



Statement of Senator Dianne Feinstein

Hearing on the Voting Rights Amendment Act (S. 1945)

Senate Judiciary Committee

June 25, 2014

Thank you very much, Mr. Chairman. Let me first thank you for your diligent efforts, along with Congressman Sensenbrenner in the House, to update the Voting Rights Act.

You have put forward a very good bill, and it is one I am proud to cosponsor.

One year ago today, the Supreme Court decided *Shelby County v. Holder*. This is a decision that, in my view, was one of the worst in memory.

In a 5-4 decision written by Chief Justice Roberts, the Supreme Court struck down the formula for deciding what jurisdictions are covered by the Voting Rights Act's "preclearance" provision, called Section 5.

In 2006, under then-Chairman Specter's leadership, as well as your leadership, we reauthorized Section 5 of the Voting Rights Act – the "crown jewel" of the civil rights movement – by a unanimous vote in the Senate. President Bush signed it into law.

We often talk in this committee about whether a judicial nominee will follow precedent if confirmed.

Well, Section 5 had been repeatedly upheld against legal challenge, in 1966, 1970, 1973, 1980, and 1999, as an appropriate means of Congress exercising its constitutional authority to protect the right to vote.

As Justice O'Connor wrote in *Lopez v. Monterey County* in 1999, the Court "specifically upheld the constitutionality of [Section 5] of the Act against a challenge that [the] provision usurps powers reserved to the States."

Nevertheless, in *Shelby County*, the Court went back on decades of precedent to essentially nullify Section 5.

The Court did this even though, as the Court itself acknowledged, "voting discrimination still exists; no one doubts that."

Yet the Court essentially ignored the 15,000-page record of voting discrimination in covered jurisdictions that Congress compiled in 2006 – stating, quote:

"We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record."

As Justice Ginsburg pointed out in dissent, the legislative record "overwhelmingly bears out . . . that there is a need for continuing the preclearance regime in covered States."

I believe the Court's decision was not only wrong, but an aggressive move to overturn precedent that simply cannot be justified.

I also fully agree with Justice Ginsburg, who said: "Throwing out preclearance when it has worked and is continuing to work is like throwing away your umbrella in a rainstorm because you are not getting wet."

In other words: it makes no sense to throw out a law because it works. But, unfortunately, that is where we are today, and we must respond.

The Court's decision said that, if we are to re-enact a preclearance requirement, we "must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions."

Mr. Chairman, I commend your effort to do that by authoring legislation with a number of critical provisions, including a preclearance formula that looks back 15 years at voting rights violations and that will update over time.

I simply wanted to state my views, and to say that I am pleased to cosponsor the Voting Rights Amendment Act.