

Testimony of
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Before the Judiciary Committee of the
United States Senate

Written Testimony for the Hearing Record on
“The Voting Rights Amendment Act, S.1945: Updating the Voting
Rights Act in Response to *Shelby County v. Holder*”
June 25, 2014

Mr. Chairman, Ranking Member Grassley, and members of the Senate Judiciary Committee, thank you for holding this critical hearing on the necessity of the Voting Rights Amendment Act (VRAA), which will allow the Voting Rights Act (VRA) to continue to protect Americans and their right to vote. Through my advocacy work for the Sikh American community, I know how important it is to ensure that the ability to vote is protected, and that cases of bias and discrimination do not prevent citizens from voting, or from exercising any of their civil rights. Despite those who say that the Voting Rights Act is no longer necessary, claiming “Covered jurisdictions are not now engaged in a systematic campaign to deny black citizens access to the ballot through intimidation and violence,”¹ our nation still faces an unfortunate level of bias and discrimination towards those who appear to be different, are from different backgrounds, or hold different views.

Laws like the VRA allow for equal practice of civil rights, and the VRA protects one of the most fundamental: the ability to vote. Without protecting the voice of all our citizens, we cannot expect our nation to represent the diversity of our people. This is why, on behalf of the Sikh American Legal Defense Education Fund (SALDEF)² and the Sikh American community, I strongly support the immediate passage of the bicameral, bipartisan Voting Rights Amendment Act (S. 1945) which would provide the modern, flexible, and uniform voter protections necessitated by the ruling in *Shelby County v. Holder*.

¹ Associate Justice Clarence Thomas, <http://aclu.procon.org/sourcefiles/Northwest Austin Municipal Utility District Number One v. Holder, Attorney General, et al.pdf>

² Founded in 1996, the Sikh American Legal Defense and Education Fund (SALDEF) is the oldest Sikh American civil rights and advocacy organization in the United States. Its mission is to empower Sikh Americans by building dialogue, deepening understanding, promoting civic and political participation, and upholding social justice and religious freedom for all Americans. More information is available at <http://www.saldef.org>.

Sikh Americans and Voting Rights:

Since its founding in 1996, SALDEF has worked on issues of discrimination, bias, and hate crimes against the Sikh community. After September 11th, 2001, the numbers of anti-Sikh hate crimes drastically increased,³ as well as general ignorance and misunderstanding regarding the Sikh identity. In a survey done by Stanford University in association with the Sikh American Legal Defense and Education Fund (SALDEF), 20% of Americans surveyed said they would be angry or apprehensive when encountering a stranger with a turban. 35.3% of those surveyed said they would associate a man with a turban and beard with Osama bin Laden.⁴ As a result, Sikh Americans are often the targets of hate-based violence, such as in Oak Creek, Wisconsin, where a man entered the Sikh gurdwara, or house of worship, and killed six people.⁵ This was the deadliest attack on a house of worship since the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama.⁶ Because of this historical targeting and violence, the Sikh American voice has been incredibly vital in fighting for civil rights and social justice.

Sikh Americans have also paved the way for the rights of Asian Pacific Islander Americans to vote. Bhagat Singh Thind, a veteran of World War I, fought tirelessly for his right to vote. In 1923, he challenged laws, which denied him the rights to citizenship and to vote, in the United States Supreme Court. But, the Court unanimously decided that he would not be

³ History of Hate: Crimes Against Sikhs Since 9/11, *Huffington Post Religion*, Aug. 7, 2012, http://www.huffingtonpost.com/2012/08/07/history-of-hate-crimes-against-sikhs-since-911_n_1751841.html

⁴ *Turban Myths: The Opportunities and Challenges for Reframing Sikh American Identity in Post-9/11 America*, Stanford University Peace and Innovation Lab and Sikh American Legal Defense and Education Fund, (Dec. 2013).

⁵ *The Shooting and the Aftermath*, Milwaukee Journal Sentinel Online, <http://www.jsonline.com/news/crime/oak-creek-wisconsin-sikh-temple-shooting.html>

⁶ *Joint Statement on First Anniversary of Oak Creek Shooting*, ACLU, (Aug. 5, 2013), <https://www.aclu.org/religion-belief/joint-statement-first-anniversary-oak-creek-gurdwara-shooting>

permitted become a citizen and vote, as those of Indian descent were not categorized as Caucasian, the only group allowed to vote at the time.⁷ Thind continued to fight for his right to vote, receiving citizenship and then losing it multiple times over the years,⁸ until President Truman passed the Luce-Celler Act on July 2, 1946, finally reversing the Supreme's Court decision in *United States vs. Bhagat Singh Thind*. Thind was only the first of many Sikhs who lobbied for equal rights in voting and citizenship, leading the way to citizenship for all Asian Pacific Islander Americans.

Following Thind was another Sikh American, Congressman Dalip Singh Saund. Immigrating to California from India, Saund spent several years studying at the University of California – Berkeley, where he received his Ph.D. in mathematics, and then became a successful farmer, but was troubled that he still could not become a citizen.⁹ He launched the Indian Association of America, creating relationships between Indians in California and New York. This group of individuals, led by Saund, was eventually able to convince Representatives Luce and Celler to work on a bill that would allow Indians to become naturalized citizens of the United States. In 1946, with the successful passage of the Luce-Celler Act, Saund immediately applied for citizenship.¹⁰ He would become the first Sikh-American and Asian Pacific Islander American in Congress, where he continued to fight for the rights of all Asian Pacific Islander Americans. Despite the fact that Bhagat Singh Thind, Congressman Dalip Singh Saund, and

⁷ *Roots in the Sand*, PBS, http://www.pbs.org/rootsinthesand/i_bhagat1.html. See also, *United States v. Thind*, 261 U.S. 204 (1923).

⁸ Dr. Bhagat Singh Thind, *Naturalization Saga: In Summary*, http://www.bhagatsinghthind.com/naturalization_summary.php

⁹ Saund, Dalip Singh. *Biographical Directory of the U.S. Congress*. <http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000075>

¹⁰ Dalip Singh Saund, a Man to Remember, to Honor, and to Emulate -Part II, Anastasia Walsh, Dec. 2013, <http://indiaamericatoday.com/article/dalip-singh-saund-man-remember-honor-and-emulate-part-ii - sthash.QVc5BEyJ.dpuf>

other countless Sikh Americans fought for the voting rights of Asian Pacific Islander Americans and others almost 100 years ago, there are still many cases of discrimination ongoing today.

Cases of Voting Discrimination:

Despite the history of protections under the Voting Rights Act, racial and language discrimination in voting is still prevalent. Simply because discrimination in voting is not as obvious does not make it less pervasive; in fact, with it being one year since the Supreme Court's decision in *Shelby County v. Holder*,¹¹ it is more likely that many of these cases are being left unreported and without scrutiny. Without the tools to respond appropriately, through strong legislation, this discrimination will continue to impact voters, especially in the upcoming election, and even in our next Presidential race. *Shelby County* removed a key component of the Voting Rights Act of 1965, leaving Section 5 inoperable and limiting the ability of the Department of Justice to ensure fair and impartial administration of justice for all Americans.¹² Without the ability to determine which states need to provide an effective uniform and fair backstop and review, states and local jurisdiction are able to change voting procedures without warning, leaving voters unaware and helpless once they arrive at the polls.

Discrimination in voting practices is certainly not a topic of the past, as there have been many documented cases – within the past decade – in states across the nation, like Alabama, Arizona, California, New York, Texas, Virginia, and more.¹³ In many states, there have been active movements to displace minority groups and dilute the power of the community's vote, effectively lessening the power that these communities have in selecting their United States

¹¹ *Shelby County v. Holder*, 570 U.S. ____ (2013).

¹² Our Mission Statement, Department of Justice, <http://www.justice.gov/about/about.html>

¹³ Voting Rights in the States, The Leadership Conference, <http://www.civilrights.org/voting-rights/vra/states.html>

Representatives, Senators, and even local politicians. One such example is in New Orleans, where the percentage of African American Representatives has notably decreased since Hurricane Katrina. In a recently report done by the Leadership Conference, Louisiana lists 13 violations of the VRA since 2000, most recently:

East Feliciana Parish, Louisiana (2011) – The parish proposed a redistricting plan that included the creation, realignment, and renumbering of voting precincts. In this plan, District 5 is an ability-to-elect district for African Americans. DOJ concluded that the significant reduction in the percentage of Black people in the total population, the voting age population, and the number of registered voters in the district would mean that Black voters in the proposed district would no longer have the ability to elect a candidate of choice to office. Therefore, the department blocked the implementations of this change.¹⁴

These potential barriers to voting are present in other states as well, like Texas, where redistricting is often attempted to weaken the minority vote. Two examples are included below:

Nueces County (2012) – In late 2011, the county commission in Nueces County, Texas, enacted a redistricting plan that diminished the voice of Hispanic voters at the polls by swapping Hispanic and White voters between election precincts. After careful review of the 2011 plan, DOJ concluded that the county’s actions “appear to have been undertaken to have an adverse impact on Hispanic voters.” DOJ also noted that the county offered “no plausible non-discriminatory justification” for these voter swaps, and instead offered “shifting explanations” for the changes.”¹⁵

Galveston County (2012) – The County’s 2011 redistricting plan for justice of the peace/constable precincts relocated a largely White area from one precinct to another, reducing the overall minority share of the electorate in the latter district. DOJ also objected to the reduction in the number of election precincts for the justices of the peace and constable. In the benchmark plan, minority voters possessed the ability to elect candidates of choice in Precincts 2, 3, and 5 for the justice of the peace and constable districts, but the ability to elect was reduced to one precinct under the proposed plan.¹⁶

In these instances, without the Voting Rights Act of 1965, *especially Section 4*, this redistricting would have been able to go through without scrutiny, weakening the voices of

¹⁴ *The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State*, The Leadership Conference, June 2014, <http://www.civilrights.org/press/2014/Racial-Discrimination-in-Voting-Whitepaper.pdf>

¹⁵ *Id.*

¹⁶ *Id.*

minority communities and their ability to have representatives in Congress. Now, without Section 4 in action, there is no policy able to protect the minority vote easily and effectively.

Section 2, although it is in place to prevent discrimination on the basis of race, color, or language, does not act in the same manner that Section 4 would. Preclearance provides a much higher level of protection of individuals versus the protections of Section 2, which requires evidence of an at-large election system having discriminatory intent, or within its maintenance, to prove that a the entire election system was unconstitutional, as a result of 1980's *City of Mobile v. Bolden*¹⁷. After this decision, the Latino community in California had to bring their case to the court in 1988's *Gomez v. City of Watsonville*, where the voice of the community had been diluted due to the at-large election system creating racially polarized voting patterns.¹⁸ The case was successful, but many like it were not, due to the cost and difficulty of proving that an overall system was inherently discriminatory. While Section 2 provides protection in the case of inherent discrimination, Section 5 preemptively supplies it by requiring preclearance of notably biased states, and also allows voters to be aware of their voting procedures ahead of time.

Another example of the efficacy of Sections 4 and 5 is during a 2004 city council primary in Bayou La Batre, Alabama, where a Vietnamese-American candidate, Phuong Tan Huynh, ran against incumbent Jackie Ladnier. Ladnier and his supporters challenged more than 40 Asian-American voters at the polls, saying that if they could not speak English well, they might not be citizens. The Department of Justice intervened, and Huynh went on to become the first Asian

¹⁷ Voting Rights in California 1982-2006, RenewtheVRA.org, May 2006, <http://www.protectcivilrights.org/pdf/voting/CaliforniaVRA.pdf>

¹⁸ *Id.*

American on the city council.¹⁹ Without the protection of Section 5 of the VRA, many minority voters would be left stranded at the polls, without language support and unable to elect their desired representative. Section 5 has also allowed the progression of our Congress into a more accurate representation of our diverse nation and its citizens.

Barriers to access to the polls due to language is a major issue for the Asian Pacific Islander American community, as approximately 60% of the community is foreign-born and approximately one-third is limited English proficient.²⁰ Section 203 of the Voting Rights Act requires certain communities to provide language assistance, but areas that do not meet this threshold should still have poll workers who are aware of cultural and language differences, and are able to assist these individuals when they arrive at the polls, rather than turning them away. Furthermore, there is also the harm of various voter suppression laws, such as photo ID required to vote or proof of citizenship needed to register to vote. Since one in five Asian Pacific Islander Americans do not have valid government-issued photo ID, this will place most of the burden on individuals in this community who are naturalized citizens. Similarly, appearances of individuals have often led to discrimination at the polls, as Asian Pacific Islander Americans are often perceived as “foreigners” or “un-American.”²¹

Language assistance has failed other communities as well, for example, the New York counties of Westchester, Nassau, and Suffolk are required by Section 203 to provide Spanish-language assistance, but an onsite study done by Cornell students in 2005 documented a failure

¹⁹ *Voting Rights Act: Sikhs, Asians Need Protection*, Jasjit Singh, *Mercury News*, http://www.mercurynews.com/opinion/ci_25913696/voting-rights-act-sikhs-asian-americans-need-protection

²⁰ 2012 Policy Platform, National Council of Asian Pacific Americans, http://ncapaonline.org/index_107_3400021688.pdf

²¹ *Id.*

to do so.²² Thus, it is clear that Asian Pacific Islander Americans are only one community of many that continues to face language discrimination at the polls, thus showing the vast necessity of an amendment, and its passage in a timely manner. As the fastest growing ethnic group in the country, Asian Pacific Islander Americans rely on the Department of Justice to protect their civil rights and provide the tools necessary for them to exercise these rights. Each day without a formula in place to evaluate voting procedures is another day that discriminatory policies can be put into place.

Voter ID:

Voter ID laws are ones that are often used to keep minority groups away from the polls. According to the nonpartisan National Conference of State Legislators, 9 out of 13 states in the South with a large Black population now have laws requiring voters to bring photo identification to the polling booth in order to cast a regular ballot, six of which are considered “strict,” meaning that one has to take additional steps after Election Day to make their vote count if they do not have an ID at the polls.²³ Those in favor of voter ID laws claim that they prevent voter fraud, but in actuality, voter fraud has been proven to be nearly nonexistent.²⁴ These laws are more useful in making it even more difficult to vote for individuals from a low-income and those from communities of color.

²² Voting Rights in New York 1982-2006, RenewtheVRA.org, March 2006, <http://www.protectcivilrights.org/pdf/voting/NewYorkVRA.pdf>

²³ *True South: Unleashing Democracy in the Black Belt 50 Years After Freedom Summer*, Center for American Progress, June 2014, <http://cdn.americanprogress.org/wp-content/uploads/2014/06/TrueSouthReport-6.16-version.pdf>

²⁴ *Myth of Voter Fraud*, Brennan Center for Justice, Justin Levitt, Nov. 2007, [http://www.brennancenter.org/sites/default/files/legacy/The Truth About Voter Fraud.pdf](http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf)

However, beyond voter ID laws at the polls, Sikh and Muslim Americans can often not even obtain a state-issued ID, due to bans on religious headwear in ID pictures. There have been several recent cases of Sikh Americans not being able to obtain a driver's license, or other state-issued ID, due to their articles of faith, in which SALDEF has been engaged. One such case occurred in Minnesota, where a Sikh man, Mr. Jatinder Singh, was told that he would not be able to take his driver's license picture with his *dastaar*, or religiously mandated turban, on.²⁵ While Mr. Singh was eventually able to obtain his license, it is important to recognize the barriers he faced in obtaining his required identification, and the impact it would have had on the ability of other Americans of faith to participate in the American economy and political arena.

There have also been instances of state legislators, in states around the country and as diverse as Maryland, Minnesota, and Oklahoma, attempting to pass bans on wearing religious headwear in ID pictures,²⁶ which would prevent a large constituency from exercising their right to vote if they are unable to comply with voter ID requirements. The inability for a judge to order preclearance on discriminatory ID laws²⁷ is dangerous because it allows an indirect, albeit simple, manner for states to exclude voters from the polls. Although it is vital to pass an amendment now that will prevent voters from being turned away from the polls due to literacy levels, English proficiency, race, religion, and country of birth, it is also pertinent to continue to evaluate the efficacy of these policies and ensure that they are protecting Americans to the best of their ability. Voter ID is not an issue that was tackled in this amendment, but I hope it is one

²⁵ *Sikh American Drives Away With Victory in Minnesota*, Sikh American Legal Defense Education Fund, Feb. 2014, <http://www.saldef.org/news/sikh-american-drives-away-with-victory-in-minnesota/>

²⁶ *Protecting Sikh ID*, Sikh American Legal Defense Education Fund, Jan. 2010, <http://www.saldef.org/issues/protecting-sikh-id/>

²⁷ Bill Summary: A VRA for Today – Protecting Voters in the 21st Century, The Leadership Conference, April 2014, http://vrafortoday.org/wp-content/uploads/2014/04/2014-04-07-VRAA-Bill-Summary_c4.pdf

that is covered in the future, ensuring that an individual's faith is not used as an obstacle to taking advantage of the right to vote.

Conclusion:

The passage of the Voting Rights Amendment Act is necessary to uphold the foundation of this country on the basis of civil rights, pluralism, and participation in government. There are clear examples of incidents in which the VRA has protected citizens' right to vote using sections that have been weakened under *Shelby County*, such as in 2012's *Perry vs. Perez*.²⁸ Each day that goes by without a strong, uniform, and fair law in place to prevent discriminatory practices in voting is another day where voters can be turned away from the polls, unable to elect the individual who will represent them. By not allowing the full participation of all Americans in our government, we are moving away from the founding principles of this nation. These discriminatory practices and denials of basic civil rights will only stop with a bipartisan effort to pass the Voting Rights Amendment Act, and a continued effort to improve the amendment to protect against voter ID policies and other discriminatory practices.

The Sikh American community stands together in supporting the passage of the Voting Rights Amendment Act, as demonstrated in a May letter we shared with each Member of Congress (Appendix A) and the hundreds of messages sent by Sikh American constituents to their Representatives and Senators. The Sikh American community and SALDEF ask that the Senate Judiciary Committee consider the positive impact that this amendment will have on our

²⁸ *Voting Rights Act: Sikhs, Asians Need Protection*, Jasjit Singh, *Mercury News*, http://www.mercurynews.com/opinion/ci_25913696/voting-rights-act-sikhs-asian-americans-need-protection

nation, and its ability to accept and represent all of its citizens without bias. Thank you for allowing me to present this testimony.

Appendix A: Letter to the U.S. House of Representatives and Senate: Sikh American Organizations Support the Voting Rights Amendment Act

May 20, 2014

Dear Member of Congress:

As national, state, and local Sikh organizations that collectively represent the hundreds of thousands Sikhs in America, we write to share our strong support for the Voting Rights Amendment Act of 2014 (H.R. 3899/S.1945) and urge its swift passage by both chambers of Congress.

For the Sikh community, the fight for the rights of citizenship, including the right to vote, is a critical part of our history in the United States. In 1923, Bhagat Singh Thind, a veteran of World War I, went to the U.S. Supreme Court to challenge racist laws that denied U.S. citizenship, including voting rights, to immigrants from Asia. In 1957, Dalip Singh Saund became the first Asian Pacific American Congressman and the only Sikh American to serve following years of advocacy for the right to become a citizen and have a vote and a voice in his country.

We are inspired not only by our history in America, but the values of our faith. Our scripture tells us to remember that all are equal, with an equal voice. “It is the Divine’s command, that no one should dominate or subjugate another; every one is equal. Let all abide in peace, under this Benevolent Rule.” (Sri Guru Granth Sahib Ji, Page 73).

The Supreme Court's recent decision in *Shelby County v. Holder*, which struck down a key provision of the VRA and stripped critical protections for voters, reminds us that our work is far from done. Chief Justice Roberts called upon Congress to develop a new formula.

Every day that passes without this new formula new voting procedures are proposed and implemented. At best, they are unreported and unscrutinized; at worst they are outright discriminatory.

This bill is not perfect. We remain concerned that voter ID laws are treated differently from other potentially discriminatory policies and that a “known practices” formula, which would provide recourse against some of the most common discriminatory practices, is not included. Yet, we firmly believe that now is the time to build on the critical tools in this legislation by working together to strengthen the overall bill and stop discriminatory voting practices wherever they occur.

Voting rights legislation has long been—and continues to be—a shining example of bipartisan unity. We urge you to support the Voting Rights Amendment Act of 2014 (H.R. 3899/S.1945) and see that its modern, commonsense provisions are swiftly enacted. If you have any questions, please free to contact Navdeep Singh, Policy Director at the Sikh American Legal Defense and Education Fund (SALDEF), at navdeep@saldef.org or 202- 393-2700 x 128.

Thank you for your consideration.

Jakara Movement

Sikh American Legal Defense and Education Fund (SALDEF)

Sikh Coalition

Sikh Council on Religion and Education (SCORE)

Sikh Research Institute

Surat Initiative

UNITED SIKHS