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LDF Media
212-965-2200 / media@naacpldf.org

LDF Attorneys to Testify Before Congress in Support of Voting Rights Protections

Securing, advancing, and protecting the rights of Black voters and other communities of color has been a cornerstone of LDF's work since it was founded in 1940 by Thurgood Marshall. LDF secured its first voting rights victory at the Supreme Court in 1944 in *Smith v. Allwright,* when it successfully challenged a Texas state law that permitted political parties to bar African Americans from voting in primaries among other exclusionary tactics. In recent years, this mission has become more critical than ever, especially after certain provisions of the Voting Rights Act (VRA) were dismantled by the Supreme Court in *Shelby v. Holder* in 2013. As part of LDF's ongoing work to protect voting rights in the wake of the Supreme Court's decision, two esteemed members of the organization's team testified before congressional committees on Oct. 17 to share their expertise in this arena – and to encourage Congress to take action.

Janai Nelson, Associate Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF), testified before the United States House of Representatives Committee on the Judiciary's Subcommittee on the Constitution, Civil Rights, and the Voting Rights Act. The hearing, "Legislative Proposals to Strengthen the Voting Rights Act," focuses on the urgent need for and constitutionality of the Voting Rights Advancement Act (VRAA).

Deuel Ross, Senior Counsel at LDF, testified before the United States House of Representatives Committee on House Administration's Subcommittee on Elections. The hearing, "Voting Rights and Election Administration in America" focuses on voting rights litigation and election administration advocacy.

Nelson's testimony underscored the constitutionality of the proposed practice-based preclearance provision of the VRAA. The VRAA's coverage formula, which would apply on a rolling basis, and the practice-based preclearance provision are designed to replace the now-defunct coverage formula of the VRA, which was gutted in *Shelby v. Holder*. Sections 4 and 5 preclearance of the VRA determined which jurisdictions, with a history and ongoing record of voting discrimination, were subject to oversight by the federal government when changing voting

practices. The *Shelby v. Holder* decision did not find preclearance inherently unconstitutional. Rather, the Court urged any preclearance provision be measured and specifically tailored to the modern needs and climate of the nation.

The newly-proposed practice-based preclearance provision of the VRAA "requires federal preclearance of voting practices that are known to correlate with racial or language-based discrimination," Nelson said in her written testimony. Notably, coverage under the practice-based preclearance formula is only triggered if a state chooses to adopt one of six voting practices that have been deemed to have discriminatory impact.

"Accordingly, practice-based preclearance is constitutional specifically because its emphasis is decidedly on the practices themselves and not the jurisdictional actor," Nelson testified. "In this regard, states remain 'equal in power, dignity and authority' per the *Shelby County* mandate."

Moreover, Nelson emphasized that it is well within Congress' "constitutional power to require that practices known to most likely result in racial or language discrimination — practices with entrenched and virulent histories of voting discrimination — can be subject to preclearance." This power has been established through years of legal precedent. Therefore, because it has no geographic target and because it falls well within Congress' authority, practice-based preclearance is a "reasonable, flexible response to the standards articulated by the Supreme Court" for a Voting Rights Act preclearance process, Nelson asserted. LDF calls on Congress to use its authority under the Constitution to strengthen the Voting Rights Act and enact this new preclearance provision.

Ross' testimony highlighted the negative implications of the elimination of preclearance review stemming from *Shelby v. Holder* – and similarly encouraged Congress to restore federal preclearance through provisions proposed in the VRAA, along with other measures. "The Shelby County decision has had a devastating effect on citizens of color's right to vote … The beauty and innovative genius of Section 5 preclearance review was that it allowed federal authorities to stop voting discrimination before it inevitably harmed voters in a variety of federal, state or local elections," Ross said in his written testimony. "That is why voters of color in states with a demonstrated pattern of discrimination needed — and still need — laws to safeguard their fundamental right to vote. For nearly 50 years, members of Congress and Presidents from both parties have supported Section 5 and other legislation to address discrimination in voting."

Beyond advocating for a restoration of preclearance review, Ross also called on Congress to strengthen Section 2 of the Voting Rights Act, a still-active provision that allows individuals or the Department of Justice to challenge discriminatory voting practices in court. LDF has successfully brought challenges under Section 2. However, litigating case under Section 2 can be prohibitively expensive and take years to resolve while the practices in question would have been otherwise blocked

by Section 5. To further strengthen the VRA, Ross also encouraged Congress to provide additional state funding to update old voting machines and train poll workers -- and to pass laws that make voting more accessible, particularly for Black voters and other communities of color.

"The undermining of the VRA by the *Shelby County* decision has made our democracy vulnerable and allowed for voter suppression to go unchecked," Ross said. "As we prepare for state, federal and local elections in 2020, it is critical that Congress act to restore federal preclearance, using provisions such as those proposed in the Voting Rights Advancement Act or Voting Rights Amendment Act, support funding for local officials, and enact laws that make voting easier rather than harder."

You can read Janai Nelson's full written testimony **here** and Deuel Ross' full written testimony **here.**

For more information about challenges voters encountered during the 2018 elections, view LDF's reports, "Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections" and "Democracy Diminished: State and Locale Threats to Voting Post-*Shelby County, Alabama v. Holder*.

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

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