

**Prepared Opening Statement by Senator Chuck Grassley of Iowa
Ranking Member, Senate Judiciary Committee
Hearing on Election Legislation
October 6, 2021**

We're here today to discuss H.R. 4 the John Lewis Voting Rights Advancement Act, a bill that was crafted in the memory of the late Congressman John Lewis and is supposed to be about voting rights. The unfortunate reality is that this hearing is another attack on the Supreme Court. And this bill is yet another attempt at a federal takeover of state and local elections. It wrestles control of elections away from the states and into the hands of the Biden-Harris Department of Justice and partisan lawyers backed by dark-money groups.

Before discussing the matter at hand, I want to say that we are grateful to have had a number of extraordinarily busy state officials and former state and federal officials we heard from who were eager to testify against this bill. This was even more impressive for this hearing, given that the second panel was unsettled until Friday. We truly appreciate all of their efforts and outreach.

Looking at this bill, I can see why so many experts were willing to rearrange their schedules. This bill is a disaster. It penalizes states for voter ID laws—which an overwhelming majority of Americans support and Democrats claimed to support earlier this year. It fundamentally changes who is responsible for elections in America, replacing states with the federal government.

This is the fourth hearing regarding voting rights in the Senate Judiciary Committee this Congress. We had a subcommittee hearing two weeks ago on the same topic. But this did not seem like a process designed to learn more from experts and state officials responsible for running elections. It seemed rushed so that we could say we had another hearing.

Let's talk a bit about this bill's history. This bill has been proposed in various names and with slightly different provisions since 2015. It was proposed in direct response to the Supreme Court's 2013 decision in *Shelby County v. Holder*. *Shelby County* recognized that the landscape in America looked very different in 2013 than in 1965 when the Voting Rights Act was passed, and the Court concluded that Congress couldn't keep requiring states to preclear with the federal government election law changes based on data from 1965.

Fast forward eight years, and the Supreme Court again issued a decision, this time in *Brnovich v. Democratic National Committee*. In *Brnovich*, the Supreme Court set forth a list of substantive guideposts to determine whether, considering the totality of the circumstances, changes to voting rules are lawful under Section 2 of the Voting Rights Act.

Unsurprisingly, Democrats immediately set about revising this bill to overrule the Supreme Court's commonsense decision. The latest version doesn't just revive the preclearance procedures in place before *Shelby County*. It massively expands preclearance.

Democrats also want to erase the reasonable factors the Court outlined in *Brnovich* to guide lower courts as they look at the "totality of the circumstances" for changes to voting laws. H.R. 4 replaces those guideposts with a list of undefined and far more vague factors, such as difficulty

complying with voting requirements. These factors don't provide any legal clarity. What they do provide is enormous opportunity for mischief by Democrat lawyers. If activist lawyers backed by an unending flow of dark money can find a few violations under this new amorphous standard, then a state is subject to preclearance. That gives the DOJ control over the jurisdiction for a period of 10 years.

As written, H.R. 4 would also give the DOJ the power to retroactively look back at a jurisdiction to determine whether, in the past 25 years, the jurisdiction had a sufficient number of violations to warrant imposing preclearance now. Preclearance worked wonders in 1965. It was needed to ensure the vote for minority communities that were denied the right to vote by poll taxes and literacy tests. Those laws have thankfully been erased from the books. We have recently had record turnout for minority voters. So why are we expanding preclearance in 2021?

Do we really want the DOJ exerting this level of control over states? This is the same DOJ that only yesterday distributed a memorandum vaguely threatening to use the FBI to investigate parents protesting schools teaching Critical Race Theory in classrooms if those protests "intimidate" school board members. Do we really want to give partisan activists—who claim that paying for a postage stamp to mail in a ballot is a poll tax—the ability to subject a state to burdensome federal regulation and oversight? Do we really want to give Democratic operatives unfettered power to bring states under preclearance with lawsuits resting on vague notions of "violations"?

To that end, I hope to hear from Attorney General Rokita, who was previously Indiana's Secretary of State, why it's so important for states to manage their own elections and why federalized election rules are bad for election integrity and voter participation. I hope to hear from the Honorable Ken Cuccinelli, who was the Attorney General of the Commonwealth of Virginia when preclearance was outlawed, about the impact imposing preclearance procedures would have moving forward.

Now, before I wrap up, I would like to take a moment to introduce for the record, two written statements that I believe warrant recognition. Lieutenant Governor Mark Robinson described the flaws in H.R. 4 and noted that "this legislation is nothing more than attempt to ensure that one party controls the machinery of our government in perpetuity, by mandating an unconstitutional federal takeover of elections in our country." I also appreciate that a legal advisor to the bipartisan Carter-Baker Commission, Thor Hearne noted that H.R. 4 is "the antithesis of the Carter Baker Commissions' bipartisan recommendations for election reform." We would be wise to heed their concerns with regard to H.R. 4.

Sadly, my friends on the other side seem to disagree. They are pushing H.R. 4 to take away the ability of states to establish their own voting rules. We should all agree that participating in American democracy at the ballot box is a fundamental right. It's a right we should want to protect and not outsource to political operatives in the DOJ and activist, outside groups.