UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425 www.usccr.gov

March 3, 2016

Dear Speaker Ryan:

I write to you as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole. I am writing in response to news reports that you have expressed support for H.R. 885, the Voting Rights Act Amendment of 2015.[1]

It would be a mistake for Congress to take any action on H.R. 885. The bill would reestablish the "preclearance" regime for state changes to their voting laws. The Supreme Court was correct in *Shelby County v. Holder* that in regard to racial discrimination in voting, our country has dramatically changed for the better. Reviving the preclearance regime would not solve any existing problems, but merely create new problems.

The preclearance regime gave rise to a voting system that became increasingly race-conscious. States' efforts to create districts that would pass muster with DOJ led to ever-more absurd results. Two majority-black districts and one thirty-five percent black district simply will not do.[2] The state of Georgia must create three majority black districts, even if "[t]he populations of the Eleventh [District] are centered around four discrete, widely spaced urban centers that have absolutely nothing to do with each other, and stretch the district hundreds of miles across rural counties and narrow swamp corridors."[3]

We should not be encouraging Americans to view their political interests as being dictated by their skin color, but that is exactly what DOJ encourages when it is in control of the preclearance system. As the former Vice Chair of this Commission, Abigail Thernstrom, has noted, the imperative to create the maximum number of majority-minority districts does African-Americans and other minorities no favors. It encourages racial balkanization and isolation, and encourages politicians in those districts to rely upon explicitly racial appeals to win elections rather than campaigning on substantive policy positions that appeal to all racial groups.[4]

Lastly, preclearance is an extraordinary distortion of federalism that can only be justified by rampant racial discrimination. States are sovereigns, and under ordinary circumstances should not be forced to beg DOJ, a mere agency, for permission to move

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[1] Mike Lillis, *Ryan backs voting rights bill – but tells black caucus it's out of his hands*, The Hill, Feb. 3, 2016, http://thehill.com/homenews/house/268159-ryan-backs-voting-rights-bill-but-tells-black-caucus-its-out-of-his-hands.

[2] Miller v. Johnson, 515 U.S. 900, 907-09 (1995).

[3] *Id.* at 908.

[4] Abigail Thernstrom, *A Vindication of the Voting Rights Act*, Wall St. J., June 26, 2013, http://www.wsj.com/articles/SB10001424127887323873904578569453308090298.

polling places and draw district lines. No serious person can claim that there are pervasive racially discriminatory voting practices anywhere in the country that are even remotely comparable to those that existed in 1965. Congress was not even able to make such a claim with a straight face when it reauthorized the Voting Rights Act in 2006, claiming only that "vestiges of discrimination continue to exist".[5] "Vestiges of discrimination" are an insufficient reason to distort our constitutional structure.

Thank you for considering my concerns. If you have any concerns or questions, please feel free to contact my special assistant, Carissa Mulder, at cmulder@usccr.gov.

Sincerely,

Peter Kirsanow
Commissioner

[5] Pub. L. 109-246, § 2(b)(2).