"Protecting a Precious, Almost Sacred Right: The John R. Lewis Voting Rights Advancement Act"
Senate Committee on the Judiciary Hearing
Wednesday, October 6, 2021

Senator Marsha Blackburn
Questions for the Record to Jon M. Greenbaum
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1. Your organization supports H.R. 4, which would prevent states from making many changes to their election laws without federal approval. Do you disagree with the Supreme Court's consistent view that the Constitution grants the States "broad powers" to oversee elections (*Shelby County v. Holder*)?

Answer: The power of the States to oversee elections is broad, but the Constitution confers powers to the federal government related to elections, as the Supreme Court has routinely recognized. For example, the Election Clause of Article I, Section 4 of the Constitution gives Congress the authority to make or alter state rules regarding the time, place and manner of holding federal elections. "The Elections Clause has two functions. Upon the States it imposes the duty ('*shall* be prescribed') to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether." *Arizona v. ITCA*, 570 U.S. 1, 8 (2013) (emphasis in original).

State power is also subject to the Constitutional prohibitions on racial discrimination in voting found in the Fifteenth and Fourteenth Amendments and the authority granted to Congress under those Amendments. The Voting Rights Act is the prime example of Congress using its enforcement authority.

From the time the Voting Rights Act was passed in 1965, Section 5 has required states and local governments covered by a coverage formula intended to identify jurisdictions with a history of discrimination under Section 4(b) to obtain federal preclearance before implementing voting changes by showing the changes are nondiscriminatory. These provisions were challenged as going beyond Congress' Reconstruction Amendment enforcement authority and the Supreme Court upheld them on multiple occasions. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) *City of Rome v. United States*, 446 U.S. 156 (1980), *Lopez v. Monterey County*, 526 U.S. 266 (1999).

In *Shelby County v. Holder*, 570 U.S. 529, 557 (2013), the Supreme Court found that the coverage formula under Section 4(b) was unconstitutional but it "issue[d] no holding on § 5 itself." Far from stating that Congress did not have the authority to employ a preclearance regime, the Court stated that "Congress may draft another formula based on current conditions." *Id.* Indeed, H.R. 4, the John Lewis Voting Rights Advancement Act is, among other things, a Congressional response to the

Court's statement in *Shelby County* that Congress could enact a new coverage formula for preclearance based on current conditions. This component of H.R. 4 is not only consistent with, but furthers the Constitutional prohibition on racial discrimination in voting and Congress's duty to enact legislation to enforce that prohibition. Under the preclearance scheme, states retain their broad powers of overseeing elections but they are prevented from instituting new laws or practices that discriminate.