HONEST ELECTIONS PROJECT ACTION

H.R. 4: THE "NANCY PELOSI POWER GRAB ACT"

On August 17, House Democrats introduced a new version of H.R. 4, Nancy Pelosi's latest attempt at a federal takeover of elections. **The new H.R. 4 is a sweeping partisan power grab.** It rewrites the law so progressives can change voting rules whenever they fear losing an election.

THE BILL:

- **Eliminates voter ID requirements nationwide**
- **Empowers federal bureaucrats to block overwhelmingly popular voting safeguards**
- **Strongly encourages partisan activists to target states with politically motivated lawsuits that manipulate voting laws and force states under federal control.**

The new H.R. 4 amends Section 4 of the Voting Rights Act (VRA) to include a new coverage formula for federal preclearance that is considerably more expansive than before. Similarly, the new bill expands the scope of "practice-based preclearance" to immediately bar enforcement of any state law that requires voters to show identification. The authors also included new amendments to Section 2 of the VRA to override the recent Supreme Court decision in *Brnovich* v. DNC. Other new provisions, meanwhile, invite a massive proliferation of eleventh-hour lawsuits by making it significantly easier for these challenges—typically highly political in nature—to successfully change voting rules immediately before an election.

H.R. 4'S NEW PROVISIONS USE LANGUAGE FROM H.R. 1 TO ELIMINATE VOTER ID REQUIREMENTS NATIONWIDE

- H.R. 4 immediately renders voter identification laws unenforceable in any state that does not permit voters to provide a simple "sworn written statement" in lieu of a photo or non-photo ID. This is the same policy—and indeed, the same language—adopted by H.R. 1.
- State voter-ID laws must then be submitted for preclearance review, allowing the federal government the opportunity to cancel them.

- Even a utility bill carveout (as proposed by Sen. Joe Manchin) runs afoul of H.R. 4, as do laws allowing for provisional voting.
- It is highly unlikely that states could adopt new identification requirements, since all new voter ID laws must be precleared under H.R. 4's "practice-based preclearance" requirements.

H.R. 4 LAUNCHES A POWER GRAB TO PUT WASHINGTON IN CHARGE OF ELECTIONS BY ENCOURAGING PARTISAN LAWYERS TO TARGET STATES AND FORCE THEM INTO "PRECLEARANCE"

- "Preclearance" empowers federal bureaucrats to overrule popular state election laws.
- H.R. 4 continues to reject the use of objective data—such as minority turnout in recent elections—in determining what states to put under federal control via preclearance. Its primary metrics remain rooted in litigation, retroactively tallying lawsuit-related "violations" over the last 25 years.
- The new bill counts not just final judgments, but "preliminary, temporary, or declaratory relief" in voting cases as a "violation" unless overturned on appeal.
- Lawsuits are now counted as multiple "violations," allowing a single case, potentially collusively settled, to put a state into preclearance. Each challenged provision of a law or redistricting plan that is ultimately abandoned, altered, or overturned is an independent "violation."
- H.R. 4 continues to invite collusive settlements and consent decrees by counting them as "violations." The bill now also counts extensions of these agreements as independent "violations." Agreements determined by a different court to burden voting rights count as yet another "violation."

H.R. 4 ORDERS COURTS TO IGNORE PUBLIC "INTERESTS IN VOTER CONFIDENCE OR PREVENTION OF FRAUD" IN VOTE DENIAL CASES

- H.R. 4 overturns the recent 6-3 Supreme Court opinion in *Brnovich* v. DNC. The case preserved the VRA as a tool to challenge voting laws that are intentionally discriminatory or have substantial discriminatory effects.
- The Court laid out guidelines for Section 2 cases that require courts to consider numerous factors including the size of a law's alleged disparities and burdens, and state interests such as preventing fraud and ensuring voter confidence.
- The bill forbids courts from considering these factors in vote denial cases, including the fact that virtually every voter may be able to comply with a law, and that a challenged law may be longstanding or commonplace nationwide.

H.R. 4 ENCOURAGES PROLIFIC ELEVENTH-HOUR LEGAL FIGHTS THAT MANIPULATE AND DISRUPT VOTING LAWS IMMEDIATELY BEFORE AN ELECTION

- The *Purcell* principle limits federal courts' power to change voting laws near Election Day, since doing so may harm the public interest in a lawful and orderly voting process and risks other unintended consequences.
- H.R. 4 compels courts to presume a lawsuit poses no risk to the public interest if it originates within 30 days of the adoption of a law, or at least 45 days before an election.

H.R. 4 SETS NEW STANDARDS FOR VOTE DILUTION AND VOTE DENIAL CLAIMS THAT PUT NEARLY EVERY VOTING LAW IN THE NATION AT RISK OF LEGAL CHALLENGE

- H.R. 4 instructs courts to consider broad, vague factors in vote denial and vote dilution cases that include:
    - Any history of voting discrimination in a state
    - The extent to which voters "bear the effects" of discrimination in areas unrelated to voting, including "education, employment, and health"
    - For vote denial cases, whether a state uses photo ID or proof of citizenship and residency laws which may impair voting
- Vote denial is now expansively defined as occurring whenever individuals in a protected class "face greater difficulty" meeting a standard (regardless whether that standard is applied evenly to all voters) that "at least in part" is traced or linked to "social and historical conditions" that have led to discrimination.
- These factors, together with the factors which courts are barred from considering, dramatically expand Section 2 liability. They risk turning the VRA into a heckler's veto that can be used against practically every voting law in the nation.