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**Senate Judiciary Committee’s Subcommittee on the Constitution**

**“Things Have Changed in the South”: Alabama’s Response to the Misleading and  
Misguided Attempt to Reimpose Preclearance Over State Election Laws**

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In 1965, Congress responded to the persistent and widespread denial of voting rights in Alabama and elsewhere by enacting the Voting Rights Act. As the Supreme Court explained, the remedy enacted by Congress marked “an extraordinary departure from the traditional course of relations between the States and the Federal Government.”<sup>1</sup> But the departure was necessary to counter an “insidious and pervasive evil”: the “unremitting and ingenious defiance of the Constitution.”<sup>2</sup>

In 1969, only 19.3% of black Alabamians were registered to vote, compared to 69.2% of whites. Nearly a half century later, Alabama—home of the heroic fight for civil rights—had the second highest black voter registration rate *in the nation*—behind Mississippi.<sup>3</sup> In 2016, black voters in Alabama turned out at higher rates than white voters by 4.6%—60.2% compared to 55.6%.<sup>4</sup> By comparison, Connecticut that year saw a racial divide of 13.1% *the other way*: 61% of whites voted compared to just 47.9% of black voters.<sup>5</sup>

This progress is evident in the recent report on voting rights in Alabama released by the Southern Poverty Law Center—though certainly that was not the goal of its authors.<sup>6</sup> The Alabama-based group is one of the largest and best-funded activist organizations in the nation.<sup>7</sup>

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<sup>1</sup> *Presley v. Etowah Cty. Comm’n*, 502 U.S. 491, 500-01 (1992).

<sup>2</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

<sup>3</sup> The 1969 figure comes from the Congressional report as recounted by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 529, 548 (2013). The 2018 rates come from the U.S. Census Bureau. See U.S. Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The comparisons are drawn from looking at the “percent registered” of total population for the “black alone” number for each State. If the rate is measured as percent registered among citizens, Alabama’s rate is still eighth highest among the thirty-five States reporting sufficient data, and under either metric, Alabama’s rate of voter registration is higher than the national average for black Americans.

<sup>4</sup> See U.S. Census Bureau, *Voting and Registration in the Election of November 2016*, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

<sup>5</sup> *Id.*

<sup>6</sup> See Southern Poverty Law Center, *Selma, Shelby County, & Beyond: Alabama’s Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act*, Report to the H. Comm. on the Judiciary (Aug. 16, 2021) (“SPLC Report”), available at <https://perma.cc/R596-VXAL>.

<sup>7</sup> The SPLC’s recent audited financial statement reports that as of October 31, 2020, the SPLC and its affiliated SPLC Action Fund held assets valued at over **\$616 million**, and in FY 2020 spent over **\$97 million**. See Southern Poverty Law Center, Inc. and SPLC Action Fund October 31, 2020 Consolidated Financial Statements, available at <https://perma.cc/E3C5-Z6BF>.

Other contributors to the report include the Leadership Conference on Civil & Human Rights and the Brennan Center for Justice. The report spans 117 pages and includes hundreds of pages more of declarations from Alabama voters. The argument of the report is simple: that preclearance is again justified because (the report ludicrously contends) Alabama’s goal is “to establish white supremacy in th[e] State.”<sup>8</sup>

This accusation would be laughable were it not so serious. Simply put, the Alabama of 2021 is not the Alabama of 1965, and the report’s repeated reliance on misleading narratives, glaring omissions, and easily debunked contentions demonstrate that there simply is no legitimate case to be made for preclearance.

In 1965, voting rates between black and white Alabamians were a mile wide. Today, black and white Alabamians register and vote at similar rates to each other—and at rates routinely higher than their counterparts in States that were never subject to preclearance.

In 1965, Congress had before it a record of “pervasive,” “flagrant,” “widespread,” and “rampant” discrimination.<sup>9</sup> Today, the SPLC supports its claim of widespread discrimination by relying on a declaration from an Alabama voter whose chief complaints are that (1) he does “not trust the absentee ballot system” for undisclosed reasons, (2) a poll worker had trouble finding his name on the voter rolls when he went to vote in 2018, but he was able to vote when the worker located his name, and (3) the voter dislikes the party voting option on the ballot and prefers to mark a candidate for each race.<sup>10</sup> This declaration is not an outlier in the group. It is the best evidence the SPLC could come up with.

In 1965, Congress confronted poll taxes and literacy tests. Today, the SPLC’s chief complaint about Alabama law is a photo ID requirement that has been upheld by both federal courts that considered it.<sup>11</sup> In two years of litigation, the challengers could not identify one single voter in the State who lacked an ID and could not get one. Now, neither has the SPLC. That is because the State makes photo IDs available for free, and the Secretary of State’s Mobile Unit will literally drive to a voter’s house to provide a free ID if requested.

In 1965, Congress had to contend with a litany of state and local officials who shamelessly encouraged voter suppression. Today, the SPLC identifies the Alabama Secretary of State as a modern-day “champion[]” of “voter suppression.”<sup>12</sup> The reason seems to be because of the Secretary’s efforts to fight voter fraud,<sup>13</sup> which the SPLC labels a “well-documented myth.”<sup>14</sup>

But what is well documented—in courts, in arrest files, in the press, in overturned election results—is that voter fraud happens in Alabama, and it is that fraud that necessitates the voter ID law. In 2016, for example, *two* mayoral elections in Alabama were affected by voter fraud; the

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<sup>8</sup> SPLC Report at 1 (citation and quotation marks omitted).

<sup>9</sup> *Katzenbach*, 383 U.S. at 308, 315, 331.

<sup>10</sup> SPLC Ex. 24.

<sup>11</sup> See *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018), *aff’d*, *Greater Birmingham Ministries v. Sec’y of State for Ala.*, 992 F.3d 1299 (11th Cir. 2021).

<sup>12</sup> SPLC Report at 82.

<sup>13</sup> See SPLC Report at 30-31, 82-83.

<sup>14</sup> SPLC Report at 83.

elections were overturned, the mayors removed from office, and one of mayors was convicted of falsifying ballots.<sup>15</sup> In 2013, four campaign volunteers for a Dothan city commissioner were arrested for voter fraud; their candidate had lost the in-person vote 154 to 109, but (thanks to their “volunteering”) received 131 of the 140 absentee votes. In 2006, a black candidate in Mobile nearly lost his election for State House because of voter fraud. Two years before that, a mayoral election in Greensboro was overturned because of voter fraud. The list goes on—even as the SPLC promises that voter fraud is a “myth” and that efforts to fight it are Jim Crow 2.0. And all too often, of course, the victims of voter fraud in Alabama are black voters and black candidates whose right to vote or hold office were stolen from them, but one searches the SPLC report in vain for any mention of the rights of *these* Alabamians.

In sum, in 1965, the evidence of voter suppression was legitimate, and the facts on the ground justified extraordinary action by Congress. Today, as all nine members of the Supreme Court recognized over a decade ago, “[t]hings have changed in the South”<sup>16</sup>—dramatically. Alabama, like our Union, is not perfect, and the State will continue to work to improve its voting system and to make voting easy and secure for *all* Alabamians. But as the SPLC’s nearly 400-page compendium demonstrates, even when some of the best capitalized activist groups in the country take aim at Alabama to justify reimposing preclearance, they miss the mark by a mile. Congress should recognize as much and reject these unsupported calls for the reimposition of preclearance.

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<sup>15</sup> See *Alabama mayor convicted of fraud, removed from office*, The Associated Press, Jan. 17, 2019, <https://www.al.com/news/2019/01/alabama-mayor-convicted-of-fraud-removed-from-office.html>; Ivana Hrynkiw, *Brighton Mayor Brandon Dean ordered to vacate office, run-off election ordered*, AL.com, Sep. 25, 2017, [https://www.al.com/news/birmingham/2017/09/brighton\\_mayor\\_brandon\\_dean\\_or.html](https://www.al.com/news/birmingham/2017/09/brighton_mayor_brandon_dean_or.html).

<sup>16</sup> See *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009) (majority op.); *id.* at 226-27 (Thomas, J., concurring in part and dissenting in part). Only 8 Justices joined this particular sentence, but Justice Thomas agreed with the substance; he wrote separately to note that he would have found Section 5 of the VRA unconstitutional because things had changed so much since its enactment.