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September 7, 2017

The Honorable Bob Goodlatte
Chairman
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

via email and hand delivery

Re: *Request for a Hearing on Restoration of the Voting Rights Act of 1965*

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF)—an organization that since its founding in 1940 has worked to secure and protect voting rights for African-American and other communities of color—I urge you to hold a Judiciary Committee hearing on legislation to restore the full protections of the Voting Rights Act of 1965 (VRA). Although in the past you have stated your opposition to such a hearing, you have also said you are “willing to look at any new evidence of discrimination.”¹ I encourage you to reconsider your opposition in light of recent developments and events, and schedule a hearing as soon as practicable.

Evidence of widespread discrimination against African American voters is overwhelming and growing. The need for legislative action is urgent. In the last month alone, there have been four federal court decisions finding that states and localities intentionally discriminated against voters of color. Last year two federal appellate courts—the Fourth and Fifth Circuit Courts of Appeals—struck down discriminatory voter ID laws, and the Fourth Circuit found that North Carolina enacted its law *for the purpose* of discriminating against African American voters. Meanwhile, the Election Integrity Commission created by President Trump has garnered widespread condemnation and the legitimate concern that it is designed to provide a platform for voter suppression. The Commission is the subject of seven separate pending lawsuits.²

¹ Alicia Petska & Tiffany Holland, *Goodlatte: Voting Rights Act strong without amendment*, THE NEWS & ADVOCATE (June 23, 2015), http://www.newsadvance.com/goodlatte-voting-rights-act-strong-without-amendment/article_b1d5bec5-9241-5aa6-ad0f-54db10e6a05f.html.

² LDF has filed a lawsuit challenging the Commission and alleging that (a) it was created with the intent to discriminate in violation of the Constitution; (b) its overwhelmingly skewed composition and pre-determined findings violate the Federal Advisory Committee Act; and (c) the president exceeded his executive authority in forming a commission to investigate individual or groups of voters. See Am. Compl., *NAACP Legal Defense & Educational Fund, Inc., et al. v. Trump*, No. 17-cv-05427 (Doc. 37-1) (Aug. 30, 2017), http://www.naacpldf.org/files/about-us/Amended%20Complaint%208.30.2017_0.pdf.

The history of our country is marked by shameful periods of overt efforts to deny racial minorities the fundamental right to vote—a right the Supreme Court in 1886 declared to be “preservative of all rights.”³ Indeed, the intimidation and disenfranchisement of Black voters has always been a central feature of American white supremacy. For decades, the KKK and other racial terrorist groups, with which state and local governments were often shamefully allied, systematically denied African Americans the right to vote. They used poll taxes, literacy tests, and byzantine registration requirements. They used absurd gimmicks like “guess the number of jelly beans in a jar.” The Voting Rights Act was enacted precisely to challenge these efforts, and to provide a means to eliminate “ingenious” voter suppression efforts that might be created in the future.

For decades, violence and intimidation by white supremacist groups were also routine methods of voter suppression. When white supremacists marched in Charlottesville and such violence appeared again, you rightly responded that the “racist and anti-Semitic views embraced by white supremacists have no place in our nation and do not reflect core American values of equality and religious freedom.”⁴

But to stand against white supremacy requires more than mere words. It requires a commitment to protecting the rights of racial minorities to participate fully and equally in the political process—a guarantee explicitly set forth in the Voting Rights Act. Any threat to the exercise of this right must be confronted and challenged, particularly by Members of Congress and other government officials. Congress must ensure that the Voting Rights Act and other voter participation statutes effectively protect against discrimination in voting.

Many regard the Voting Rights Act of 1965, enacted in the wake of bloodshed on the Edmund Pettus Bridge in Selma, as the crowning achievement of the Civil Rights Movement. For nearly 50 years, it proved to be the most effective civil rights law in our nation’s history. The key to its strength was the “preclearance” requirement set forth in Section 5. Section 5 required certain jurisdictions with a history of discrimination to preclear any voting changes with either the Justice Department or a federal court *before* the changes could take effect. This ensured that discriminatory voting restrictions were blocked before they could harm voters, and put the burden of proof, time, and expense on the state or locality to prove that a new voting law would not discriminate against minority voters.

In 2013, the Supreme Court struck a blow to voter protection when it decided *Shelby County, Ala. v. Holder* and struck down the coverage formula used to determine which states fell under Section 5’s preclearance requirement.⁵ We disagree

³ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁴ <https://goodlatte.house.gov/news/documentsingle.aspx?DocumentID=951>.

⁵ 133 S. Ct. 2612 (2013).

with the Court’s decision, but we do not request a hearing to relitigate that case. Instead, we seek an opportunity to explore the current state of voting discrimination, and to encourage a congressional effort to restore the Voting Rights Act to protect against contemporary, ongoing, and harmful voter suppression efforts. This includes the adoption of a preclearance formula based upon existing harms and contemporary conditions.

Your adamant refusal to hold a hearing to address voter suppression is an abdication of your obligation and that of Congress to protect the right of every citizen to vote. We note that a number of your colleagues over several years have repeatedly introduced bipartisan and bicameral bills to revive the VRA’s preclearance protection, including the Voting Rights Amendment Act, co-sponsored by Republican and Judiciary Committee Member Jim Sensenbrenner, and the Voting Rights Advancement Act. Both bills are ripe for consideration by your Committee. Yet you insist there is no need to restore the VRA,⁶ while also promising to “continue to monitor this very important issue[.]”⁷ That position is no longer tenable, if it ever was.

Since *Shelby County*, there have been at least 10 federal court decisions finding that states or localities *intentionally* discriminated against African Americans and other voters of color—and that’s on top of voting restrictions struck down solely for their disparate impact on racial minorities. In July 2016, for example, the Fourth Circuit struck down North Carolina’s package of voting restrictions, which included a strict photo ID requirement, after finding that they “target African Americans with almost surgical precision” and “impose cures for problems that did not exist.”⁸ Last month, a district court ruled for the third time that Texas enacted its voter ID law—the most burdensome in the country—with the purpose of discriminating against Black and Latino voters.⁹ This followed the court’s initial finding that the law “constitutes an unconstitutional poll tax.”¹⁰ Indeed, while courts have found intentional discrimination elsewhere, including in Wisconsin and Louisiana,¹¹ Texas has been the epicenter of voting discrimination in 2017:

⁶ Zachary Roth, *Top GOPer confirms Congress won’t strengthen Voting Rights Act*, MSNBC (Jan. 14, 2015), <http://www.msnbc.com/msnbc/top-goper-confirms-congress-wont-strengthen-voting-rights-act>.

⁷ Alicia Petska, *NAACP sit-in at Goodlatte’s Roanoke office ends with 2 arrests*, THE ROANOKE TIMES (Aug. 8, 2016), http://www.roanoke.com/news/politics/naACP-sit-in-at-goodlatte-s-roanoke-office-ends-with/article_f3001fca-641e-5c91-9bfe-e3e2c8e50d37.html.

⁸ *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

⁹ *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017).

¹⁰ *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014), *aff’d in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh’g en banc*, 830 F.3d 216 (5th Cir. 2016), and *aff’d in part, vacated in part, rev’d in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

¹¹ *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Terrebonne Parish NAACP v. Jindal*, No. CV 14-0069, 2017 WL 3574878 (M.D. La. Aug. 17, 2017).

- On August 24, a federal three-judge panel ruled that Texas’ 2013 state House redistricting plan was unconstitutional in four counties. The court concluded that Texas intentionally diluted minority voting strength and racially gerrymandered districts in Bell, Tarrant, and Nueces counties, and that Texas intentionally diluted Latino voting strength in Dallas County.¹²
- On August 16, the Fifth Circuit Court of Appeals ruled that Texas’ restrictions on assistance to non-English-speaking voters violated the Voting Rights Act.¹³ Texas required interpreters to be registered voters in the same county as the voters to whom they provide assistance. This conflicted with the VRA’s guarantee that “any voter who requires assistance to vote by reason of . . . inability to read or write may be given assistance by a person of the voter’s choice[.]”¹⁴
- On August 15, a three-judge federal court ruled that Texas’ 2013 congressional redistricting maps were enacted with “racially discriminatory intent” against Latino and African American voters.¹⁵
- On January 6, a federal judge ruled that the City of Pasadena, Texas implemented a voting plan intended to dilute Latino voting power: “Their right to vote is simply not the same right to vote as that of those living in a favored part of the [jurisdiction]. In Pasadena, Texas, Latino voters under the current . . . plan . . . do not have the same right to vote as their Anglo neighbors.”¹⁶

After these decisions, there is no denying that intentional race discrimination in voting is a pervasive and worsening problem that warrants swift legislative action. These cases also show how the VRA’s remaining protections are inadequate. Even when courts ultimately find unlawful discrimination and order relief, that typically comes only after enormous time and expense, and after the offending law has been in place for one or more election cycles. In Texas, for example, LDF has spent more than six years challenging the state’s voter ID law, while the state has spent at least \$3.5 million defending the discriminatory and unconstitutional policy. With the litigation ongoing, the law remained in effect, harming Black and Latino voters, during the 2014 elections.

It is against this backdrop of voter discrimination that Trump convened the so-called “Presidential Advisory Commission on Election Integrity.” As described in

¹² *Perez v. Abbott*, No. 11-cv-360, 2017 WL 3668115 (W.D. Tex. Aug. 24, 2017).

¹³ *OCA-Greater Houston v. Texas*, No. 16-51126, 2017 WL 3498914 (5th Cir. Aug. 16, 2017).

¹⁴ 52 U.S.C. § 10508.

¹⁵ *Perez v. Abbott*, No. 11-cv-360, 2017 WL 3495922 (W.D. Tex. Aug. 15, 2017).

¹⁶ *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 730 (S.D. Tex. 2017) (internal quotation marks omitted).

LDF's lawsuit challenging the Commission, the panel is designed to support Trump's baseless claims of widespread voter fraud and suppress the votes of Black and Latino voters.¹⁷ The pre-baked Commission is stacked with members, like Kansas Secretary of State Kris Kobach, who have long histories of peddling the pernicious voter fraud myth and supporting discriminatory and unlawful voting policies.¹⁸ Even in its early stages, the Commission has had a chilling effect on voter registration with its invasive and sweeping request for state election officials to hand over personal voter data.¹⁹ The existence of this Commission only enhances the need for a fully restored Voting Rights Act that can stop discriminatory policies before they harm voters.

Chairman Goodlatte, you have pledged that you oppose white supremacy and that you will defend the "core American value[] of equality[.]" You have said that you support equal voting rights and that you would "monitor" the need for a restored VRA in light of new evidence of discrimination. If those assurances mean anything, then it is time to act on them. The growing list of judicial findings of discrimination against African-American voters reveal in painstaking detail the present-day fight to access the ballot against a rising tide of white nationalism. A hearing on pending legislation to restore the Voting Rights Act is one modest but essential way to respond, and we urge you to call a hearing this session of Congress.

Sincerely,



Sherrilyn A. Ifill
President & Director Counsel

¹⁷ See *supra* n.2; LDF, *LatinoJustice and MALDEF Join LDF and The Ordinary People Society in Lawsuit Challenging the President's Election Integrity Commission* (Aug. 31, 2017), <http://www.naacpldf.org/press-release/latinojustice-and-maldef-join-ldf-and-ordinary-people-society-lawsuit-challenging-eic>.

¹⁸ See Ari Berman, *The Man Behind Trump's Voter Fraud Obsession*, THE NEW YORK TIMES MAGAZINE (June 13, 2017), <https://www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html?r=0>.

¹⁹ Dylan Wells & Saisha Talwar, *Some voters unregistering after Trump administration's data requests* (July 14, 2017), <http://abcnews.go.com/Politics/voters-registering-trump-administrations-data-requests/story?id=48578555>.