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July 17, 2013

The Honorable Patrick Leahy
Chair, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

We strongly welcome the Senate Judiciary Committee hearings on the aftermath of the Supreme Court's June 25 *Shelby County v. Holder* decision, which we believe is a major setback to the progress we have made in civil rights over the last 50 years. We appreciate the opportunity to provide the views of the Anti-Defamation League (ADL), and would ask that this statement be included as part of the hearings record.

ADL is a leading civil rights organization that has been working to secure justice and fair treatment for all since its founding 100 years ago. Recognizing the Voting Rights Act of 1965 (VRA) as one of the most important and most effective pieces of civil rights legislation ever passed, ADL has strongly supported the VRA and its extensions since its passage almost 50 years ago.

The success of the VRA is undeniable. It has helped to eliminate discriminatory barriers to full civic participation for millions of Americans, and has sparked significant advances for equal political participation at all levels of government. In the years immediately after passage of the VRA, African American voter registration increased dramatically, and the number of African Americans elected to public office increased fivefold in five years.[1] Today there are more than 9,000 African American elected officials,[2] including the first African American president. Many of these elected officials are from jurisdictions that were protected by the preclearance provisions of Section 5 of the VRA.[3] Surely, the United States would not have made such progress without the VRA.

The success of the VRA in improving minority voter participation and increasing the number of African American elected officials is not a demonstration that the protections of the VRA are no longer necessary. To the contrary, extensive Congressional testimony from 2006 before passage of the Act's latest extension and subsequent evidence show that Section 5's preclearance requirements continue to serve as a crucial safeguard for the right to vote for millions of citizens. In 2006 Congress found that "the hundreds of objections interposed [and] requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by [Section 5]" evidenced continued discrimination,[4] and that many of the laws blocked by the Department of Justice pursuant to Section 5 closely resembled attempts to disenfranchise voters before passage of the VRA. Proposed laws blocked by Section 5 have included discriminatory redistricting plans, polling place relocations, biased annexations and de-annexations, and changing

[1] See H.R. Rep. No. 109-478, at 18, 130 (2006), reprinted in 2006 U.S.C.C.A.N. 618.
[2] *Id.* at 18.
[3] *See* Chandler Davidson & Bernard Grofman, The Voting Rights Act and the Second Reconstruction, in Quiet
Revolution in the South 378, 381-86 (Chandler Davidson & Bernard Grofman eds., 1993).
[4] Pub. L. No. 109-246, § 2(b)(4)(A).

offices from elected to appointed positions.[5] After extensive hearings and very thorough consideration, the House concluded that these proposed voting changes, successfully prevented by Section 5 of the VRA, were "calculated decisions to keep minority voters from fully participating in the political process," showing that "attempts to discriminate persist and evolve, such that Section 5 is still needed to protect minority voters in the future."[6]

Seven years later, the protections of Section 5 continue to be just as necessary. Actions by a number of covered states in the hours and days immediately following the *Shelby County* decision striking down the formula in Section 4 of the VRA, effectively gutting Section 5, demonstrate how crucial Section 5's preclearance provision continues to be in protecting minority voting rights. Shortly after the decision, Texas Attorney General Gregg Abbott announced that the state's voter ID law and a redistricting plan, both of which had been previously blocked by Section 5, would go into effect immediately. The three judge panel that had reviewed the Texas voter ID law and denied preclearance in 2012 found that "based on the record evidence before us, it is virtually certain that these burdens will disproportionately affect racial minorities. Simply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote."[7] Without Section 5 safeguards, that discriminatory voter ID bill is now in effect. Similarly, unnecessarily restrictive voter ID laws in North Carolina, South Carolina, Alabama, Mississippi and Virginia are all moving forward, despite scant evidence of in-person voter fraud and the great potential to disparately impact minority voters. Another pending bill in North Carolina threatens to reduce college age voting by preventing students' parents from claiming them as dependents on their tax returns if the student registers to vote at his school address. In less than one month since the Supreme Court struck down the preclearance formula -- effectively ending preclearance unless and until Congress creates a new formula -- laws that threaten to reverse the progress made by the VRA are moving forward.

History provides important, sobering lessons about what can happen when protections for minority voting rights are rolled back. After the Civil War, Congress moved swiftly and decisively to enfranchise African American men. Under the supervision of federal troops, more than 700,000 African American men were registered to vote in the South by 1868, a 75 to 95% registration rate. The 15th Amendment was ratified in 1870, and the Enforcement Act of 1870 prohibited discrimination in voter registration and created criminal penalties for interfering with voting rights. These combined efforts and federal protections led to unprecedented rates of African American participation in elected government. By the end of Reconstruction, 18 African Americans had served in statewide office in Southern states, there were eight African Americans in Congress from six different states, and more than 600 African Americans served in state legislatures.[8] When Reconstruction ended in 1877 and the Supreme Court struck down key portions of the Enforcement Act, progress quickly reversed. Southern states began implementing racial gerrymandering, followed by more brazen efforts to disenfranchise African American voters, including poll taxes, literacy tests, whites-only primaries, and grandfather clauses. By the early 1900's, 90 percent of African Americans in the Deep South had been disenfranchised by these schemes. The widespread, insidious disenfranchisement of African American voters only ended in 1965, with passage of the VRA.

To be sure, the United States is very different today than it was after Reconstruction. Yet the possibility of repeating history by reversing decades of progress on improving minority voting rights looms large. The Supreme Court majority in *Shelby County* ignored extensive congressional findings of ongoing election discrimination – instead substituting its own view that a muscular VRA is no longer needed. We certainly hope that one day the protections of the Voting Rights Act will no longer be necessary and that

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[5] H.R. REP. NO. 109-478, at 36.
[6] *Id.* at 21.
[7] No. 12-cv-128, 2012 U.S. Dist LEXIS 127119, at *86 (D.D.C. Aug. 30, 2012).
[8] Eric Foner, Reconstruction: America's Unfinished Revolution 1863-1877, at 353, 355, 538 (1988).

all eligible voters will be able to vote, free from discriminatory barriers. Unfortunately, that day has not yet come. Congress must act to create a new formula, restoring the safeguards of Section 5 preclearance and protecting minority voting rights.

In his speech proposing the VRA, President Lyndon Johnson said, "Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen can and must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs on us more heavily than the duty we have to ensure that right."[9]

Almost 50 years later, President Johnson's words ring true today. We urge Congress to work swiftly and decisively to enact a new formula for Section 4 of the VRA, restoring the Act's crucial voting rights protections and ensuring to every American citizen an equal right to vote.

Sincerely,

Barry Curtiss Lusher
National Chair

Abraham H. Foxman
National Director

[9] President Lyndon B. Johnson, Special Message to the Congress: The American Promise, 1 Pub. Papers 281, 282 (March 15, 1965), available at http://lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise.