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GEORGIA STATE CONFERENCE

Statement of

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

UNITED STATES SENATE

Committee on the Judiciary

Hearing before the Full Committee on the Voting Rights Amendment Act, S.1945:

Updating the Voting Rights Act in Response to Shelby County v. Holder

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Introduction

Good Morning. As President of the Georgia State Conference of NAACP Branches (the Georgia NAACP), I welcome the opportunity to testify before the Senate Judiciary Committee.

I would like to begin by thanking you, Chairman Leahy, Ranking Member Grassley, and members of this committee, for holding this hearing and for your efforts to ensure that the right to vote, the cornerstone of our democracy, is protected. Your efforts thus far and your actions after today's hearing will not go unnoticed by history. In 1982, when President Ronald Reagan signed the Reauthorization of the Voting Rights Act he said "actions speak louder than words. The Voting Rights Act proves our unbending commitment to voting rights." President Reagan went on to say that "the right to vote is the crown jewel of American liberties, and we will not see its luster diminished." Sum and substance, what this Congress does with the Voting Rights Act is the real measure of this Nation's commitment to free, fair, and accessible elections. The United States must never again permit racial discrimination to silence our witness of freedom and darken our light of liberty in this world.

The NAACP founded in 1909 has had an unbroken presence in Georgia since 1917. The Georgia NAACP maintains a network of 118 units throughout Georgia, from cities and small rural counties to college and university campuses. The Georgia NAACP has, and continues to have, the distinction of being the most effective and consistent advocates for civil and voting rights in Georgia.

I am here today on behalf of the Georgia NAACP, and also on behalf of the nearly 10 million Georgia residents whose Constitutional right to vote no longer enjoys full federal protection. Most importantly, I am here on behalf of my children, Frederick Douglas Caleb Johnson, Thurgood Marshall Joshua Johnson, and Langston Hughes Elijah Johnson, to make sure that as they reach our state's legal voting age, they are protected as they cast an unfettered vote, have it counted and participate in our democracy regardless of their gender, the language they speak, or the color of their skin.

This statement will address three points from the perspective of what is going on the ground in Georgia that are central to Congress's response to the Supreme Court's devastating decision in Shelby County, Alabama v. Holder: (1) the history of the abridgement of voting rights in Georgia; (2) the importance of the Voting Rights Act to progress in Georgia; and (3) the Post-*Shelby* Georgia.

The History of the Abridgement of Voting Rights in Georgia

The history of voting rights in Georgia can best be categorized as promises made, promises broken; promises remade, promises broken; promises made and now only partially realized. I come to this United States Senate with a view from the rural communities like as Sylvania, Statesboro, and Sylvester and cities such Augusta, Albany, and Atlanta. It is clear to me that while we have made great strides; there is still much work to be done.

In 1870, the 15th Amendment to the U.S. Constitution promised all Americans the right to participate in the search for the common good. As a result of federal protection during the First Reconstruction, more than 600 African Americans served in the Congress, state legislatures, and many more held local offices. However, with the end of federal protection of those rights, Georgia effectively nullified the 14th and 15th Amendments, stripping African Americans of the right to vote. It would be nearly a century before the nation would again attempt to establish equal rights for African Americans. I come in the spirit of Henry McNeal Turner, Tunis Campbell, and Jefferson Franklin Long of Macon, who gave the first speech by a black representative ever presented before Congress during his brief term from 1870-71. I come bearing witness to those brave Americans who fought and died for equal rights. I come bearing witness to those that endured fire hoses, vicious dogs, separate but equal, poll taxes, literacy tests, the strange fruit hanging from the trees, and bodies floating down the rivers.

After the end of federal protection, the forces of retrogression in Georgia quickly disenfranchised citizens who looked like me by enacting Jim Crow laws; amending the constitutions and passing legislation to impose literacy tests, poll taxes, property-ownership requirements, moral character tests, and grandfather clauses that allowed otherwise-ineligible persons to vote if their grandfathers voted (and which excluded many African Americans whose grandfathers had been ineligible). In fact, Georgia often took the lead in many of these disenfranchising tactics. In 1871, Georgia became the first state to enact a poll tax, and in 1877, it made the tax cumulative, meaning that past unpaid poll taxes accumulate and that an individual must pay the back taxes in order to vote. The poll tax in Georgia was not abolished until 1945.

To the shame of the United States of America, efforts to disenfranchise African Americans and other racial and ethnic minorities were largely successful. In the period immediately preceding the enactment of the Voting Rights Act of 1965, only 27.4% of Georgia's non-white voting age population was registered to vote, compared with 62.6% of the white voting age population. In thirty Georgia counties with significant African-American populations, less than 10% of the age-eligible African Americans were registered in 1962. In four of these counties, the voting lists contained the names of fewer than ten non-whites. The last African American member of the Georgia General Assembly, W. H. Rogers, resigned in 1907. Not until 1963, during the civil rights movement or the Second Reconstruction, would another black politician, Leroy Johnson, enter the Georgia General Assembly. As a result of the end of federal protection in the face of the blatant abridgement of our rights, citizens in Georgia were not able to elect any person of color to represent our interests in Congress or local government for more than 60 years.

The Importance of the Voting Rights Act of 1965 to Progress in Georgia

Congress passed the Voting Rights Act of 1965 to enforce rights promised but not guaranteed for nearly a century. Under the 1965 Act, Georgians were offered federal protection from people who wanted to deny them their Constitutional right to vote. The reaction in Georgia was

immediate. By 1967, 52.6% of Georgia's non-white voting age population had registered to vote.

In eight counties, a majority of non-white adults had signed up to vote upon enactment of the Voting Rights Act. Baker County, with 71.7% of its non-white adults on the voting lists, led the way towards enfranchisement. The state-wide median level of non-white registration in 1967 was 28.25%, as compared to 5.6% in 1962.

With federal protection, Georgia's success continues to grow. In each of the thirty counties with low rates of African-American registration in 1962, African-American registration had become widespread by 2004. The mean for the thirty counties was 67.6%, and in eight counties, the registration rate exceeded 75%.

In addition to registration, the number of African Americans who have actually voted has substantially and consistently grown since 1965 as well. In every one of the thirty counties, at least a majority of registered African-American women voted in 2004. In the Atlanta suburbs of Fayette County, 88% of registered African-American women and 82% of registered African-American men participated.

The impact of the federal protections afforded to us by the Voting Rights Act of 1965 cannot be overstated. By 2004, African Americans constituted 27.4% of all registered voters in Georgia and 27.2% of the state's citizen voting age population, according to the U.S. Census.

With the enactment and enforcement of the Voting Rights Act of 1965, not only did African Americans register and vote, but their support helped to elect men and women who looked like me and represent my community values. As I have already testified, the end of federal protection signaled the demise of those great advances during the First Reconstruction. Indeed, at time of the enactment of the Voting Rights Act in 1965 there were no African American elected officials in Georgia. Yet by 1969, thirty African Americans held office in Georgia, fourteen of whom served in the state legislature. Eight sat on city councils, and three served on school boards. By 1973, the number of African-American elected officials in Georgia had risen to over one hundred, and three years later, in 1976, it topped two hundred. By the year 2001, 611 African Americans held public office in Georgia.

Recognizing the lessons of the First Reconstruction and the importance of the federal protection, Congress has passed every Voting Rights Act reauthorization and extension by overwhelmingly bipartisan votes. The 1965 Act passed the Senate 77-19, and the House 333-85. The 1970 extension passed the Senate 64-12, and the House 234-179. The reauthorization in 1982 garnered similar support passing 85-8 in the Senate and 389-24 in the House. Congress last extended the Act in 2006, by a vote of 98-0 in the Senate and 390-33 in the House, concluding that the coverage formula enforced by Section 5 was needed for at least another 25 years.

In 2006, the congressional record overwhelmingly demonstrated the need to maintain the Voting Rights Act's federal protections. The record included more than 750 Section 5 objections by the Department of Justice (DOJ), which blocked the implementation of some 2,400 discriminatory voting changes; the withdrawal or modification of over 800 potentially discriminatory voting changes after DOJ requested more information; 105 successful actions to require covered jurisdictions to comply with Section 5; 25 denials of Section 5 preclearance by federal courts, citing high degrees of racially polarized voting in the jurisdictions covered by Section 5; and reports from tens of thousands of federal observers dispatched to monitor elections in covered jurisdictions. In total, the record included over 15,000 pages of testimony and reports and statements from over 90 witnesses in over a dozen hearings.

I would caution you, though, that we must do all that we can to protect the gains that we have made. As I have demonstrated in my preceding testimony, the percentage of African Americans who have registered to vote, and who have voted, has increased substantially over the past 40 years due almost entirely to the protections offered by the Voting Rights Act of 1965. In addition to protecting those gains in registration, we must also ensure that the votes of racial and ethnic minorities across our country and in Georgia specifically are not diluted by gerrymandering or other changes to election laws which the VRA has historically protected us from. We are not at a point now where we can say that our journey has ended. We must continue our work together to ensure that yesterday's gains remain intact and that tomorrow's challenges can be successfully confronted.

Although tremendous progress has been made in keeping America's promises, equal opportunity in voting still does not exist – particularly at the local level. In fact, the vast majority of instances of racially discriminatory laws since 2000 have occurred at the local level.

Georgia in a post-*Shelby* world

As we all know, one year ago today, the U.S. Supreme Court issued its decision in *Shelby v. Holder*. In that decision, the Court did not invalidate the principle of preclearance whereby a state or local jurisdiction needs to receive advanced approval by the U.S. Justice Department or a panel of Federal Judges before they can make any changes to the time, place or manner of an election, as established in Section 5. Instead, the Court, despite the exhaustive work during the 2006 reauthorization by this Congress, held that Section 4(b) of the Voting Rights Act, which sets out the formula that is used to determine which state and local jurisdictions must comply under Section 5's preapproval requirement, is outdated and as such unconstitutional and can no longer be used. Thus, although Section 5 passed Constitutional muster, it cannot fulfill its intended purpose unless and until Congress can enact a new formula to determine who should be covered by it.

Senator Leahy and Senator of Grassley, in Post-*Shelby* Georgia we are witnessing the wholesale elimination and changing of polling locations; significant changes in the methods of electing school board, town and city council members; a rush to move to at-large districts; annexations,

and changes to early voting that have the purpose or effect of denying or abridging the right to vote.

In Georgia, the *Shelby* decision makes it much harder for us to prevent eligible voters from being disenfranchised and to win our battles against discrimination. While Section 2 of the Voting Rights Act remains a crucial tool in protecting Americans' voting rights, it is not enough for three reasons: (1) Section 2 lacks the hallmarks of Section 5 that prevents discrimination from occurring in the first place through a relatively low-cost administrative process; (2) Section 2 requires much more money and resources than are often unavailable to engage long and drawn out legal battles; (3) and Section 2 litigation can only target discrimination that is already known and is adversely impacting voters and it does not consistently capture voting discrimination that was not identified and blocked by section 5. Thus, without section 5, the reporting onus is removed from the jurisdiction and placed on groups like the Georgia NAACP or individual voters.

By invalidating Section 4(b), the Court also took away the requirement that covered states provide notice to their local communities regarding any potential new voting law; it effectively invalidated the federal observer program – long relied upon by communities across the country to stop racial intimidation in polling places; and eliminated the mechanism that provided an efficient and effective way to stop the implementation of new voting laws that may be racially discriminatory, until there is a review of all the facts.

For the Committee's information, I am attaching a listing of some of the proposed and enacted laws and administrative changes which have occurred in Georgia which have racial implications. I would also like to highlight just a few of those proposals.

Prior to the *Shelby* decision, Section 5 prevented a blatantly discriminatory attempt to reassign the African American Board of Education Chair's voter registration district from a seventy percent African American voting population to a seventy percent white voting population in Randolph County, Georgia. Section 2 could not be used to stop the change in advance because the changes were done in a special closed door meeting the sole purpose of running that African American out of office. In a unanimous vote, the all-white members of the Board of Registrars voted for the district change. There are literally hundreds of examples just like this.

Post *Shelby*, in Athens, Georgia, with a population of over 118,000, almost 30% of whom are African American, the City of Athens considered eliminating nearly half of its 24 polling places, and replacing them with only two early voting centers—both of which would be located inside police stations. Community members raised concerns that the location of the new centers would intimidate some voters including those of color, who may have been exposed to a time or place in which law enforcement officials were used to enforce the preferences of one party or candidate or to enforce anti-democratic, intimidating, disenfranchising, tactics and that the proposed closures would be harmful to voters of color, low and moderate income citizens, and/or

students, many of whom would need to travel on three hour bus rides just to reach the new polling places. The race neutral argument was that this would save money.

Another "money saving" proposal which we saw in Georgia was the State's proposition to shorten the early voting period from 21 days to 6 days. This, it was agued at the State legislature, would save cities and counties on average $3,400. Given that we presently spend over $45,000.00 a week to station a soldier in Afghanistan to fight for freedom abroad, spending $3,400 to ensure that working Americans can participate in the search for the common good seems like a worthy investment.

Another challenge is the consolidation of governments. Georgia, with a population of less than 10 million people, has 159 counties; this was done in order to make the state government so weak that it couldn't enforce the laws which were enacted to protect racial and ethnic minorities, including African Americans. In a strange twist of history, the state is now consolidating a number of jurisdictions so that the local officials are even more removed from the average citizen than they were before. This also contributes to the dilution of the voice of the "new majority," specifically racial and ethnic minorities. This has happened in Columbus, in Macon, and in Augusta, GA, to name but a few jurisdictions.

Finally, another tactic has been to *divide and conquer* areas where consolidation can't or hasn't worked, such as the City of Atlanta. This is especially true as the state legislature gerrymanders its electoral maps, and without the federal protection conferred by preclearance provision in the Voting rights Act of 1965, it is likely to happen more often. The Supreme Court's gutting of the preclearance formula essentially gave jurisdictions with a history of racial discrimination freedom to go back to disenfranchising voters. Indeed, actions by the State of Georgia and of local governments after the Shelby decision, demonstrates the critical importance of federal protection that Section 5's preclearance provision conferred.

Conclusion

Let me be clear at this point, Race still matters in America and it certainly matters in Georgia. I shared earlier in my testimony that I am here to ensure that I, like the generations of Americans before me, leave a more perfect union to my children. Langston, my baby boy is 7 months old. I wonder if he will work more while earning less; face discrimination in school, on the job, in his neighborhood, and when he tries to vote.

According to the National Center for Health Statistics, Langston is more than twice as likely as a white to die during the first year of his life. Langston is almost three times as likely as a white baby to be born to a mother who has had no prenatal care at all and that baby's mother is four times more likely than a white mother to die in childbirth. Langston's father is still twice as likely to be unemployed as the white child's father and his family still earns 72% of what the white family earns with the same education. Last year, the median family income for African Americans from Georgia was still only $31,778, compared to $51,244 for Whites. That is not

the result of the pigment of his skin. That is the result of racism – a theory of power and privilege as practiced in discrimination. If Langston survives at all, he is more likely to attend overcrowded or crumbling schools where performance is below the state or national average. Langston will have a higher chance than his white counterpart of going to jail or prison. In fact, the color of my children's skin is still the best indicator of whether or not they will be pulled over by police; whether or not they will be tried as an adult instead of as a juvenile and what kind of plea bargain they will be offered; how long their prison sentence will be, and whether or not they will be given the death penalty. From the cradle to the grave, race still matters and discrimination still exists.

To that point Chief Justice Roberts acknowledged the same when he conceded that "voting discrimination continues to exist; no one doubts that." Yet, there is no longer a mechanism in place to prevent states and jurisdictions with a history of voter discrimination from enacting such disenfranchising laws. As a nation, we have been here before. Our history as nation on race is replete with progress that is two steps forward and one step back.

Let me be clear at this point about race, racism and all the other 'isms' for that matter. Race is a social construct that at the core is about power and privilege. Racism at its core is not about hate. That is merely a possible by-product. Racism is a theory of politics – that is the power and privilege to decide in a system of limited resources who gets what, when, where, and how.

Today, we are in a Third Reconstruction that will test the metes and bounds of our nation's commitment to expand the "we" in "we the people" to all Americans including American Indians, Asian Americans, and Latino Americans. Racism (a theory of politics as practiced in the form of discrimination) will worsen without Section 5 to combat such behavior.

The elimination of Section 4(b) of the Voting Rights Act of 1965 by the U.S. Supreme Court has opened the door to invite all sorts of mischief inside our Nations sacred voting box, and as such we risk the disenfranchisement of whole segments of our society. Thus, I come here today, on behalf of the State of Georgia, and specifically the people of Georgia who have traditionally suffered the most from discrimination, and on behalf of our children, to respectfully and urgently request that you do all that you can to strengthen and modernize the 1965 Voting Rights Act. We need the tools inherent in a pre-clearance requirement fully intact and operational in order to tackle head-on the numerous attempts to silence us in a democratic system that requires the voices of all its eligible citizen partners to be a successful Democracy.

Given the continued need for voting protections, I join with the national NAACP and others in urging swift action on the Voting Rights Amendment Act of 2014, S. 1945 / H.R. 4899. While I too support strengthening the bill so that it covers more jurisdictions and offers protections for more people, I recognize that to amend it we must move it through the legislative process. Thus, I offer my sincere appreciation for these hearings and I strongly urge your colleagues in the other body to follow suit and quickly hold hearings, and a markup, and to get the bill moving. The sad

truth is that right now, nobody is enjoying the crucial protections offered by Section 5 of the Voting Rights Act of 1965, and we should act as expeditiously as possible to amend that situation.

I thank you again, Chairman Leahy, Ranking Member Grassley, and members of this committee, for holding this hearing and for your efforts. There are some who don't believe this Congress can get anything done. I am reminded that though the woods are lovely, dark and deep, America has promises to keep,
And miles to go before I sleep,
And miles to go before I sleep.

America must keep her promises regarding the right to vote, the cornerstone of our democracy! The world is watching. I welcome your questions.