Testimony of Representative Gilda Cobb-Hunter,
South Carolina House of Representatives

United States Senate
Committee on the Judiciary

Hearing on
"The State of the Right to Vote After the 2012 Election"

Dirksen Senate Office Building
December 19, 2012
10:00 a.m.

Good morning. Chairman Leahy, Ranking Member Grassley, and all other Members of the Senate Judiciary Committee, thank you for holding this important hearing on voting rights. My name is Gilda Yevette Cobb-Hunter. I appreciate the opportunity to testify today.

I am here to address the critical role of the Voting Rights Act in protecting the most precious of all civil rights—the right to vote. I am a twenty-one year veteran member of the South Carolina House of Representatives. In that capacity, I would like to focus my testimony on the following two points: *first*, South Carolina's efforts to enact Act R54, a photo identification measure that requires voters to present a designated form of photo ID to vote in-person in South Carolina, which has a discriminatory effect *but for* an ameliorative "reasonable impediment" exemption from that photo ID requirement; and *second*, the essential role that Section 5 of the Voting Rights Act played in protecting the most vulnerable of my constituents in South Carolina's District 66, and voters in the State more broadly, from the implementation of a restrictive photo ID law for the November 2012 general election.

Background on District 66

Before I discuss the events surrounding South Carolina's attempt to implement Act R54, I would like to tell you about the voters that I represent in District 66, which encompasses eastern Orangeburg County, South Carolina.

Considered a part of the Low Country, District 66, which is 63 percent African-American, is a poor, rural stretch of South Carolina, where agriculture is the main industry. Some of my constituents were born on a farm and/or delivered by mid-wives and thus lack birth certificates. In my district, nearly 100 percent of the students receive free and reduced price lunch, broadband Internet access is scarce, and there is *no* public transportation. The city of Orangeburg, the county seat, and other areas where my constituents conduct business, has only recently become accessible through some public transportation. I am humbled, incredibly proud, and honored to serve my constituents, who represent the very best of South Carolina, and, who, in the finest democratic traditions of our country and their culture, take exercising their right to vote very seriously. That said, my constituents, for a variety of reasons, including lack of transportation and ready access to birth certificates, are among the least likely voters in South Carolina to possess the type of photo ID that Act R54 requires.

South Carolina's Passage of Act R54

Citing the need to combat non-existent in-person voter fraud, members of the South Carolina General Assembly championed a requirement that voters produce restrictive photo ID to vote in-person. I strongly opposed the measure because I understood how it would materially burden the voting rights of my constituents in District 66 and many other South Carolinians. Given South

Carolina's horrible history and modern day experiences with racial discrimination in voting, our legislature should have actively sought ways to harness the historic rate at which my constituents voted in the 2008 Presidential election by encouraging *more* people to participate in the political process. Instead, Act R54's proponents, citing a solution in search of a non-existent problem of voter fraud, sought to make voting *more difficult* for many of my constituents who, because of their poverty and lack of access to transportation, among many other reasons, simply do not have access to the unnecessary photo ID required by Act R54. For example, a voter residing in the easternmost part of my district would have to incur the costs of traveling approximately 70 miles roundtrip to the county seat to obtain a photo ID. Some of my constituents live even further away from the county seat.

To make matters worse, when pressed to provide an example of voter impersonation, Act R54's proponents could not cite *one* case as a basis for enacting the photo ID law. There's a good reason for that: studies show that one is more likely to be struck by lightning than to witness an instance of in-person voter fraud.

But here, however, the racially discriminatory effects of South Carolina's proposed photo ID measure were not lost on its proponents. In October 2011,

political strategists in South Carolina publicly boasted that suppression of the African-American vote was "why we need [voter ID laws in South Carolina]."[1]

Given this reality, I strongly opposed Act R54 on the floor of the South Carolina House of Representatives and in public and private conversations with proponents of the legislation. My opposition, and that of every member of the Legislative Black Caucus, was ignored. Also ignored were all of our suggestions for ameliorative provisions to Act R54, including expanding the universe of acceptable IDs to include, among others, student IDs and federal and state employee IDs, or exempting voters 65 years and older. Indeed, we became so frustrated with the process and the absence of consideration of the wisdom and experience of the House Legislative Black Caucus and the people that we represent, that we, along with supportive white colleagues, walked out of the General Assembly in protest of Act R54.

Section 5 Preclearance – the DOJ & Federal District Court's Review

Unfortunately, South Carolina ultimately enacted Act R54 in May 2011. But, thankfully, the story did not end there. South Carolina, because of its history of racial discrimination in voting, is fully covered under Section 5 of the Voting Rights Act, and is thus required to submit *all* of its proposed voting changes to the

[1] *See* Joan McCarter, *South Carolina GOP Operative Admits Suppressing Black Vote is Goal of Voter ID Law,* Daily Kos, Oct. 19, 2011, http://www.dailykos.com/story/2011/10/19/1028056/-South-Carolina-GOP-operative-admits-suppressing-black-vote-is-goal-of-voter-ID-law (last visited Dec. 17, 2012).

United States Department of Justice ("DOJ") and/or to a three-judge panel of the District Court of the District of Columbia to ensure that they are free of racial discrimination *before* they can be implemented. South Carolina ultimately did both. I am pleased to report today that Section 5 protected my constituents and other voters across South Carolina from implementation of this discriminatory measure in both instances.

First, South Carolina submitted Act R54 to the DOJ for preclearance. Thankfully, in December 2011, the DOJ denied preclearance under Section 5, finding, based on South Carolina's own data, that "minority registered voters were nearly 20% more likely to lack DMV-issued ID than white registered voters," and would be effectively disfranchised by the state's proposed requirements.[2]

South Carolina defended the discriminatory effect of this law by relying on the Act R54's so-called "reasonable impediment" exemption for voters who lacked the designated IDs. However, the DOJ also found that Act R54 failed to define what constitutes a "reasonable impediment" that would prevent a voter from obtaining photo ID, and also to provide guidance for the individual county boards of registration and elections about how to interpret and apply this provision. Because of the uncertainty surrounding this purported exemption from the photo

[2] Letter from Assistant Attorney General Thomas E. Perez of the U.S. DOJ, Civil Rights Division, to Assistant Deputy Attorney General C. Havird Jones, Jr. of South Carolina, dated Dec. 23, 2011, *available at* http://brennan.3cdn.net/594b9cf4396be7ebc8_0pm6i2fx6.pdf.

ID requirement, the DOJ determined that the provision could not mitigate, but in fact could exacerbate, the law's discriminatory effects.

Second, undeterred by DOJ's rejection of its discriminatory photo ID measure, South Carolina, in February 2012, filed a lawsuit in federal district court seeking judicial preclearance of its photo ID measure in time for the November 2012 election.[3] Significantly, in October 2012, this three-judge district court panel found that there was insufficient time before the 2012 November election to implement the voter ID law, particularly the "reasonable impediment" provision in a non-discriminatory manner.[4]

Because of Section 5 of the Voting Rights Act, the "reasonable impediment" provision was significantly revised during the course of the preclearance trial such that a three-judge federal district court panel, composed of two George W. Bush appointees (Judges Brett Kavanaugh and John Bates) and one Bill Clinton appointee (Judge Colleen Kollar-Kotelly), referred to it as a "new" and "expansive" provision.[5] The "reasonable impediment" provision, during the Section 5 preclearance process, was expanded to provide every South Carolina voter who lacks a photo ID an opportunity to assert *any* reason for lacking one of the required photo IDs. In practice, eligible voters in my district who lack

---

3 *See State of South Carolina v. Holder*, Civ. A. No. 12-203 (BMK) (CKK) (JDB).

4 *Id*.

5 *See, e.g*., *id*. at 2-3 (panel opinion)

transportation and/or a birth certificate to access the required photo ID under the law should be able to use this provision to cast a ballot that counts in South Carolina elections. According to Judge Bates, "the evolving interpretations of . . ., particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials' efforts to satisfy the requirements of the Voting Rights Act."[6]

While the federal court rejected South Carolina's implementation of its photo ID measure for the November 2012 election, it ultimately permitted the law to go into effect for future elections. Judge Bates recognized that:

> Act R54 as now precleared is not the R54 enacted in May 2011. . . . An evolutionary process has produced a law that … protect[s] every individual's right to vote and a law that addresses the significant concerns raised about Act R54's potential impact on a group that all agree is disproportionately African-American.[7]

Judge Bates also made clear "the vital function that Section 5 … has played [in South Carolina's preclearance request]. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive."[8] Moreover, Judge Bates reasoned that the "Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of Act R54 demonstrates the continuing need for Section 5 of the Voting

---

6 *Id*. at 2 (Bates, J. concurring).
7 *Id.* at 1 (Bates, J. concurring).
8 *Id*.

Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws."[9]

Even after the new law's implementation, Section 5 remains a needed protection for South Carolina voters if the State alters its interpretation of the "reasonable impediment" provision *or* any other aspect of the precleared Act. And my history in this Legislature suggests that South Carolina may develop selective amnesia about the expansive and thus nondiscriminatory interpretation of the "reasonable impediment" provision that the court precleared. Even more, Section 5 review protects voters from *any* other voting change that South Carolina may enact in the future.

Conclusion

Even as our country has made significant progress in combating serious racial discrimination in our political system—in great measure *because of* the protections afforded under the Voting Rights Act—South Carolina's efforts to implement a discriminatory photo ID law make plain that there are continuing efforts to deny voters of color the opportunity to participate meaningfully in our shared democracy which require aggressive protection.

[9] *Id*. at 2 (Bates, J. concurring).

Here, Section 5 blocked South Carolina's discriminatory photo ID law *before* it took root and had the opportunity to diminish the voting rights of my constituents in District 66 and other voters in South Carolina. Section 5 of the Voting Rights Act, based on South Carolina's recent and not as recent history of voting discrimination, is needed now more than ever, both to safeguard hard-fought progress, *i.e.*, historic turnout of voters of color resulting in the election of the first person of color to the highest office in this country, *and* to defeat persistent attempts, *e.g.,* nonexistent voter impersonation fraud as a basis for adopting photo ID legislation, to narrow the franchise. Unfortunately, it is wishful thinking that we live in a post-racial society.

For these reasons, Section 5 remains vital to ensuring fairness in our democratic process and answering the ultimate question that the Senate Judiciary Committee is considering today: how can we collectively encourage *more* people to participate in the political process?

Thank you.