in 13 black Americans cannot vote due to disenfranchisement laws."¹⁰

The VRA Implementation in New York State

Due to their own pervasive histories of voter discrimination, three counties in New York City were also covered by the preclearance powers of Section 5: New York, Kings and Bronx counties.¹¹ "New York's history was replete with numerous examples where the color of one's skin, the foreignness of one's ancestry, and the difficulty with which one brokered the English language all worked to deny the franchise of its citizens."¹²

Section 5 isn't the only provision of the 1965 VRA applied to political subdivisions within the State of New York. As a result of its history of voter discrimination against language minorities,

⁸ Vann R. Newkirk II, *Voter Suppression is Warping Democracy*, The Atlantic, July 17, 2018, available at <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>

⁹ Id.

¹⁰ Id.

¹¹ Juan Cartagena, *Voting Rights in New York City: 1982 – 2006, A Report of RenewtheVRA.org*, 17 S. Cal. L. & Social Justice 501, 502 (2008).

¹² Id. at 502

parts of New York State are also covered by the 1965 VRA's language provisions in Bronx, Kings, New York, Nassau, Queens, Suffolk and Westchester counties.¹³

Despite these advancements, and the recent voter reforms passed into law, New York remains a hotbed of voter suppression efforts. Albany County, for example, has a legislative redistricting plan that has been subjected to litigation surrounding racial vote dilution three times over the course of the past 25 years.¹⁴ Notably, Albany County is not subject to the same preclearance provisions that govern elections in New York, Kings and Bronx counties. If it were, plaintiffs in Albany County would not have had to endure the burden of extensive litigation to protect their electoral franchise. As opposed to placing the burden on the victims of voter disenfranchisement to protect their rights, a state based pre clearance provision would have required the county to prove that their redistricting plan would not disenfranchise minority voters.

Albany County is not alone. One finds examples of successful racial vote dilution cases in other New York counties (i.e. the Village of Port Chester in Westchester County) where at-large elections coupled with racial polarization, deny voters in minority communities the chance to elect candidates of their own choosing.¹⁵ The risk of minority vote dilution in the State of New York is not contained at the county level. Indeed, a sizeable majority of towns, villages and school districts in New York use at-large elections. At-large elections are highly susceptible to the harmful dilution of minority voting strength.¹⁶

In addition to harmful vote dilution, voter suppression is also a significant source of voter disenfranchisement in New York – even with the newly enacted slate of voter reforms. As recently as 2019, Rensselaer County created a plan for early voting that harkened back to classic minority voter suppression tactics. Their plan made it virtually impossible for minority voters to take advantage of early voting. The Board of Elections for the county only designated

¹³ *Id.*

¹⁴ *See e.g. Pope v. County of Albany*, 94 F.Supp.3d 302, 351 (N.D.N.Y. 2015).

¹⁵ *See, United States v. Village of Port Chester*, 704 F.Supp.2d 411, 447 (E.D.N.Y. 2010)

¹⁶ Richard L. Engstrom and Michael D. McDonald, "The Effects of At-Large Versus District Elections on Racial Representation in U.S. Municipalities." *ELECTORAL LAWS AND THEIR POLITICAL CONSEQUENCES*, ed. Bernard Grofman and Arend Lijphart (1986); Jessica Trounstein and Melody E. Valdini, *The Context Matters: The effects of Single Member Versus At-Large Districts on City Council Diversity*, 52 *American Journal of Political Science* 554-569 (2008).

two early voting sites and neither of them were within the City of Troy. The City of Troy is the largest municipality in the county and nearly 82% of the county's residents of African descent and more than 70% of its non-white population reside there.¹⁷

Instead, the two location selected for early voting were in sparsely populated areas of the County which were not easily accessible by public transportation. In response to public outcry, Rensselaer Count and its Board of Elections turned a deaf ear. The resultant costs of litigation exceeded the available resources and as a result, the non-white residents of the County were effectively excluded from participation in the early voting process.

New York State Needs a State Voting Rights Act

During an era when racially motivated voter suppression and vote dilution are rising across the country generally – and in New York State in particular – New Yorkers need the New York State Voting Rights Act (NYSVRA). The NYSVRA would ensure that New Yorkers are protected from the increasing trends of voter suppression and rampant voter disenfranchisement that are sweeping across the nation. While the 1965 VRA provided certain protections to New York voters, its limited reach did not provide the level of protections that the NYSVRA proffers.

While the proposed legislation could be strengthened, the Center for Law and Social Justice supports its efforts to implement and strengthen protections for New York voters. In addition to providing tools to eradicate vote dilution and voter suppression, the NYSVRA also provides a framework for judicial interpretation that centers the needs of voters. The NYSVRA contains data collection provisions that ensure transparency and an opportunity to improve language assistance for voter who have limited English proficiency. Of particular importance is the inclusion of the preclearance framework. This ensures that the burden of protecting the vote lies not on the voters – but on those who have a pattern of seeking to prevent the voters from exercising themselves in the voting booth.

Conclusion

¹⁷ U.S. Dept of Justice, Language Minority Citizens, <https://www.justice.gov/language-minority-citizens>.

New York State legislators recently enacted a slate of dynamic voter reforms. The passage of those reforms was an historic event. However, without a New York State Voting Rights Act, those reforms will be subject to the same dangerous winds of voter repression sweeping across the nation. It is imperative that New York State act to protect the franchise of all of its voters. We call on our legislative bodies to pass the NYSVRA into law so that New York voters are both full protected and fully empowered to engage in the electoral process.