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Statement of Hon. Kenneth T. Cuccinelli, II
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Chairman Durbin, Ranking Member Grassley and Members of the Committee, thank you for inviting me today to discuss the quality and integrity of our voting systems. I am Ken Cuccinelli and I served as Virginia's last attorney general under the prior preclearance process. I currently serve as the national chairman of the Election Transparency Initiative, where we work every day to help improve the transparency, security, accessibility and accountability of elections in every state, so that every American has confidence in the outcome of every election, regardless of party or race and regardless of whether one's chosen candidate won or lost.

Today it is easier to register and vote than ever before in our history, regardless of where you live, what color you are, or any political party you affiliate with. This is a great accomplishment worthy of celebrating, while always looking to improve.

Instead, many in this body seek to advance propaganda in place of truth. They accuse everyone who wants clean and transparent elections of the most despicable names, such as "racists" or suggesting they want to suppress the votes of their fellow Americans. As evil as this course of conduct is, it is not new. It has been a long-term strategy.

For example, in 2003, a *New York Times* editorial called 'election integrity' a "code phrase for voter suppression." That summarizes the false narrative very succinctly.

In 2004, in Colorado, the DNC election manual suggested launching a "pre-emptive strike by encouraging minority leadership to denounce voter suppression, issue press releases and place stories when no signs of intimidation techniques have emerged yet."

In 2010, my former attorney general colleague, Martha Coakley, was caught red-handed in her losing Senate race practicing the tactic of "pre-emptive accusation" (without evidence) by issuing a press release alleging voting "irregularities" that

had clearly been drafted the day before the election. How do we know they drafted the accusations with no evidence before Election Day? Because they foolishly left the date they drafted the lies on the press release.

In 2017, following the 2016 presidential election, the Democrats carried their false 'voter suppression' narrative into court, alleging nationwide voter suppression by the RNC, and Obama-appointed District Judge Vazquez said the following about their claims: "As far as what's before this court, you've presented me with no evidence of actual voter suppression efforts on the day of the election, much less tying it to the RNC." The judge went on to point out that "[t]he DNC has a lot of resources and I know this was a big concern. Where is the evidence that there [was] suppression going on on Election Day, and then a reasonable inference that the RNC was involved in those?" And he found that there was none.

More directly related to the history of the bill focused on here today, in 2019, a number of Republicans offered to support that year's version of the John Lewis bill if it included objective measures of voter suppression such as low voter registration by minorities or low voter turnout by minorities, but the radical leftists driving that legislation had no interest in objective standards, as that would not accomplish their actual goals of facilitating cheating nationwide. Not to mention, the worst performing states today under such objective standards would be states like Massachusetts and Oregon, not the states originally covered by the Voting Rights Act. That doesn't fit the false narrative of fake 'voter suppression,' and so such reasonable proposals were rejected out of hand.

It is no secret why this narrative is advanced by those on the Left. Simply put, they view it as a voter turnout message to rile up their base. Do Democrats sincerely believe that election integrity and today's laws forming the most free, fair, and inclusive voting system in the world are akin to the scourge of "Jim Crow"-era oppression? Perhaps they have convinced themselves of it, but such allegations are really just part of the false narrative that I have described here.

In 2004, in an attempt to address the concerns of both parties, then-RNC-Chairman Ed Gillespie made a detailed proposal to then-DNC-Chairman Terry McAuliffe about how both parties could work together to address concerns about potential voter suppression and fraud; thereby attacking any such problems and

at the same time, dramatically increasing the confidence of all Americans in the 2004 election.

But consistent with the later-discovered McAuliffe/DNC strategy of intentionally making false accusations of voter suppression – as seen in the 2004 Colorado DNC manual – Terry McAuliffe and the DNC declined to work together to actually address even their own alleged concerns about voter suppression, presumably because their only interest was in the false narrative, as there no longer was a voter suppression problem to address – thankfully for America.[1]

It is also worth noting that in 2005, at a time when election security and transparency was somewhat more of a bipartisan concern, the Carter-Baker Commission, peopled with luminaries of both political parties, warned of the risks of mail-in and absentee voting, as well as the need to avoid duplicate voter registrations and other problems with the voter rolls. At the same time, commonsense measures like voter I.D., ready access by election observers and the prosecution of voter fraud were all praised by that bipartisan commission.[2]

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As a testament to the common sense of everyday Americans, those things that make for a secure and reliable election are generally agreed upon by ordinary Americans, and they tend to track very closely with many of the recommendations from the Carter-Baker Commission, though many such measures are targeted and undermined by the legislation proposed here in the Senate.

75% of Americans think only U.S. citizens should be participating in American elections.[3]

Polling consistently shows that 70-80+% of Americans believe that voter I.D. is an essential element of a well-run election – despite the continual targeting and vilification of this particular security and confidence-building measure.

[1] Attached are the two referenced letters.
[2] See https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf
[3] See https://onlycitizens.vote/wp-content/uploads/2021/10/ACV-National-Public-Opinion-101719-1.pdf.

Such support includes majorities of minority voters along with every other category of Americans.[4] And such support similarly extends to voter I.D. for absentee and early voting.[5]

Questionable practices such as 'ballot harvesting' or 'ballot trafficking' are disfavored by the American people, yet H.R. 4, S. 1 and other currently-proposed federal legislation seek to force ballot trafficking on the states.[6]

Not surprisingly, Americans favor consistency in the application of the rules of elections across their states. For example, by substantial margins, Americans believe election clerks should use the same standards everywhere in their state for correcting absentee ballot errors, and they favor in-person early voting hours being the same everywhere within their state.[7]

Yet H.R. 4, the deceptively named "John Lewis Voting Rights and Advancement Act," would let unelected left-wing bureaucrats essentially veto commonsense election safeguards and voter integrity measures passed by duly elected state legislators.

Through H.R. 4, Democrats would like to impose a federal preclearance requirement nationwide – suggesting access to voting is actually worse today than it was in 1965, a patently ridiculous position.

In truth, the lying demagoguery coming from the radicals is not constructive and represents a large-scale attempt to knowingly convince the American people of a false narrative – namely, that since the *Shelby County* ruling by the Supreme Court in 2013, America has been suffering from a rash of voter suppression.

Thankfully, the data demonstrates that this narrative is blatantly false.

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[4] See, e.g., https://www.honestelections.org/wp-content/uploads/2021/03/Memo-on-Voters-and-Elections-1.pdf (national); https://www.detroitchamber.com/wp-content/uploads/2021/06/June-2021-Michigan-Statewide-Voter-Survey-Report.pdf (Michigan); https://www.fandm.edu/uploads/files/109736436702240144-f-mpolljune2021-summary.pdf (Pennsylvania); https://will-law.org/wp-content/uploads/2021/09/WILL_FINAL-Memo.pdf (Wisconsin).

[5] Id.; see also https://www.ajc.com/politics/interactive-poll-of-georgia-voters-january-2021/TWP2LTEGFZEGNFUPMS3NIWPDWU/ (Georgia); https://www.texaspolicy.com/wp-content/uploads/2021/07/Rasmussen_toplines.pdf (Texas).

[6] See, e.g., https://will-law.org/wp-content/uploads/2021/09/WILL_FINAL-Memo.pdf (Wisconsin).

[7] See https://will-law.org/wp-content/uploads/2021/09/WILL_FINAL-Memo.pdf (Wisconsin).

And rather than make general allegations, let me be specific about some of the radical leftists who are lying to the American people.

It starts at the top, with President Biden. Even the leftist *Washington Post* had to give President Biden their strongest liar rating of "four Pinocchios" for his blatantly false statements about Georgia's recent election reform efforts.[8]

Not to be left out, Vice President Harris flip-flopped from her anti-voter I.D. position in an interview on BET, an interview in which that flip-flop was overshadowed by her comment that people who live in rural communities aren't capable, i.e., smart enough, to use voter I.D.s to conduct their voting.

Vice President Harris's 'rural people are stupid' view is no less prejudiced than her view – shared implicitly by so many others on the Left – that minorities are somehow incapable of getting and using voter I.D.s like everyone else.

In addition to the data simply not supporting this prejudiced view, it is one of the most offensive aspects of the entire contemporary public discussion.

Congressman Clyburn not only flip-flopped on his previous position that requiring voter I.D. is racist, but he even denied ever holding such a position. And beyond just that, he further denied that anyone in Congress ever held such a position! Given that members of this very committee have suggested that requiring voter I.D. is suppressionist at the least or racist at worst, you all know Congressman Clyburn's denial was without foundation. And like President Biden, Congressman Clyburn also earned "four Pinocchios" from the leftist *Washington Post* for his lies on this subject.[9]

Of course, our list would be incomplete without Stacey Abrams, who, like Congressman Clyburn, both flip-flopped on her "voter I.D. is racist" position AND denied ever holding such a position.[10]

Pennsylvania Governor Tom Wolf staged a spectacular flip-flop of his own, suddenly declaring he is now open to changing the state's voter I.D. laws. Less than three weeks earlier, Wolf enthusiastically vetoed commonsense voter I.D.

[8] See https://www.washingtonpost.com/politics/2021/03/30/biden-falsely-claims-new-georgia-law-ends-voting-hours-early/
[9] See https://www.washingtonpost.com/politics/2021/07/15/clyburns-false-claim-that-no-democrat-has-opposed-voter-id-laws/
[10] See https://www.washingtonpost.com/politics/2021/06/21/democrats-voter-id/

provisions contained within the *Voting Rights Protection Act* passed by the state's General Assembly.[11]

What do the flip-flopping race baiters have in common? Two things: their timing and their polling.

What do I mean?

First, because of the political necessity of getting federal legislation through a 50-50 Senate, following West Virginia Senator Manchin's indication that he would require some kind of voter I.D. to support national legislation, President Biden, Vice President Harris, Congressman Clyburn, Stacey Abrams and many others on the Left, had to cast aside their false "voter I.D. is racist" mantra, as they could not be calling Senator Manchin a racist (at least for now) while they were trying to get his vote for their extreme H.R.1/S.1 legislation in the U.S. Senate or its follow-on, H.R. 4.

Second, even after six solid months of relentless, false, ad hominem attacks on election reform efforts, including voter I.D. requirements, by left-wing national leaders and their media puppets, the American people still overwhelmingly hold the position that voter I.D. requirements – and other ballot integrity measures – should be an integral part of the election processes in our states.

I will use Stacey Abrams as an example of the role of persistently positive polling in favor of election integrity reforms. Given that Stacey Abrams will likely run for governor of Georgia again next year, being on the bottom side of issues that poll in the range of 2-to-1 in favor is not a comfortable place for any aspiring politician to be.

Abrams flip-flop/denial regarding voter I.D is very similar to her handling of first encouraging Major League Baseball to boycott her own home state of Georgia by moving the All-Star game out of Atlanta, then denying that she had done so.

In that case, amazingly, allegedly in the name of fighting racism, Major League Baseball, with encouragement from Stacey Abrams and others, moved the All-Star

[11] See https://www.inquirer.com/politics/election/pennsylvania-voter-id-tom-wolf-interview-20210720.html

game from the 51% black city of Atlanta to the 9% black city of Denver, doing incalculable damage to the black small business owners of Atlanta.

This example epitomizes – in one action – how far off the mark those opposing transparent election reforms have been in this entire debate.

To drive home how so many on the Left are more interested in perpetuating a false narrative, rather than having a full discussion of what makes for the best election, I would note that I was jointly invited to debate, first, Stacey Abrams and then former congressman and presidential hopeful “Beto” O'Rourke, respectfully, on the issues of election reform. While I gladly accepted the opportunity, both of my proposed challengers declined. Why? They have no interest or intention to engage these issues on the merits.

Let’s look at this from a different perspective.

Imagine an election with no rules. Just a table with a stack of empty ballots. Nobody is watching the table. Nobody is dispensing the ballots. Anyone who comes along can fill out a ballot (and since nobody is watching, as many as they choose), and drop those ballots into a drop box. For good measure we will mail a blank ballot to every single name listed in an outdated pollbook and let anyone return those ballots to unsecured drop boxes.

No one would trust the outcome of that "unrestricted," voting process.

We need rules, i.e., time, place and manner rules. And we find that when Americans talk about the mechanics of what makes a good election – outside the umbrella of partisanship – there is broad agreement on good rules for elections.

Only citizens can vote. A reasonable rule.

Citizens have to register and registrars have keep pollbooks up to date. A reasonable rule.

One ballot per registered voter. A reasonable rule.

Enforceable transparency is required so everyone can see the election is clean and secure from start to finish – every step of the way. A reasonable rule.

Ensure each voter is who they say they are. A reasonable rule. The Carter-Baker Commission recommended it and overwhelming majorities of Americans support it.

So, on the basic mechanics of how elections should best be run, when you take the discussion out of the overcharged political atmosphere of the day, Americans tend to agree on what it takes to run good elections.

We have seen that one does not need fraud to shake confidence in an election. In *Bush v. Gore* in 2000, Florida's election system was held up before the world as a sad joke – incompetence, election breakdowns, untrustworthy ballots and machines, and haphazard and inconsistent rules. Americans' confidence was shaken.

In 2000, the Left was screaming its lack of confidence in our elections. And again in 2016 and 2018 Democrats questioned election results.

Highly regarded pollster Scott Rasmussen wrote an article this year in which he recorded that, while 31% of Americans lacked confidence that America swore in the correct person as president following the election of 2020, 26% held the same view in 2016 – and there is not much overlap between those two groups. [12]

Furthermore, most voters (56%) believe at least one of the last two presidents was illegitimately put into office. That includes 26% who believe Hillary Clinton was the legitimate winner in 2016 and 31% who believe Donald Trump was the legitimate winner in 2020.[13]

Here, in the U.S. Senate, you can learn from Florida. How did the people of Florida respond to the shocking revelation of just how poor their election system was in 2000? They set about fixing their laws and procedures, and in many parts of the state, they improved the quality of their personnel.

[12] See https://scottrasmussen.com/just-26-believe-the-right-person-was-declared-winner-in-last-two-presidential-elections/
[13] *Id.*

And given the atmosphere flowing from 2020 into 2021, it is worth recognizing that even though the Republican candidate won that contested election in Florida in 2000, it was largely Republicans – though by no means only Republicans – that set about to improve their election processes.

States can and are working to upgrade and improve their elections systems, but it is important that Washington not step in to dictate its own one-size-fits-all approach that is really more about control of elections by one party than achieving the confidence of the American people in the outcome of our elections.

The first and most important thing the Senate can do, is stick with the Voting Rights Act in its current form to fight actual discrimination where it occurs, as noted by the Supreme Court in *Brnovich*, and not go beyond it to a partisan federal takeover of our elections.

One need only look back at Florida 20 years after *Bush v Gore*. When much of the country suffered election breakdowns in their states, Florida – the third largest state, and the largest swing state – smoothly tallied its votes on election night 2020, with no significant complaints from either side.

Citizens can have confidence in their elections, but only if the federal government doesn't force them to eliminate basic rules of fair and accurate elections.

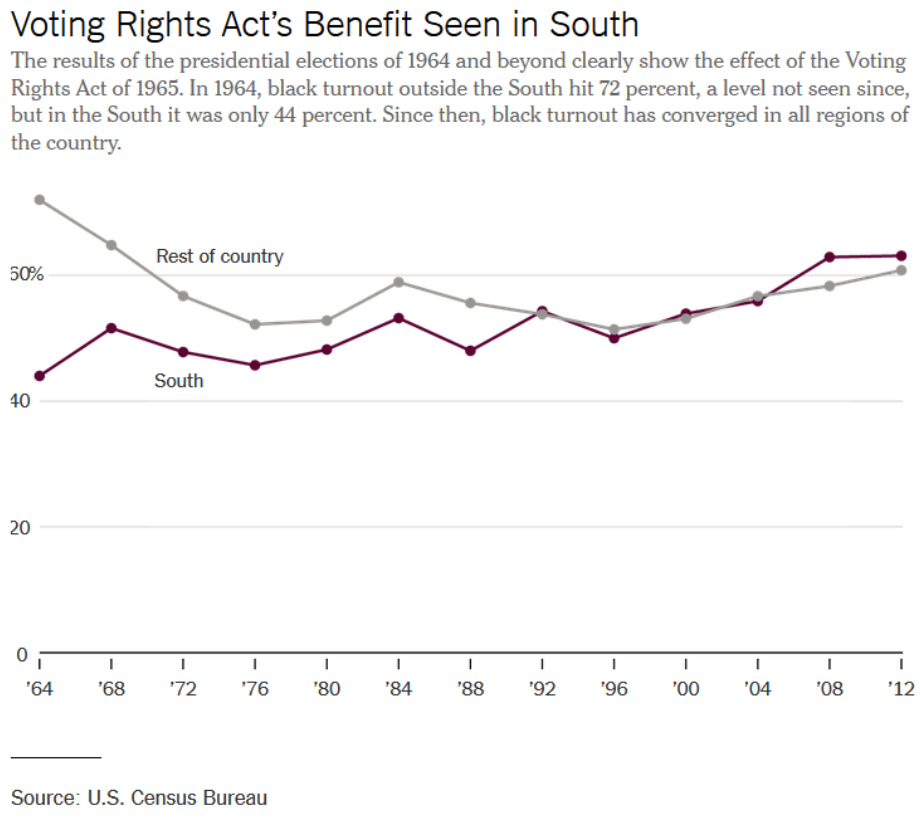
Many on the Left want to overturn the *Shelby County* and *Brnovich* decisions by the U.S. Supreme Court. It should be noted that the simple reason the *Shelby County* and *Brnovich* decisions are right is because they are based on facts, not left-wing hysteria.

Given the pure volume of hysteria, I think that bears repeating: The reason the *Shelby County* and *Brnovich* decisions are right is because they are based on facts, not left-wing hysteria.

I would reiterate that both H.R. 1/S. 1 and H.R. 4's nationwide preclearance with no objective basis both require a false assumption that America is worse off today as it relates to voting access than it was in 1965, but also one directly at odds with the Supreme Court's conclusion in the *Shelby County* decision of 2013.

In *Shelby County*, the Supreme Court noted that the preclearance requirements of the Voting Rights Act constituted an "uncommon exercise of congressional power" that was warranted by the "exceptional conditions" existing in 1965, including tests and hurdles to registering to vote and voting in some parts of the country, particularly the South, including my home state of Virginia. The result of those obstacles was substantially lower black voter participation.

As you can see in the graph below (from the *New York Times*, using Census Bureau data), once the restrictions targeted in the Voting Rights Act were removed, black adults in the South began to engage in elections at rates that quickly approached the rest of the country, actually surpassing black voters in the rest of the country by 1992.



Beyond equalizing access to voter registration and voting, the Supreme Court noted that in 2013 "…discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." Under those circumstances, federal preclearance could not be constitutionally sustained as it was not based on "current political conditions."

Those 'current political conditions' are shown in the steady, positive changes in the voting and registration data compiled by the Census Bureau over the years to see that while we are not perfect, America has – thankfully – left its days of racially suppressive voting laws behind.[14]

This summer, in the completely unsurprising *Brnovich* decision, the Supreme Court further noted that Section 2 of the Voting Rights Act is alive and well and available to the federal government to use to attack actual instances of discrimination – as it should be.

I mention this because I am concerned that many leaders on the Left talk about the *Shelby County* decision as if the federal government's authority to stop discrimination was held unconstitutional, which I hope everyone on this committee knows is not the case. Only the outdated preclearance formula was found to be unconstitutional. But it seems that some on the Left want to mislead the American people in an effort to build artificial pressure for a federal takeover of elections.

As it relates to the amendments to the Voting Rights Act put forward in H.R. 4, the federal takeover via nationwide preclearance is clearly intended to position the extreme partisans in the Voting Section of the Department of Justice[15] to block voting integrity efforts. In fact, it is these very efforts that have been histrionically referred to by members of the Senate and even the president of the United States as so-called "Jim Crow 2.0."

Recent evidence of the problem is the politicized lawsuit recently filed against Georgia by the Department of Justice (Voting Section) asserting – in unusually political terms – that Georgia's recent modest reforms to its election system were enacted in order to discriminate against black voters in Georgia. In light of the complaints in Georgia about election administration – dating back to 2018 (by Democrats) – it should be no surprise to anyone that Georgia's General Assembly would seek to make improvements. That those improvements have been the subject of some of the most brazen and dishonest attacks seen in American politics in years, including by President Biden, indicates that cleaning up Georgia's

[14] See https://www.census.gov/topics/public-sector/voting.html
[15] See https://oig.justice.gov/reports/2013/s1303.pdf, page 209

elections is deemed by those doing the attacking, i.e., Democrats, to somehow disadvantage their "side."

When someone thinks cleaner and smoother elections are disadvantageous, I am hard pressed to discern a defensible reason for such a position.

Finally, I would share a bit of my experience as an attorney general of a covered jurisdiction – Virginia. We always had to struggle with the never-well-delineated, conflicting demands of Section 2 and Section 5 of the Voting Rights Act when it came to redistricting. To put it in simple terms, Section 2 reasonably demands that a state's laws be developed and implemented without regard to race, while Section 5 required covered states to take into account race when drawing district lines, with the general goal of no retrogression. Needless to say, it is actually impossible to do both. It is possible to do both yet not discriminate, but the preclearance requirement made this arrangement subject to great arbitrariness on the part of the Department of Justice.

And that is just redistricting. With over 100 election jurisdictions in Virginia, the aggregate burden of complying with preclearance was enormous. I completely agree that that burden made sense when the VRA was put in place, but it cannot be justified today.

Again, for those of you who have not had to contend with preclearance in your careers, it covers the smallest of trivia. For example, we have approximately 2,500 voting precincts in Virginia. They are in schools, churches, government buildings, and the list goes on. To do something as pedestrian as moving a voting location from the local school to the local firehouse – for one, single precinct – a locality had to ask permission of the federal government for that change, and thus had to go through the preclearance process. While the overwhelming majority of such requests end up being approved, the process often comes with requirements for information and what amount to interrogatories. All for one of the simplest elements of election administration. Then multiply that through all of the different aspects of an election and you begin to see the extraordinary burden involved.

And when you realize that the extreme left-wing lawyers that inhabit the Voting Section at DOJ view every one of these as opportunities to negotiate a state or

locality into election process positions that they – the unelected bureaucrats – want for your state, you can see the opportunities for mischief.

The term "federal takeover" describes such a situation very accurately, and it cannot be justified as achieving anything other than political control of elections, perhaps one of the only results that could actually take America's shaky confidence in its elections to an even lower place. I would ask the Senate not to go down that path.

Finally, given the outrageous propaganda being spewed by so many on the Left about so-called "Jim Crow 2.0" election reforms, I thought it would be helpful for me to put into the record a number of items that are examples of real Jim Crow laws.

The 1902 Virginia Constitution imposed poll taxes, literacy tests and even a civics test as hurdles to voter registration and voting.[16] All intended to deny as many black citizens access to voting as possible.[17] One might also look at the other then-contemporary rewrites of other Southern states' constitutions to see similar provisions.

In addition to the taxes, tests and hurdles of these constitutions, there were also devices to allow illiterate whites onto the voter rolls. These included going easy on the civics tests for prospective white voters who couldn't read, as well as so-called "grandfather clauses," by which illiterate whites whose father or grandfather fought for either the Union or Confederacy (virtually always the Confederacy) would also be admitted to register to vote.

One example of the kind of civics tests used to bar black citizens from voting can be seen in the below footnote – a 1958 Georgia civics test that I am confident not one single member of this committee could get a 100% score on even if you had a localized version.[18]

And it was not only Southern states. California, Connecticut, Delaware, and the list goes on had either or both constitutional or statutory provisions to impede black citizens from voting.

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[16] See https://vagovernmentmatters.org/archive/files/vaconstitution1902_6885e65b9d.pdf
[17] See http://www.virginiaplaces.org/government/constitution1902.html
[18] See https://dp.la/primary-source-sets/voting-rights-act-of-1965/sources/1387

This is a history we must never forget. But those who suggest that one side of what should be an honest debate about how best to run elections today are engaged in a new round of "Jim Crow" legislation either do not know their history, or more likely, are abusing that history for their own political ends. A sad commentary on those who engage in such abuse – regardless of their exalted rank.

H.R. 4 is nothing but a power grab by congressional Democrats aimed at taking election powers away from the states. The takeover of all election reforms and redistricting by federal bureaucrats with a radical agenda under the guise of voter protection would set America back.

H.R. 4 should be rejected in favor of using the current Voting Rights Act – Sections 2 and 3 – which has already proven to be effective in fighting true discrimination where and when it has existed.

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