Testimony of

The Honorable John Conyers, Jr.

April 27, 2006

Statement: Reauthorization of Voting Rights Act
Rep. John Conyers, Jr.
Ranking Member House Committee on the Judiciary
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Chairman Specter, Ranking Member Leahy and distinguished members of the Committee, I am pleased to join you today, along with my colleague Chairman Sensenbrenner, in a spirit of bicameral and bipartisan cooperation as we move to reauthorize the historic Voting Rights Act of 1965.

As this hearing demonstrates, the Voting Rights Act has enjoyed unprecedented levels of bipartisan support in Congress, with extensions of the Act in 1970, '75 and '82. I particularly want to commend Chairman Sensenbrenner on his strong commitment to the Act, which was equally evident in the 1982 reauthorization, and is evidenced most recently by his presentation to the NAACP and our robust schedule of 10 oversights hearings. I believe that his leadership has been critical to the legislative success of the Act and a testament to the fact that civil rights need not be a partisan issue.

When the Voting Rights Act passed in 1965, the civil rights era was in full bloom, with sit-ins and marches across the South in response to the massive resistance to the call for equal rights. Brave Americans of different races, ethnicities, and religions risked their lives to stand up for political equality.

The pursuit of equal voting rights was most dramatically displayed on the Edmund Pettus Bridge in Selma, Alabama on March 7, 1965, a day that would come to be known as "Bloody Sunday." On this day, nonviolent civil rights marchers, like our colleague John Lewis, were beaten, hit, kicked, spit on, brutalized, and demeaned.

The news media brought home to all Americans the horror and violence that propped the system of segregation, forcing us to a decision point about our nation's democratic ideals. Without sacrifice by countless individuals in Selma and across the South, the struggle for equality could not have been won nor this legislation passed by Congress.

Eight days after Bloody Sunday, President Lyndon B. Johnson called for a comprehensive and effective voting rights bill. He would sign that bill into law on August 6th and the Voting Rights Act would come to stand as a tribute to the countless Americans who fought for voting rights for all Americans.

Today, as the Senate commences the process of reauthorizing the Act, its importance to opening the political process to all Americans is beyond doubt or challenge. I was one of a handful of minority Members of Congress in 1965 when we passed this landmark legislation: six (6) African-Americans, five (5) Latinos, and four (4) Asian-Americans. As a result of the success of the Act, we can now count 43 African-Americans, 29 Latinos, 8 Asian-Americans, and 1 Native American in the U.S. House and Senate. And the federal government itself is merely the tip of the of the iceberg.

Across the nation, the number of people of color elected to federal, state, and local offices has increased tremendously in the last forty years, opening the political process to every American. It is not an overstatement to call the Voting Rights Act the keystone of our nation's array of civil rights statutes.

Against this historical backdrop, we viewed our hearings and the larger reauthorization process as an opportunity to take stock of where we are and, if necessary, to make adjustments that will protect and restore the Act, just as we have done in the past. As the Chairman has noted in his testimony, we paid particular attention to the preclearance provisions of Section 5 and the language minority provisions of Section 203. However, we also focused on the less well known examiner and observer provisions which are designed to ensure fair access to the polls.

Our inquiry broke down into two fundamental questions: 1) Is there an adequate record of discrimination to justify the reauthorization of the expiring provisions ? and 2) Are the expiring provisions, as interpreted by the courts, still adequate to protect the rights of minority voters ?

While there is much to celebrate over the last 40 years, our record indicates that we have not yet reached the point where the special provisions of the Act should be allowed to lapse, as some might have you believe. Efforts to suppress or dilute minority votes are still all too common.

With respect to Section 5 covered jurisdictions, we found continuing patterns of discrimination in voting, as evidenced by adverse Section 2 findings, Section 5 objections, and withdrawals of Section 5 submissions after requests for more information from the Department of Justice.

Similarly, with respect to the Section 203, we received substantial testimony from the advocacy community and the Department of Justice, supported by its litigation record, that language minorities remain the victims of discrimination in voting. Most importantly, our record indicates that substantial native-born populations and other citizens still need language assistance to cast an effective ballot.

These threshold factual findings are essential to ensuring that a reauthorized Voting Rights Act will survive an almost certain challenge to its constitutionality. I must emphasize that the record we present to you today is one of the most complete that I have seen for any piece of legislation, with testimony from almost 40 witness, national reports, state specific reports and investigations as to the effectiveness of specific statutory provision by government and academic experts. Should it choose to review this legislative history, as it has done in the past, the Supreme Court should find this record evidence of a careful inquiry that supports the guarantees of equal voting rights which are enshrined in the Constitution.

In addition to examining whether there was continuing discrimination in voting, we also examined the impact that several Supreme Court decisions have had on Section 5's ability to protect the minority community in covered jurisdictions from discriminatory voting changes. This inquiry was important to ensure the continuing vitality of the Voting Rights Act. Just as we found in 1982 after examining the negative impact of Mobile v. Bolden on Section 2, a straight reauthorization of the Act will not be sufficient to protect the rights of minority voters, given its evolution in the courts.

Our examination focused on the impact of two Supreme Court cases and their effects on the scope of Section 5. In the first case, Reno v. Bossier Parish Sch. Bd. 528 U.S. 320 (2000), a narrow majority of the Supreme Court articulated a new standard for the Section 5 preclearance provision of the Act. Under this interpretation of the statute, the Justice Department cannot block an intentionally discriminatory voting change, unless it finds that the jurisdiction acted with the "retrogressive purpose" of making things worse than they already were for minority voters.

In this case, because the school board in Bossier had no majority black districts before 1990, its intentional enactment of a plan preserving the all-white school board was not held to violate Section 5 - the plan would not be worse than zero seats. The Court held that the Board's discriminatory purpose was not an adequate basis for an objection, no matter how blatant the evidence that the plan was motivated by racial discrimination. The case, I believe, improperly reversed over 34 years of law and practice, dating back to the 1965 enactment of the Voting Rights Act, under which voting changes with a racially discriminatory purpose had "no legitimacy at all . . . under the statute." City of Richmond v. United States, 422 U.S. 358, 378 (1975).

In the second case, Georgia v. Ashcroft, 539 U.S. 461 (2003), another narrow majority of the Supreme Court held that plans that reduce the ability of minority voters to elect candidates of choice could still be approved under Section 5 as long as the Attorney General or a court believed that other factors somehow balance out the loss in minority voting power - so-called influence districts. Our witnesses indicated that this case introduced a new and complex legal standard to Section 5. Taken to an extreme, this opinion could result in the dismantling of majority-minority opportunity districts. At minimum, the opinion has introduced a standard that may prove difficult to administer for both the Justice Department and covered jurisdictions.

Our record with respect to this inquiry leaves us to confront the prospect that these cases may severely limit the scope of the Act's nondiscrimination standards. Just as in 1982, today we are presented with the choice of whether to simply reauthorize the Act or to also address the actions of the Court and restore the Act to the standard that was earlier intended by Congress.

I believe that we made the better choice in 1982 when we amended Section 2 and restored the pre-Bolden standard. I believe that it is not enough for Members of Congress or the Administration to say that they support an extension of the present Voting Rights Act. If we really supports voting rights, then we must support restoring the Act to its original strength.

The Voting Rights Act is one of the nation's most important civil rights victories and memorializes those who marched, struggled, and even died to secure the right to vote for all Americans. We owe a deliberative and thoughtful process to those who risked so much in the fight for equal rights. While we must applaud the substantial progress which has been made in the area of voting rights, we must also continue our efforts to protect the rights of every American voter with the reauthorization and restoration of the expiring provision of the Act. The Voting Rights Act remains the "Crown Jewel" of our civil rights laws. We must extend the Act at full strength, and I am fully committed to do just that.