CONTINUING CHALLENGES TO THE VOTING RIGHTS ACT SINCE "SHELBY COUNTY V. HOLDER"

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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TUESDAY, JUNE 25, 2019

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

Washington, DC.

The subcommittee met, pursuant to call, at 2:44 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Cohen [chairman of the subcommittee] presiding.

Present: Representatives Cohen, Nadler, Raskin, Dean, Garcia, Escobar, Jackson, Johnson, Collins, Gohmert, Jordan, Reschenthaler, Cline, and Armstrong

Staff Present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Lisette Morton, Director, Policy Planning and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Julian Gerson, Staff Assistant; Keenan Keller, Senior Counsel; Will Emmons, Professional Staff Member; Paul Taylor, Minority Counsel; and Andrea Woodard, Minority Professional Staff Member.

Mr. COHEN. The Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order. Without objection, the chair is authorized to declare a recess of the subcommittee at any time. We welcome everyone's attendance here in the hearing on Continuing Challenges to the Voting Rights Act in *Shelby County* v. *Holder*. We know this is the 6th anniversary of *Shelby County* v. *Holder*.

Normally, what we would do is I would give an opening statement of 5 minutes, and then the ranking member would give one of 5 minutes, but Ms. Clarke, one of our witnesses, has a 3:40 train, which would have been easy to accomplish if it weren't for the House of Representatives' schedule. And with the permission of the ranking member, we are going to go straight to her statement and then go back into the traditional my talk, he talk, somebody else talk, the panel.

So Ms. Clarke, thank you so much for being here. Ms. Clarke is the President and Executive Director of the National Lawyers Committee for Civil Rights Under Law, one of the Nation's leading

civil rights organizations. She previously worked for several years at the NAACP Legal Defense and Education Fund, where she helped lead the organization's work in the areas of voting rights and election law across the country and worked on cases defending the constitutionality of the Voting Rights Act.

Prior to joining the Legal Defense Fund, she worked in the Civil Rights Division at the cannot of justice, serving as a prosecutor in the criminal section of the Division of Voting Rights and redistricting cases through the division's voting section. She received her J.D. from Columbia University and her Bachelor's degree from another ivy school called Harvard.

I normally give you the warning. I give you the warning. You start, you have got a green light, it goes off in 4 minutes, a yellow light, and that means you have got—yellow light is off, you have to got to go to the train. You are recognized for 5 minutes.

STATEMENTS OF KRISTEN CLARKE, PRESIDENT AND EXECUTIVE DIRECTOR, NATIONAL LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; HON. STACEY ABRAMS, FOUNDER AND CHAIR, FAIR FIGHT ACTION; HON. KYLE HAWKINS, SOLICITOR GENERAL OF TEXAS, OFFICE OF THE TEXAS ATTORNEY GENERAL; LEAH ADEN, DEPUTY DIRECTOR OF LITIGATION, NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.

STATEMENT OF KRISTEN CLARKE

Ms. CLARKE. Thank you, Chairman Cohen, Ranking Member Johnson, and members of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. My name is Kristen Clarke, and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law, and I thank you for the opportunity to testify today on challenges to voting rights.

My testimony today is shaped by my experience as an attorney who started off her career enforcing Section 5 of the Voting Rights Act at the Justice Department, as someone who litigated the Shelby County versus Holder case, and as someone who has worked to protect voting rights their entire career.

The Voting Rights Act of 1965 transformed American democracy, and the Supreme Court's evisceration of the Section 5 preclearance provision of the Act, coupled with a Justice Department that has abdicated its responsibility for enforcing remaining provisions of the Act, have placed the voting rights of our Nation's most vulnerable communities in peril. These dynamics have created a perfect storm, resulting in the resurgence of voting discrimination and voter suppression at levels not seen since the days of Jim Crow. It is worth underscoring that the current administration has not filed a single case under the Voting Rights Act. The Justice Department's silence is deafening.

The Lawyers' Committee for Civil Rights Under Law has been at the forefront of the battle for equal voting rights since it was created in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating voting discrimination and more. Today, our vast docket of voting rights liti-

gation is among the most comprehensive and far-reaching, both geographically and in terms of issues raised, as any in the Nation.

And by way of our election protection program, the Nation's largest nonpartisan voter protection effort, anchored by the 866 Our Vote hotline, we have vetted complaints from tens of thousand of voters since Shelby, many revealing systemic voting discrimination. In short, this is how Shelby has impacted our democracy.

First, we have seen the resurgence of discriminatory voting practices, some motivated by intentional discrimination. And this discrimination has been most intense in the very jurisdictions that were once covered by Section 5. They range from the consolidation of polling sites to make it less convenient for minority voters to vote, to the curtailing of early voting hours, the purging of minority voters from the rolls under the pretext of list maintenance, strict photo ID requirements, abuse of signature match verification requirements to reject absentee ballots, the threat of criminal prosecution, and more.

Second, we have seen increased levels of recalcitrance and hostility among elected officials who institute and reinstitute discriminatory voting changes with impunity. Well-known examples come out of North Carolina, where the legislature adopted an omnibus bill that the Fourth Circuit found was crafted with surgical precision. My written testimony includes an appendix that outlines several cases since the Shelby decision that evidence this hostility.

Third, the loss of public notice regarding changes in voting practices that could have a discriminatory effect is significant. Most suppressive actions occur in small towns sprinkled across the country, where constant oversight is difficult, if not impossible.

Fourth, the public no longer has the ability to participate in the process of reviewing practices before they take effect. And between 2000 and 2010, DOJ received between 4,500 and 5,500 submissions, capturing between 14,000 and 20,000 voting changes per year. Without Section 5, communities are in the dark, and unable to share critical information that can help to illuminate the discrimination that sometimes underlies voting changes.

Fifth, the preclearance process had an identifiable deterrent effect that is now lost.

Sixth, the status quo is not sustainable. Civil rights organizations are stepping up to fill the void created by the Shelby decision at insurmountable expense.

And finally, this will be the first redistricting cycle in decades if Congress fails to restore the Voting Rights Act. A little over 12 years ago, both Chambers of Congress reauthorized the Act with tremendous bipartisan support. Many members of the House present for that vote are still here today. Bipartisan support for the Act has been consistent across the decades and should remain so today. The Supreme Court has put the ball in Congress' court, and this body must take action now to help our country safeguard the right to vote for all. Thank you.

[The statement of Ms. Clarke follows:]

STATEMENT OF KRISTEN CLARKE
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "CONTINUING CHALLENGES TO THE VOTING RIGHTS ACT SINCE *SHELBY COUNTY V. HOLDER*"

JUNE 25, 2019

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Kristen Clarke and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on challenges to voting rights: an issue of paramount importance to minorities and our democracy.

The Voting Rights Act of 1965 transformed American Democracy. Ninety-five years after its ratification, it fulfilled the promise of the Fifteenth Amendment that the right to vote should not be denied because of race, color or previous condition of servitude. Today, our nation is at a crucial juncture in the decades-long struggle to create, maintain, preserve, and ensure true equality of voting rights for African Americans, Latinos and other minority communities. The United States Supreme Court's evisceration of a core provision of the Voting Rights Act, coupled with the Department of Justice's abdication of responsibility for enforcing the remaining provisions of the Act, place the voting rights of those populations most in need of protection at peril.

The Lawyers' Committee for Civil Rights Under Law, the organization that I lead, has been a leader in the forefront of the battle for equal rights since it was created in 1963 at the request of President Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has been at the forefront of many of the most important cases brought under the Voting Rights Act. We spearheaded the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Act and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization. In 2014, we organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.[1] To this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching – both geographically and in terms of the issues raised – as any in the nation.

It is unacceptable that in 2019, the right to vote is at risk. A little over 12 years ago, a unanimous Senate and a nearly unanimous House of Representatives reauthorized the temporary provisions of the Voting Rights Act including Section 5.[2] This vote reflected the historical bipartisan support for the Voting Rights Act. That bipartisanship consensus ended six years ago, with the Supreme Court's decision in *Shelby County v. Holder*,[3] which despite Chief Justice Roberts conceding that "voting discrimination still exists; no one doubts that," held that the formula determining which jurisdictions were subject to the pre-clearance requirements of Section 5 was not based on current conditions, and was therefore unconstitutional. Further, the Department of Justice, a governmental agency with not only the primary enforcement authority for enforcing the Voting Rights Act but greater capacity and resources than organizations like the Lawyers' Committee has largely been absent. Indeed, the current Administration has not filed a single case under the Voting Rights Act.

The *Shelby County* decision has led to heightened challenges to voting rights for minorities including: 1) the resurgence of discriminatory voting practices, many motivated by intentional discrimination; 2) increasing levels of recalcitrance among officials who institute and re-institute discriminatory voting changes with impunity; 3) the loss of public notice regarding changes in voting practices that could have a discriminatory effect; 4) the elimination of the public's ability to participate in the process of reviewing those practices; 5) the loss of the deterrent effect of Section 5; and 6) the

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[1] National Commission on Voting Rights, Protecting Minority Voters: Our Work Is Not Done (2014).

[2] The Senate passed the reauthorization bill 98-0 and the House 390-33. Congress.Gov, H.R.9 - Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (2006), https://www.congress.gov/bill/109th-congress/house-bill/9/all-actions?overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D.

[3] 570 U.S. 529 (2013).

increasing costs and burdens imposed on civil rights organizations and community leaders who must fill the gap left by the suspension of Section 5 and the absence of the Department of Justice in the fight to protect the most basic of freedoms. In addition, in two appendices, I provide examples of how Section 5 worked and of post-*Shelby County* instances of voting discrimination. Additionally, at present, the Lawyers' Committee is in the process of conducting a nationwide review of voting discrimination which will be included in a report later this year.

Below is a discussion of the consequences of the *Shelby County* decision, examples of the Lawyers' Committee's efforts to challenge discriminatory voting changes and the lack of enforcement of the Voting Rights Act by the Department of Justice.

A. The consequences of *Shelby County*

The ramifications of the decision in *Shelby County* are numerous and grave. At the most basic level, without the protections of Section 5 of the Voting Rights Act, changes that negatively impact the rights of minority voters in jurisdictions with documented histories of discrimination are now implemented without review by the federal government. As we discuss below, and as shown in Appendix 2, this permits government-authorized voter discrimination to remain in effect while challenges to it are litigated for years. The loss of the right to vote, or restrictions imposed on ballot access, even if ultimately vindicated, can never be fully remedied.

1. Loss of Notice of Proposed Discriminatory Voting Practices

One of the less recognized and more nuanced problems resulting from the lack of Section 5 preclearance is loss of notice that a discriminatory voting change has been enacted in the first place. There are a myriad of ways that the voting rights of minority citizens can be jeopardized. Many of them occur at the local level. Many of them are subtle. They range from the consolidation of polling places so as to make it less convenient for minority voters to vote, to ID requirements, to the curtailing of early voting hours that makes it more difficult for hourly-wage workers to vote, to the disproportionate purging of minority voters from voting lists under the pretext of "list maintenance." Many of these suppressive actions occur in small towns sprinkled across the country, where constant oversight is difficult, if not impossible. By requiring changes in voting practices and procedures to be reported to the federal government by jurisdictions covered by Section 5, the Voting Rights Act provided indispensable notice of such actions before they could be implemented.

2. Loss of Transparency of the Process

With notice came substantial transparency. Under Section 5, on a weekly basis, the Department of Justice posted on its website Section 5 submissions it received, pursuant to the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act (Part 51 of Title 28 of the Code of Federal Regulations). Indeed, during 2000-2010, the Attorney General received between 4,500 and 5,500 Section 5 submissions, and reviewed between 14,000 and 20,000 voting changes per year.[4] The pre-clearance process itself encouraged further transparency, often involving telephone interviews with persons representing or associated with the submitting authority, local organizations, and private citizens, particularly members of the affected racial or language minority groups.

3. Loss of Participation in the Process

The administrative preclearance process encouraged public participation and allowed voters themselves to assess proposed voting changes, consult with racial justice organizations to determine the impact of any proposed changes, and have a real say in the process. For example, in Section 5 reviews of redistricting

[4] United States Department of Justice, About Section 5 of the Voting Rights Act (2017), https://www.justice.gov/crt/about-section-5-voting-rights-act.

plans, organizations often presented redistricting plans with demographic and statistical detail, and individual voters submitted their views on the proposed plans to the Department of Justice. This avenue of participation, particularly for minority voters and the organizations representing their interests, is lost without the Section 5 process. Notably, without Congressional action, the upcoming redistricting cycle will be the first without the full protections of the Voting Rights Act.

4. Loss of Deterrence

Section 5 had its intended effect. As Justice Ginsburg memorably analogized in her *Shelby County* dissent, it was the umbrella in a rainstorm[5]. Its specific deterrent effect was self-evident any time the Attorney General or the United States District Court for the District of Columbia refused to preclear a proposed change in voting practices or procedures. Although the Attorney General objected to only approximately one percent of voting changes submitted under Section 5,[6] these objections represented over 500 redistricting plans, and nearly 800 election method changes.[7] Examples of discriminatory practices stopped in their tracks under Section 5 are attached to this Testimony as Appendix I.

However, Section 5 also had a powerful general deterrent effect: jurisdictions were clearly more prudent in their approach to changes in voting policy or procedure because of the preclearance requirements. The impact of *Shelby County* on general deterrence was felt immediately, when Texas announced the implementation of its discriminatory photo ID law before the ink was dry on the *Shelby County* opinion[8], and the North Carolina legislature, with similar haste, enacted an omnibus voting rights law, subsequently found to have been drafted with "surgical precision" to discriminate against minority voters.[9]

The Texas and North Carolina examples represent the headline-grabbing events – cases that would be in the public eye even without Section 5. But the general deterrent effect of Section 5 is equally visible in those relatively smaller, but equally pernicious acts, of suppression, such as poll closings. Changes in polling places accounted for the largest number of submissions under Section 5.[10] Since *Shelby*, in Georgia – a state that had been subject to 151 objections by the Attorney General under Sections 5 – jurisdictions have moved swiftly with attempted efforts to close, consolidate, or relocate polling places and voting precincts since 2013, including:

- Proposal to move 16 of 37 polling sites in Henry County, GA;[11]
- Proposal to close all but two polling places in Randolph County, GA;[12]

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[5] "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet." *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

[6] United States Department of Justice, About Section 5 of the Voting Rights Act (2017), https://www.justice.gov/crt/about-section-5-voting-rights-act.

[7] Mark A. Posner, The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress, 1 Duke J. Const. L. & Pub. Pol'y 79, 102, 104–05 (2006).

[8] See Ryan J. Reilly, Harsh Texas Voter ID Law 'Immediately' Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

[9] *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

[10] United States Department of Justice, Section 5 Changes by Type and Year (2015), https://www.justice.gov/crt/section-5-changes-type-and-year-2.

[11] Henry County Board of Commissioners, Notice of Change of Polling Places (January 23, 2019), http://www.co.henry.ga.us/Departments/D-L/Elections-Registration.

[12] Vanessa Williams, *Ill-Fated Plan to Close Polling Places in Georgia County Recalled Lingering Prejudice,* Washington Post (August 24, 2018), available at: https://www.washingtonpost.com/politics/ill-fated-plan-to-close-polling-places-in-georgia-county-recalled-lingering-prejudice/2018/08/24/6cad0ee6-a78c-11e8-97ce-cc9042272f07_story.html?utm_term=.f21a24b830ee

- Proposal to eliminate all but one of the City of Fairburn, GA polling places;[13]
- Proposal to eliminate all but one of Elbert County, GA precincts and polling locations;[14]
- Numerous polling place and precinct changes in Fulton County, GA;[15]
- Proposal to close 2 of 7 precincts and polling places in Morgan County, GA after previously reducing the number from 11 to 7 in 2012;
- Proposal to reduce the number of precincts and polling locations from 36 to 19 in Fayette County, GA;[16]
- Proposal to consolidate polling locations in majority-Black Hancock County, GA;[17]
- Proposal to eliminate 20 of 40 precincts and polling locations in Macon-Bibb County, GA;[18]

Post-*Shelby County* attempts at suppression are not limited to poll closings. Over the past 17 years, the Lawyers' Committee has led Election Protection, the nation's largest nonpartisan voter protection coalition. Election Protection—through a suite of hotlines and poll monitoring programs across the country—has provided assistance and support to hundreds of thousands of voters to ensure that they can cast a ballot that counts. Through Election Protection we have also amassed extensive data evidencing systemic barriers faced by voters. Leading up to and during the 2018 midterm election, we received widespread reports of voting practices in states with long histories of voting discrimination like Georgia, Texas, Florida and North Dakota that suppressed the vote. Here are a few examples:

- In Georgia under the state's "exact match" law, more than 53,000 voter registration applicants, a disproportionate number of whom were African Americans, were placed into "pending" status if the information on their voter registration forms did not exactly match the information in the state's other error-laden government databases. The law also led to Georgians who are citizens being flagged as potential non-citizens due to the process of comparing the information in the applicant's voter registration form against outdated citizenship data in the state's driver's license records. The Lawyers' Committee and its partners challenged the law, and a federal court enjoined Georgia's practice of mandating proof of citizenship documents be produced only to

[13]Daily Report, Notice of Polling Place Location Changes (March 7, 2018), https://www.law.com/dailyreportonline/public-notices/?atex-class=&keyword=permanent+polling+place+location+change+fairburn+march+15%2C+2018&from=01%2F01%2F2018&to=03%2F31%2F2019.

[14]Elbert County Board of Commissioners, Notice Of Proposal To Consolidate Elbert County Voting Precincts (2018), https://nearme.elberton.com/local-business/Elbert-County-Board-of-Commissioners/Public-Notice/Notice-Of-Proposal-To-Consolidate-Elbert-County-Voting-Precincts-By-Elbert-County-Board-Of-Commissioners-In-Elberton-Georgia.

[15]Kristina Torres, Fulton OKs Polling Site Changes in Mostly African-American Precincts, Atlanta Journal Constitution (July 13, 2017), https://www.ajc.com/news/state--regional-govt--politics/fulton-oks-polling-site-changes-mostly-african-american-precincts/BOR4EHJnhNkXa9E32JQU8L/.

[16] http://www.fayettecountyga.gov/elections/pdf/Quick-Facts-with-Maps.pdf

[17] Kristina Torres, Cost-cutting Moves Spur Fears about Reducing Access to Georgia voters, Atlanta Journal-Constitution (October 11, 2016), available at: https://www.ajc.com/news/state--regional-govt--politics/cost-cutting-moves-spur-fears-about-reducing-access-georgia-voters/qu9llnbKd6dSl6yblbB68M/

[18] Jeremy Timmermann, Board of Elections Settles on 33 Precincts, The Telegraph (June 10, 2015), available at: https://www.macon.com/news/politics-government/election/article30238326.html.

deputy registrars, who are frequently not stationed at polling places, and ordered that the documents be produced to poll managers, who are required to be on-site at polling stations.[19]

- In Georgia ahead of the 2018 midterm election, a federal court ordered emergency relief to block the practices of allowing election officials with no prior training in signature verification to reject absentee ballots if they believed the signature on the ballot did not match the voter's signature on file and to reject absentee ballots based upon immaterial omissions or mistakes on the absentee ballot envelopes without allowing the voters a reasonable opportunity to cure the issue so the ballots could be counted.[20]

- In November 2018, a federal court in Florida held that the state's law, which allowed county election officials to reject vote by mail ballots based upon the officials' untrained determination that the signature on the vote by mail ballot did not match the voter's signature on file with the county election office, constituted an unconstitutional burden on the right to vote.[21]

- In North Dakota, where Native Americans comprise a larger share of the state's population than nationwide, voters were required to provide a state ID showing a residential address. Many Native Americans who live on reservations lack street addresses on their state ID. [22]

- In Texas, minority voters and voters who are not native English speakers reported incidents where they were asked about their race, citizenship status, and length of stay in the country by poll workers and poll watchers.[23]

5. Increased Burden and Cost of Litigation

Additionally, there is the cost of challenging of discriminatory voting changes – costs which now must be borne primarily by civil rights organizations, whose resources are already stretched thin. Under Section 5, the two methods for a covered jurisdiction to comply with the preclearance requirement were a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia, or administrative review requiring the Attorney General to determine within 60 days of submission whether to block a voting change because the submitting jurisdiction failed to show the change was non-discriminatory.[24] The latter avoided expensive and lengthy litigation by submitting proposed changes to the Civil Rights Division of the Department of Justice. The optional declaratory judgment route required a convening by a three-judge panel in the United States District Court for the District of Columbia, with the United States or the Attorney General as the defendant. Over 99 percent of

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[19] Laura Grace & Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, (2018) https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf.; *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F.Supp.3d 1251 (N.D.Ga. 2018).

[20] *Id.; Martin v. Kemp,* 341 F.Supp.3d 1326 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon signature match and allowing voters the opportunity to cure the issue); Martin v. Crittenden, 347 F.Supp.3d 1302 (N.D.Ga. 2018)(blocking practice of rejecting absentee ballots based upon immaterial or minor errors on the absentee ballot envelope).

[21] *Democratic Executive Committee of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D.Fla. 2018).

[22] Laura Grace & Morgan Conley, "Election Protection 2018 Midterm Elections Preliminary Report," (2018) https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf; Cheyenne Haslett & Roer Hadar, *North Dakota Native Americans fight to protect their right to vote after court ruling (Oct. 21, 2018).* https://abcnews.go.com/Politics/native-americans-north-dakota-fight-protect-voting-rights/story?id=58585206

[23] *Id.*

[24] United States Department of Justice, About Section 5 of the Voting Rights Act (2017), https://www.justice.gov/crt/about-section-5-voting-rights-act.

changes were reviewed administratively.[25] It is important to note that Section 2 of the Voting Rights Act is not an adequate substitute for the prophylactic remedy provided by Section 5.

Without Section 5, enormous resources are needed to both bring, and defend Section 2 claims. While jurisdictions may extend the financial burden to taxpayers, citizens often rely on nonprofit organizations to challenge discriminatory voting practices. Section 2 cases cost millions of dollars to litigate,[26] not only in terms of thousands of hours of attorney time, but out-of-pocket expenses for filing fees, transcripts, expert witnesses, and travel.

Section 2 litigation often lasts years and, in some cases, plaintiffs are forced to bring multiple lawsuits over the course of many years to address the same problems because state officials refuse to comply with the federal law even after they have been sued previously for the same issues. The Section 2 Texas photo ID case was a 5-year legal battle, before it ended with a judgment of discrimination and the Texas Legislature's enacting a new law found by the Court of Appeals to cure the discriminatory effect of the old law.[27]

In Georgia, voters and advocates have been forced to bring multiple lawsuits challenging various iterations of the state's "exact match" voter registration process over the years that has been demonstrated to prevent Georgia's eligible people of color to complete the voter registration process in order to participate in Georgia's elections. In 2008, voters challenged an iteration of the "exact match" process that was instituted by former Secretary of State, Karen Handel, because the state failed to obtain preclearance of the process by the DOJ before implementing it.[28] Subsequently, once Handel's successor, Brian Kemp, finally obtained preclearance of a different iteration of the "exact match" process in 2010, voting advocates discovered that the process was disproportionately preventing eligible people of color from successfully completing the voter registration process and filed a second lawsuit challenging the process in 2016.[29] Even after Secretary Kemp agreed to settle the 2016 "exact match" litigation, his staff was working behind the scenes with lawmakers in the Georgia General Assembly to draft House Bill 268 in 2017, which codified the exact match process - a process which had already been shown to have a disproportionate, negative effect on the ability of people of color to complete the voter registration process.[30] As a result, voting advocates were forced to file the third lawsuit within 10 years to challenge the iteration of the "exact match" process enacted as a result of the passage of House Bill 268 in 2018.[31]

As noted above, costs are also borne by governmental entities defending against discrimination claims. North Carolina lawmakers spent more than $10.5 million defending their discriminatory omnibus voting bill; and Texas spent more than $3.5 million defending its discriminatory photo ID law.[32] It is unfortunate that taxpayers -- who include those discriminated against – must foot the bill for their government's discriminatory conduct. But those are among the additional protections lost by the elimination of the much less-costly and time-consuming administrative process under Section 5 that often nipped discriminatory practices in the bud.

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[25] *Id.*

[26] *See* Understanding the Benefits and Costs of Section 5 Pre-clearance: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 20 (2006) (statement of Armand Derfner, Voting Rights Att'y, Derfner, Altman and Wilborn).

[27] *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).

[28] See *Morales v. Handel*, Civil Action No. 1:08–CV–3172, 2008 WL 9401054 (N.D.Ga. 2008).

[29] See *Georgia State Conference of the NAACP v. Kemp*, Civil Action No. 2:16-cv-00219-WCO (N.D.Ga. 2016).

[30] See Georgia House Bill 268 as enacted in the 2017 Georgia Legislative Session, http://www.legis.ga.gov/Legislation/20172018/170669.pdf.

[31] See *Georgia Coalition for the People's Agenda v. Kemp*, 1:18-CV-04727-ELR (N.D..Ga. 2018).

[32] Jim Malewitz & Lindsay Carbonell, Texas' Voter ID Defense Has Cost $3.5 Million, THE TEXAS TRIBUNE (June 17, 2016, 6:00 AM), https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/.

B. Examples of Lawyers' Committee's Efforts to Challenge Discriminatory Voting Changes

In the years since *Shelby*, we have seen many discriminatory voting practices put in place, both in jurisdictions previously covered by Section 5 and those that were not. But, I emphasize, we have not seen all such attempts. We can only fight the threats we know about, and we have been fortunate to have strong local partners on the ground who use their own strained resources to maintain a wary eye on local election changes. Georgia, a state previously covered by Section 5 of the Voting Rights Act, provides examples of the obstacles facing minority voters that Section 5 would have blocked.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of "challenge proceedings" to voters, all but two of whom were African American, which resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the National Voter Registration Act, and obtained a preliminary injunction, which resulted in the unlawfully-removed voters placed back on the register. Ultimately plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and requires the county's policies to be monitored foir five years.[33] But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

Also, in 2015, the Georgia state enacted a mid-decade redistricting plan that reduced the minority population in State House districts in 105 and 111, where increases in the minority voting population had enabled candidates preferred by minority voters to almost defeat the white incumbents. They provided the incumbents with a greater safety margin by re-drawing the districts that made the districts more white in composition and those incumbents narrowly prevailed in 2016. The Lawyers' Committee filed suit in 2017 alleging intentional racial discrimination and a racial gerrymander.[34] Fortunately, there, the plan did not work, and African American candidates were able to prevail in 2018, despite the efforts to prevent such a result. Ultimately the site was relocated to a majority black church.

Efforts to move polling sites to hostile locations was also another discriminatory practice that had been blocked by the Section 5 review process. Without Section 5, we've seen officials attempt to move sites to intimidating locations. In 2016, the Macon-Bibb County, Georgia, Board of Elections voted to temporarily relocate a voting precinct location to the Macon-Bibb Sheriff's Office. Because of valid fears that this decision would reduce turnout among African American voters, the Lawyers' Committee worked with its local partners, the Georgia State Conference of NAACP Branches, the Georgia Coalition for the People's Agenda, and New Georgia Project, to organize a successful petition drive that required the Board of Elections to reverse the relocation decision under Georgia law[35]

In certain instances, we were fortunate to have partners on the ground that alerted us to potentially discriminatory voting barriers. An effective Section 5 process would have placed the burden on these jurisdictions to have provided notice of these changes in their voting practices and policies before they took effect.

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[33] *See Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, at *1 (M.D. Ga. Mar. 30, 2018).

[34] *See Georgia State Conference of the NAACP v. State of Georgia*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017).

[35] Stanley Dunlap, *Macon-Bibb Polling Location OK'd After Sheriff's Precinct Nixed,* The Telegraph May 16, 2016, 7:27 PM), http://www.macon.com/news/local/article77920442.html.

Texas presents another jurisdiction which demonstrates the substantial problems caused by *Shelby County* in previously covered jurisdictions. In 2011, the Texas legislature passed a law, SB 14, which limited the number of identifying documents for purposes of voting to seven, all photo IDs.[36] Because Section 5 was in effect at the time of SB 14's passage, Texas sought pre-clearance, first from the Justice Department, which blocked the change. Then, Texas sought preclearance from the United States District Court for the District of Columbia. On August 30, 2012, a unanimous three-judge panel of that court denied Texas pre-clearance, ruling that because Black and Latinx voters would be disproportionately burdened in obtaining the required IDs compared to white voters, that SB 14 would have a retrogressive effect on these minority voters.[37] However, on June 27, 2013, this judgment was vacated by the Supreme Court in accordance with the ruling in *Shelby* two days earlier.[38]

Texas had not even waited for the Supreme Court to act on the case. The afternoon that *Shelby* was decided, then Texas Attorney General Greg Abbott announced that the State would immediately implement SB 14.[39] Without the protections of Section 5, several civil rights groups including the Lawyers' Committee for Civil Rights Under Law, filed suit in Texas federal court, challenging SB 14 under Section 2 of the Voting Rights Act. The Department of Justice filed its own suit under Section 2, which was consolidated with those of the civil rights groups.[40] The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts – half of whom were paid for by the civil rights groups – testified.

In late 2014, the District Court ruled that SB 14 violated the "results" prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters.[41] The District Court's injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law – now deemed to be discriminatory remained in effect. Subsequently, a three-judge panel and later an en banc panel of the Fifth Circuit Court of Appeals, affirmed the District Court's finding. As a result, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law.[42]

Had Section 5 been enforceable, the enormous expense and effort that the civil rights groups bore would not have been necessary. More important, had Section 5 been enforceable, a law found to have been discriminatory by 14 different federal judges would never have taken effect.

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[36] These were Texas drivers' licenses, Texas personal identification cards, United States passports, United States naturalization papers, United States military identification, Texas licenses to carry a concealed handgun, and Texas Election Identification Certificates. Tex. Elec. Code Ann. § 63.0101.

[37] *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012).

[38] *Texas v. Holder*, 570 U.S. 928 (2013).

[39] See Ryan J. Reilly, Harsh Texas Voter ID Law 'Immediately' Takes Effect After Voting Rights Act Ruling, Huffington Post (June 25, 2013 2:04 PM), https://www.huffpost.com/entry/texas-voter-id-law_n_3497724.

[40] The suits were consolidated under *Marc Veasey v. Greg Abbott*, 265 F. Supp. 3d 684 (S.D. Tex. 2017).

[41] Veasey v. Perry, 71 F. Supp. 3d 627, 659-77 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), on reh'g en banc, 830 F.3d 216 (5th Cir. 2016), *and aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

[42] Veasey v. Abbott, 830 F.3d 216 (5th Cir. 2016). The district court had also found that SB 14 was enacted, at least in part, with discriminatory intent, a prerequisite of a constitutional violation, but the issue was remanded for further fact-finding. On remand, the district court reaffirmed its finding of discriminatory intent. On appeal from that ruling, the Fifth Circuit reversed, not on the merits, but because by then the Texas Legislature had enacted a new law that substantially remediated the discriminatory effects of SB 14, according to that court.

A. Enforcement of the Voting Rights Act

Since *Shelby*, the Department of Justice has filed only *four* suits alleging violations of Section 2 of the Voting Rights Act and only one after 2013.[43] By way of comparison, the Lawyers' Committee has filed *thirteen* such suits during that same time period.[44] Of even greater concern is that since January 20, 2017, the Department has not filed a single suit under the Voting Rights Act.[45] Again, by way of comparison, the Lawyers' Committee has filed *five* lawsuits under Section 2 during that same period.[46] Two of the Section 2 cases filed by the Lawyers' Committee settled relatively quickly with the establishment of majority-minority election districts in Emanuel County, Georgia and Jones County, North Carolina. The increase in work being carried out by civil rights organizations has helped provide relief for minority voters, but is no substitute for the protections provided by Section 5.[47]

As shown in Appendix 2, enforcement of voting rights in the states has fallen primarily upon the shoulders of individual voters, non-profit voting rights and racial justice organizations or other non-governmental advocates. Although not all of the cases in Appendix 2 would have been avoided through the preclearance process, it is clear that states, particularly those with a well-documented history of voting discrimination, wasted no time in enacting discriminatory voting changes and implementing a whole host of barriers to the ballot box that negatively and disproportionately impacted African Americans, Latinxs, and other people of color in the wake of *Shelby*. Many of these cases stand as stark examples of the onerous and burdensome nature and uncertain outcome of private enforcement of our voting rights laws

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[43] *Perez v. Perry*, No. SA-11-CV-360, 2014 WL 2533801, at *1 (W.D. Tex. June 5, 2014) (Texas Photo ID); *United States v. Texas*, No. 5:11-cv-00360(W.D. Tex.) (legislative redistricting); *United States v. North Carolina*, No. 13-cv-861 (M.D.N.C. Feb. 6, 2014) (state omnibus voting law); *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. Mar. 27, 2019) (vote dilution).

[44] *Texas State Conference of NAACP Branches v. Steen* No. 2:13-cv-291 (S.D. Tex.2013) , consolidated under *Veasey v. Abbott*, No. 2:13-cv-00193 (NGR) (S.D. Tex. 2013)Texas Photo ID law); *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR), 2018 WL 1583160, *at* *1 (M.D. Ga. 2018) (voter purge); *Georgia State Conference of NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No. 1:16-cv-2852-AT, 2017 BL 344388 (N.D. Ga. 2017) (vote dilution); *Georgia State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, No. 2:16-CV-00154 JNP, 2016 WL 3079740, at *1 (D. Utah May 31, 2016), vacated (June 16, 2016) access to in-person absentee voting and language assistance); *Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018) (vote dilution); *Georgia State Conference of the NAACP v. Kemp for Georgia*, No. 1:17-CV-1397-TCB, 2018 WL 2271244, at *1 (N.D. Ga. 2018) (challenge to exact match process for voter registration); *Alabama State Conference of NAACP v. State*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017) (vote dilution); *Georgia State Conference of NAACP v. State*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstituting exact match for voters registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019) (vote dilution); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019) (voter purge).

[45] The last Voting Rights Act complaint filed by the United States was a vote dilution claim filed on January 10, 2017. *United States v. City of Eastpointe*, No. 4:17-CV-10079, 2019 WL 1379974, at *1 (E.D. Mich. 2019).

[46] *Hall v. Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (vote dilution); *Georgia State Conference of NAACP v. State, 269 F. Supp. 3d 1266 (N.D. Ga. 2017) (racial gerrymander); Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (challenge to new statute reinstituting exact match for voter registration); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 2019 BL 52194 (S.D. Miss. 2019)(Racial gerrymander); *MOVE Texas Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 4, 2019).

[47] *Hall v Jones County Board of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Feb. 13, 2017) (creation of two single-member, majority-minority districts for seven member Board of County Commissioners); *GA State Conference of the NAACP v. Emanuel County Board of Commissioners*, No. 6:16-cv-00021 (S.D. Ga. Feb 23, 2016) (creation of two majority-minority single-member districts for seven member Board of Education).

that the Section 5 preclearance process and strong federal enforcement of voting rights could largely prevent or mitigate against.

Conclusion

The combination of the effective elimination of Section 5 of the Voting Rights Act and lack of enforcement activity of the Civil Rights Division of the Justice Department presents a perfect storm not seen since the days preceding the enactment of the momentous civil rights legislation in the 1960s. Vigilance is required to monitor and xxx the resurgence of voting rights discrimination in formerly covered jurisdictions and we urge Congress to act swiftly to restore the Voting Rights Act to help this Nation protect that most fundamental of all civil rights: the right to vote.

APPENDIX I

Examples of discriminatory voting changes that Section 5 prevented from taking effect.

Prior to the Supreme Court's decision in *Shelby County v. Holder,*[48] Section 5 of the Voting Rights Act prevented numerous discriminatory voting changes from taking effect. The *Shelby County* decision has hit African American voters particularly hard as nearly 90% of the proposed voting changes stopped by Section 5 between 1995 and 2013 involved a discriminatory purpose or effect on African American voters.[49] During that 18-year period, there were 113 denials for Section 5 preclearance, examples of which are highlighted below:[50]

Redistricting Changes: Over half of the Section 5 preclearance denials were for redistricting changes, including denials of statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina and Texas.

- In 1996, the Justice Department objected to Louisiana's congressional redistricting plan, concluding that with the racially polarized voting pattern in Louisiana, the proposed plan would "provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area."[51]
- In 1997, the Justice Department objected to South Carolina's State Senate redistricting plan based on clear findings of racially polarized voting patterns.[52]
- In 2002, the Justice Department objected to Arizona's 2001 legislative redistricting plan on the grounds that the state failed to provide sufficient evidence to show that voting was not racially polarized and failed to prove that the proposed decreased number of majority-minority districts would not be retrogressive.[53]
- In 2011, Texas created redistricting plans for the Texas House of Representatives, the Texas Senate and the United States Congress and sought to bypass the Justice Department's preclearance process by filing suit for judicial preclearance. The three-judge panel of the U.S. District Court for the District of Columbia denied preclearance for all three plans, finding signs of purposeful discrimination in the State House of Representatives plan, intentional discrimination against minority voters in the Texas Senate and congressional redistricting plans. Additionally, the court concluded that the State House of Representatives and congressional redistricting plans were retrogressive.[54]

Polling Place Closures and Changes

- In 2003, Bexar County in Texas announced it was planning to reduce the number of early voting polling places from 20 to 11 while awaiting the Justice Department's decision on the County's preclearance request. Among the polling place closures were five that served the predominantly-

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[48] 570 U.S. 529 (2013).
[49] National Commission on Voting Rights, Protecting Minority Voters: Our Work Is Not Done 13 (2014).
[50] Id. at 57.
[51] Determination Letter from Deval L. Patrick, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of La. (Aug. 12, 1996), *available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-2310.pdf* .
[52] Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to state of S.C. (Apr. 1, 1997), *available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-2090.pdf* .
[53] Determination Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., U.S. Dep't of Justice, to state of Ariz. (May, 20 2002), *available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_020520.pdf*
[54] Texas v. United States, 887 F. Supp. 2d 133, 138, 152, 161-162, 177 (D.D.C. 2012).

Hispanic west side of San Antonio. A civil rights organization filed a Section 5 enforcement action seeking an injunction, which was granted by a federal court to enjoin the polling place closures.[55]

Voter Registration Laws:

- In response to the NVRA, in 1995 Mississippi implemented a dual registration system where voters who registered under NVRA-mandated options would only be eligible to vote in federal elections. In order to vote in state elections, eligible voters were required to re-register using state forms. Following concerns raised by the Justice Department, Mississippi refused to submit the dual registration system for Section 5 preclearance. Private plaintiffs commenced a Section 5 enforcement action that made its way to the Supreme Court, which held that Mississippi was required to obtain preclearance. The Justice Department objected to the dual registration system and Mississippi abandoned it.[56]

Voter Purges:

- In 2007, Georgia implemented a computerized citizenship matching procedure that cross-checked the statewide voter registration list with citizenship information in the state's driver's license database to identify and remove noncitizens from the voter rolls. Local election officials in the state were provided with a computerized printout of potential noncitizens with instructions that they use it to review voter eligibility. This led to local election officials mailing letters to thousands of voters informing them that they would be removed from the voter registration lists unless they appeared in-person and presented proof of citizenship. In some instances, voters were given as little as a few days to do so. A private citizen, who obtained their license in April 2006, became a United States citizen in November 2007 and registered to vote in September 2008 then subsequently received letters from Cherokee County election officials, brought a Section 5 enforcement action because Georgia had not submitted the new procedure for preclearance. A federal court in Georgia enjoined the State from using the procedure until preclearance was obtained and ordered the State to take steps to remedy its prior unauthorized use of the procedure. In May 2009, the Justice Department interposed a Section 5 objection to Georgia's procedure noting that it subjects minority voters to additional and erroneous burdens on the right to vote.[57]

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[55] Order Granting Plaintiff's Application for a Temporary Restraining Order at 1-3, 6 *Miguel Hernandez Chapter of the Am. GI Forum v. Bexar Cty.*, No. 5:03-cv-00816 (W.D. Tex. 2003), *available at* http://www.clearinghouse.net/chDocs/not_public/VR-TX-0420-0002.pdf;
Testimony of Nina Perales, Reg'l Counsel, Mexican Am. Legal Def. & Educ. Fund, Southwest Regional Hearing 51 (Apr. 7, 2005) (on file with the Lawyers' Committee).

[56] *Young v. Fordice*, 520 U.S. 273, 291 (1997);
Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), *available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/MS-2650.pdf.*

[57] *See* Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), *available at https://www.justice.gov/crt/voting-determination-letter-58*; Complaint at ¶¶ 33–40, *Morales v Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008); *See also Morales v. Handel*, No. 1:08–CV–3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).

APPENDIX 2

Alabama

Challenge to At-Large Elections for Judicial Candidates that Dilute the Voting Strength of Black Voters

***Alabama State Conference of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017):** On September 7, 2016, Plaintiffs filed a vote dilution lawsuit under Section 2 of the Voting Rights Act (VRA) in the Middle District of Alabama challenging the state's at-large method of electing justices and judges of the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals. Defendants filed a motion to dismiss; the District Court denied the motion. The case was tried in November 2018 and the parties are awaiting a decision.

Lawsuit Challenging Alabama's Discriminatory Photo ID Law

***Greater Birmingham Ministries v. Merrill*, Case No. 2:15–cv–02193–LSC (N.D.Ala 2015):** On December 2, 2015, advocates filed a lawsuit in the United States District Court for the Northern District of Alabama challenging Alabama's photo ID law under Section 2 of the VRA and the United States Constitution. Plaintiffs contend the photo ID law violates 1) Section 2 of the Voting Rights Act because it abridges or denies the right to vote on account of race, color, or language minority status, 2) violates the prohibition on tests or devices for voting under the VRA, and 3) violates the Fourteenth and Fifteenth Amendments because it was purposefully enacted to deny or abridge the right to vote on account of race or color. On January 10, 2018, the Court granted summary judgment in favor of the Alabama Secretary of State and dismissed the lawsuit.[58] The Plaintiffs' appeal is pending.

Voters Challenge Alabama's Congressional Map that Dilutes the Voting Strength of Black Voters

***Chestnut v. Merrill*, No. 2:18-CV-00907 (N.D. Ala. Mar. 27, 2019):** In June of 2018, eight Alabama voters filed a federal lawsuit alleging that Alabama's 2011 congressional map violates Section 2 of the VRA. Plaintiffs allege the map packs African-American voters into Alabama's Seventh Congressional District and significantly cracks African-American voters between three other congressional districts, with the effect of diluting African-American voting strength. The suit alleges that the African-American population in the three "cracked" congressional districts is sufficient to form a second majority-minority district. On March 27, 2019, the court partially granted the Defendant's motion for judgment on the pleadings, concluding that Plaintiffs' demand for affirmative relief is barred by the doctrine of laches, but denied the motion as to Plaintiffs' demand for declaratory relief (i.e., a declaration determining the maps violate Section 2). The case is currently scheduled for trial later this year.

[58] *Greater Birmingham Ministries v. Merrill*, 284 F.Supp.3d 1253 (N.D.Ala. 2018).

Voters Challenge Alabama's Felony Disenfranchisement Law

***Thompson v. Merrill*, Civil Action No. 2:16-cv-783-WKW-CSC (M.D.Ala. 2016)**: In 2016, Alabama voters filed suit challenging Alabama's felony disenfranchisement law which they allege is intentionally racially discriminatory and leads to arbitrary and unconstitutional disenfranchisement of citizens in violation of the United States Constitution and Section 2 of the VRA. Plaintiffs also argue that broad felon disenfranchisement is not sanctioned by the Fourteenth Amendment's "rebellion or other crime" language and that the Constitution supports, at most, very limited disenfranchisement of voting-related offenses. The case is pending.

Alaska

Lawsuit Successfully Challenged Alaska's Failure to Provide Language Assistance to Yup'ik and Gwich'in Speaking, Limited English Proficient Voters

***Toyukak v. Treadwell*, No. 3:13-cv-00137-SLG (D. Alaska June 24, 2014)**: Voters and tribal councils filed suit challenging the failure of state and local officials to provide language assistance to Yup'ik and Gwich'in speaking, limited English proficient voters under Section 203 of the VRA and the United States Constitution. After prevailing on their Section 203 claim at trial, the Court ordered comprehensive remedies for the 2014 election cycle and, in 2015, the parties entered into a settlement that included additional language assistance reforms in the state.

Arizona

Maricopa County, Arizona Sued Post-Shelby Due to Election Administration Problems caused by Polling Place Consolidations

***Huerena v. Reagan, Superior Court of Arizona*, Maricopa County, CV2016-07890:** This lawsuit challenged the reduction of polling places in Maricopa County after severe cut-backs disenfranchised voters in the 2016 presidential preference primary because of extremely long lines, hours-long wait-times and a host of election administration problems. Maricopa County is Arizona's most populous county and was a covered jurisdiction under Section 5 of the VRA with approximately 60 percent of the state's minority voters residing in the county. As a result of the *Shelby* decision, Maricopa County was no longer required to preclear polling place changes. As a result, in February 2016 the county slashed the total number of polls from 211 in 2012 to only 60 in 2016. With this reduction, there was approximately one polling place for every 21,000 voters in Maricopa County as compared to one polling place for every 1,500 voters in the rest of the state. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes.

Arizona Secretary of State Sued to Enjoin the State's Two-Tier Voter Registration Process

***League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018):** Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. Plaintiffs argued that the state's two-tier registration process constituted an unconstitutional burden on the right to vote. The parties settled the matter with an agreement that allows the state to continue to require proof of citizenship to register to vote in state elections, but requires the state to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections.

State Court Challenge to the Redistricting of the Maricopa County Community College District Which Added Two At-Large Seats to the Board

***Gallardo v. State*, 236 Ariz. 84 (Ariz. 2014):** Elected officials and voters filed suit in December 2013 in Arizona state court challenging the method used for electing the Governing Board of the Maricopa County Community College District. In 2010, the Arizona Legislature enacted H.B. 2261 requiring that two at-large seats be added to the Governing Board, increasing the size of the Board from five to seven. The pre-existing five members of the Board were elected from single-member districts. As a result, H.B. 2261 established a new method of election consisting of five members elected from single-member districts and two elected at large. The lawsuit alleged that H.B. 2261 violated the Arizona State Constitution because the statute effectively only applies to the Maricopa County District, and does not apply to any of the other community college districts in the state. The suit alleged that H.B. 2261 violates the state Constitution's prohibition against local or special laws and the Constitution's privileges and immunities clause.

When H.B. 2261 was enacted, Arizona was required by Section 5 of the Voting Rights Act to obtain preclearance for its voting changes. The State submitted this legislation to the U.S. Department of Justice for review, and the DOJ responded by sending a written request for additional information noting concerns as to whether the addition of two at-large seats would discriminate against the District's minority residents. Instead of providing the requested information, the State set the legislation aside and did not seek to implement it. However, as a result of the Supreme Court's decision in June 2013 in *Shelby County v. Holder*, Arizona was no longer is covered by Section 5 and thus was not required to obtain preclearance to implement H.B. 2261. As a result, after *Shelby County* was decided, local election officials began preparations to fill the two new at-large seats in the November 2014 election.

Shortly after suit was filed, the constitutionality of H.B. 2261 was presented to the Arizona superior court for decision and, on March 27, 2014, the court ruled in favor of the defendants. Plaintiffs appealed and on April 23, 2014, one day after oral argument, the Arizona Court of Appeals held that H.B. 2261 is a special law that violates the Arizona Constitution. Defendants then appealed and, on August 26, 2014, the Arizona Supreme Court issued a minute order vacating the ruling by the Arizona Court of Appeals. In the November 2014 election, the two new at-large seats were filled. A Latino candidate ran but finished third, and thus was defeated.

Voters, Political Party and Candidate Filed Suits Challenging Arizona's Criminalization of the Collection of Absentee Ballots by Persons other than the Voter and Restrictions on Out of Precinct Voting

***Democratic National Committee v. Reagan* CV-16-01065 (D.Az. 2016):** The Plaintiffs allege that Arizona's criminalization of the collection of valid absentee ballots by persons other than the voter and the state's restrictions on out of precinct voting violate Section 2 of the VRA and Constitution. Plaintiffs did not prevail at trial or before a panel of the Ninth Circuit Court of Appeals. However, in January 2019, the Ninth Circuit granted a rehearing *en banc* and the case remains pending at this time.

California

Successful Section 2 Vote Dilution Lawsuit on Behalf of Latino Voters Challenging the Districting Plan for the Five Member Kern County Board of Supervisors

***Luna v. County of Kern*, 291 F.Supp. 3d 1088 (E.D. Cal. 2018):** This was an action brought pursuant to Section 2 of the Voting Rights Act on behalf of Latino voters in Kern County, California, in which Plaintiffs alleged that the districting plan under which the five members of the Kern County Board of Supervisors were elected deprived Latino voters an equal opportunity to elect candidates of their choice. After the District Court found in favor of the Plaintiffs at trial, the parties agreed to a settlement which provided for a new districting plan with ability to elect majority-Latino districts and an award of $3 million dollars in attorneys' fees and costs to plaintiffs' counsel.

Connecticut

NAACP Challenged "Prison Gerrymandering" of Connecticut Legislative Districts

***NAACP v. Merrill*, No: 3:18-cv-01094 (D. Conn. 2018):** In June 2018, the NAACP, the NAACP Connecticut State Conference and five Connecticut NAACP members, filed suit contending that Connecticut's 2011 state legislative maps violate the "one person, one vote" principle of the Fourteenth Amendment because of unlawful prison gerrymandering, i.e., counting incarcerated individuals as residents of the district in which they are imprisoned rather than at their home addresses for the purpose of drawing state legislative districts. Plaintiffs argue that this practice dilutes the voting power of the predominantly African American and Latino prisoners' home communities. Defendants' motion to dismiss was denied in February 2019 and the state has appealed that decision.

Florida

Voters and Voting Rights Advocates Challenge Florida's Arbitrary Standards for Restoring the Voting Rights of Returning Citizens

***Hand v. Scott*, 315 F. Supp. 3d 1244 (N.D. Fla. 2018):** Advocates filed a class action lawsuit that sought to automatically restore the voting rights of returning citizens and eliminate Florida's arbitrary petition process for re-enfranchisement. The case cited the lack of any rules governing the Executive Clemency Board, which grants or denies former felons' petitions for re-enfranchisement, as arbitrary treatment in violation of the First and Fourteenth Amendments. The case was filed in March 2017, and the Plaintiffs obtained a preliminary injunction in March 2018 that required the Executive Clemency Board to establish a new re-enfranchisement process by April 26, 2018. Defendants appealed to the Eleventh Circuit Court of Appeals, and on April 25, 2018, the court granted then Governor Scott's request to stay the order requiring him to establish a new re-enfranchisement process.

Voters and Voting Rights Advocates Successfully Challenge Florida's Congressional District Maps in State Court

***League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258 (Fla. 2015):** State-court litigation was filed by good-government groups over concerns that Florida's congressional maps were unconstitutional under state law. The Circuit Court agreed and found that congressional districts five and ten were unconstitutional and had to be redrawn. The legislature enacted new maps, and the Court did not object to the new maps. Plaintiffs appealed the decision after the Florida Legislature enacted the new maps and requested certification to the Florida Supreme Court. The district court of appeals granted certification to the Florida Supreme Court, and it accepted jurisdiction. The NAACP intervened to defend African American opportunity districts that were threatened. Other civil rights advocates filed an *amicus* brief to inform the Court about concerns over the reduction of District Nine's Latino population. Both the NAACP and *amici* have focused on protections offered by the Fair Districts Amendment under Florida's Constitution. The Florida Supreme Court ruled that the maps are unconstitutional and ordered the legislature to redraw several congressional districts.

Voters Filed Suit against the Florida Secretary of State and 32 Counties Due to Their Failure to Provide Adequate Language Assistance to Puerto Rican Voters under the Voting Rights Act

***Madera v. Detzner*, No. 1:18-CV-152-MW/GRJ (N.D. Fla. 2018):** After Hurricane Maria devastated Puerto Rico, an estimated 160,000 people fled to Florida, joining over half a million people who left Puerto Rico in the past decade because of the island's economic crisis. As a result, Florida's Puerto Rican population now totals over one million. Section 4(e) of the VRA requires the provision of bilingual voting materials and assistance for Puerto Rican-educated, limited English proficiency voters. After advocates were unable to informally obtain compliance by sending letters about these requirements to election officials, they filed a lawsuit against the Florida Secretary of State and 32 Florida counties to compel compliance with Section 4(e). On September 7, 2018, the district court ordered the Secretary of State to issue instructions to the 32 counties, requiring them to provide Spanish-language sample ballots at polling places, on county websites, and by mail to guide voters in marking their ballots, and to publicize the availability of these sample ballots and instructions on how to use them. On May 10, 2019, the District Court issued an order requiring Florida's Secretary of State and the Supervisors of Elections in the 32

Florida counties take further action to comply with Section 4(e) of the VRA. Specifically, the order requires the Secretary of State to ensure that those 32 counties provide 1) official ballots in both Spanish and English, 2) Spanish language election assistance, and, 3) Spanish translations of other voting materials for elections beginning with the 2020 presidential primary election. The case remains pending.

Voting Rights Advocates Successfully Organized Campaign to Pass Amendment Automatically Restoring Rights to Returning Citizens, but the Florida Legislature Made Efforts to Undermine its Implementation

Advocates invested significant resources to support a ballot initiative (Amendment 4) that restored voting rights to individuals with felony records upon completion of their sentences. Despite the fact that Amendment 4 was designed to be self-implementing, the Florida enacted laws in 2019 that will require returning citizens to satisfy fines and fees before becoming eligible to register to vote. In addition, in the wake of this successful ballot initiative, Florida also enacted legislation making it more difficult for proponents of ballot initiatives to be successful in the future.

Georgia

Voters and Voting Rights Advocates Challenge Georgia's "Exact Match" Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters

***Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018):** On October 11, 2018, a coalition of civil rights organizations filed suit in the U.S. District Court for the Northern District of Georgia, against then Georgia Secretary of State, Brian Kemp, alleging that Georgia's "exact match" voter registration process, which requires information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state's Department of Driver's Services (DDS) databases, violates Section 2 of the VRA, the NVRA, and imposes an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the "exact match" process, more than 53,000 applicants were in "pending" status in 2018 because the information on their voter registration applications did not exactly match the DDS or SSA database information or because the process inaccurately flagged United States citizens as potential non-citizens. On November 2, 2018, the Court partially granted Plaintiffs' motion for preliminary relief, ordering that Georgians inaccurately flagged as non-citizens could vote a regular ballot if they provided proof of citizenship to a poll manager, rather than a deputy registrar, when voting at the polls for the first time. The Georgia legislature subsequently amended the "exact match" law in 2019 to permit applicants who fail the "exact match" process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the "exact match" process that continues to inaccurately flags United States citizens as non-citizens. The litigation is still pending.

Voters and Advocates Successfully Challenged Georgia's Rejection of Absentee Ballots Based upon Alleged Signature Matching and Immaterial Errors or Omissions

***Martin v. Kemp*, No. 18-14503-GG (N.D. Ga. 2018):** On October 23, 2018, civil rights organizations joined lawsuits challenging the state's practices of 1) rejecting of absentee ballots based upon election officials' untrained conclusion that the voter's signature on the absentee ballot envelope did not match the voter's signature on file with the registrar's office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections

generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019.

Successful Legal Challenge to Georgia's Runoff Election Scheme in Federal Elections

***Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB (N.D. Ga. May 4, 2017):** This case challenged Georgia's runoff election voter registration scheme as a violation of the National Voter Registration Act ("NVRA"). Under Georgia law, eligible Georgians were required to register to vote on the fifth Monday before a general or primary election in order to be eligible to vote in a runoff election if no candidate received a majority of the vote. The runoff election would generally be held about two months after the general or primary election As a result, Georgians would be required to register to vote approximately three months before a runoff election in order to participate in that election. Under Section 8 of the NVRA (52 U.S.C. § 20507(a)(1)), states are prohibited from setting voter registration deadlines in excess of thirty days before a federal election. Thus, Georgia's runoff election voter registration scheme violated this provision of the NVRA and the District Court granted a preliminary injunction enjoining the state from using the longer deadline ahead of the Georgia Sixth Congressional Runoff Election in June 2017. Subsequently, the parties settled the matter with the Secretary of State agreeingnot to enforce a voter registration deadline that violated Section 8 of the NVRA.

Voters and Voting Rights Advocates Challenged Georgia's Mid-Decade Redistricting of Two Legislative Districts Targeting African-American Communities

***Georgia State Conference of NAACP v. Georgia*, No. 1:17-CV-1427 (N.D. Ga. 2017) and *Thompson v. Kemp*, 1:17-cv-03856- TCB (N.D. Ga. 2017):** Voters and advocates filed two lawsuits in the United States District Court for the Northern District of Georgia, challenging the State legislature's post-*Shelby* 2015 redistricting of two legislative districts as racial and partisan gerrymanders. The Plaintiffs alleged the legislature targeted African American population in drawing the districting plans to increase the electoral advantage of white Republicans as the districts were becoming more competitive for Black Democrats. The *Thompson* Plaintiffs' suit also alleged a claim under Section 2 of the Voting Rights Act. After African American candidates were elected to seats in both of the challenged districts in November 2018, the parties agreed to voluntary dismissals of the actions.

Voters and Voting Rights Advocates Successfully Challenged Hancock County's Illegal Purge of 53 Voters, Mostly Black, from the Voter Rolls

***Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015):** Plaintiffs filed this action on November 3, 2015 in the U.S. District Court for the Middle District of Georgia, challenging the removal of 53 voters, who were almost all African Americans, from the voter rolls of a small, predominately Black county prior to a hotly contested election in Sparta in which white candidates successfully ran for seats on the City Council for the first time in decades. The case was brought under Section 2 of the VRA and Section 8 of the NVRA. The district court directed Defendants to restore qualified purged voters to the registration rolls or show cause why they would not do so. As a result, 17 voters were restored to the rolls; two others would have been restored, but had died in the interim; and eight voters were placed into inactive status, but remained

eligible to vote by producing proof of their residency when requesting a ballot. The parties subsequently mediated the case, which resulted in a settlement in which the Defendants agreed to comply with the NVRA before removing anyone from the voter rolls and to be subject to monitoring by a court appointed examiner. On March 30, 2018, the Court granted the parties' Joint Motion for Entry of Consent Decree and awarded Plaintiffs' fees and expenses. Compliance with the Consent Decree is being actively monitored by the Court appointed examiner.

Vote Dilution Lawsuit Challenged the Districting Plans for the Gwinnett County Board of County Commissioners and School Board

***Ga. State Conference of the NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No: 1:16-cv-02852 (N.D. Ga. 2016):** Plaintiffs filed a vote dilution suit under Section 2 of the VRA challenging the districting plans for the County Board of Commissioners and Board of Education. At the time the lawsuit was filed, no African American, Latino or Asian American candidates had ever won election to these boards, despite the fact that Gwinnett County is considered to be one of the most racially diverse counties in the Southeastern United States. After two long-term incumbents chose not to run for re-election to the School Board in the 2018 mid-term election, and with the minority population of the county continuing to grow, African American and Asian American candidates were finally elected to the County Commission and an African American candidate was elected to the School Board for the first time in the county's history. Following these electoral successes, the parties agreed to a voluntary dismissal of the litigation.

Voters and Voting Rights Advocates Successfully Challenged Sumter County's Reduction of Board of Education and Creation of At-Large Seats Diluting Strength of Black Voters

***Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018):** Sumter County adopted a districting plan for the Board of Education that switched from 9 single-member districts to a total of seven districts, five of which are single-member and two are at-large. This case presents the precise factual scenario that advocates worried about after *Shelby County*: that local jurisdictions would move from district-based elections where minority voters have an opportunity to elect their preferred candidates, to an arrangement where some or all seats are chosen by the jurisdiction as a whole, which is majority white. Black residents comprise about 48 percent of the voting age population in Sumter County, but are packed into two of the five single-member districts. As a result, they can elect representatives of their choice for only two of the seven seats. In March 2018, the District Court ruled that the current at-large method of voting for the county's public education school board members disproportionately favored the white majority candidates over the black minority preferred candidates. The court ordered Sumter County to re-draw the district lines to give African Americans the ability to elect candidates of their choice to the Board of Education.

Voters and Voting Rights Advocates Challenged Crisp County's At-Large Voting System that Diluted the Voting Strength of Black Voters

***Whitest v. Crisp Cty. Bd. of Education*, No. 1:17-cv-00109 (M.D. Ga. filed June 14, 2017):** In July 2017, advocates brought a Section 2 challenge in the Middle District of Georgia to the at-large method of electing members to the Board of Education in Crisp County, Georgia. No Black candidate has ever won a contested seat on the board, and a data analysis on election history has shown voting to be statistically racially polarized. The case is still pending.

Voters and Voting Rights Advocates Successfully Challenged a Georgia Law Restricting Rights of Limited English Proficient Voters to Obtain Assistance at the Polls

***Kwon v. Crittenden*, 1:18-cv-05405-TCB (N.D.Ga. 2018):** In 2018, advocates successfully challenged Section 21-2-409 of the Georgia Code under Section 208 of the Voting Rights Act. The Georgia law restricted the rights of limited English proficient (LEP) voters to obtain the assistance of interpreters or assisters of their choice. The statute limited an LEP voter, in non-federal elections, to the assistance of only either (1) a voter in the same precinct, or (2) one of certain statutorily-prescribed family members. The statute also provided that no person was allowed to assist more than 10 voters and that no candidate or family member of a candidate in any particular election could offer assistance to a voter in that election who is not a family member. After obtaining a preliminary injunction enjoining enforcement of the law, the Georgia General Assembly amended the law in 2019 to conform to the federal law.

Voters and Voting Rights Advocates File Suit Challenging Systemic Voter Suppression in Georgia

***Ebenezer Baptist Church of Atlanta, Georgia, Inc. v. Raffensperger,* 1:18-cv-05391-SCJ:** Fair Fight Georgia, Inc., Care in Action and several Black Churches filed suit challenging systemic voter suppression in Georgia under Section 2 of the Voting Rights Act and the Constitution. In May 2019 the District Court granted in part and denied in part Defendants' motion to dismiss. The case remains pending.

Voters Challenge the Failure of the Georgia General Assembly to Draw a Congressional District in Central and Southeast Georgia to Provide African Americans an Equal Opportunity to Elect Candidates of their Choice

***Dwight v. Kemp,* 1:18-cv-02869-JPB (N.D. Ga. 2018):** This is a vote dilution lawsuit that was filed on June 13, 2018 by six African American Georgia voters under Section 2 of the VRA. The lawsuit challenges the Georgia General Assembly's failure to draw a congressional district in central and southeast Georgia, where the 12th Congressional District (CD 12) is currently located, that would provide African Americans in that region an equal opportunity elect their preferred candidates. On May 1, 2019, the Plaintiffs filed a motion for summary judgment and that motion is currently pending in the District Court.

Voting Rights Advocates Fight Precinct Closures and Efforts to Reduce Voting Hours in the Wake of *Shelby County*

Pre-litigation advocacy has been ongoing in a number of Georgia jurisdictions which have proposed the closure and relocation of polling places and have made efforts to reduce or curtail early voting and poll hours, which in many instances adversely impact voters of color. These include:

1) Macon-Bibb County, where in January 2015, the majority white Macon-Bibb Board of Elections and Registration proposed a plan to close or consolidate 14 of the county's 40 voting precincts as an alleged cost-savings device. Many of the proposed closures were in majority-Black precincts. In the wake of strong opposition to the plan by voters and voting rights advocates, the Board scaled back the plan by consolidating 7 of the 40 voting precincts and including a majority-White precinct as among the consolidated precincts.

2) Hancock County, where in May 2014, the Hancock County Board of Elections and Registration announced that it was planning to close all precincts except a single precinct located in downtown Sparta. The plan presented a travel burden for voters living in the majority African American precincts in a mostly poor and rural County, particularly since the County does not have a robust public transportation system. The Board abandoned the plan following public outcry and threats of potential litigation by advocates.

3) In September 2018, advocates, working with local groups, were able to reverse a decision by the Randolph County Board of Elections to close 7 out of 9 polling places, several of which were in predominantly African American precincts. However, it appears that the Board of Elections may be planning to again consider polling place closures and consolidations in 2019, notwithstanding overwhelming objection by the county's voters, local and national advocates.

4) In 2018, the City of Fairburn, Georgia proposed closing 2 of its 3 polling locations, despite the fact this proposal would have increased the number of minority voters in the single remaining polling location to almost 8,000 and after the city had previously increased the number of polling locations from 1 to 3 because of complaints by voters about long lines and delays at the polls. Advocates submitted written objections and in the face of strong opposition by voters, the proposal did not pass.

5) During 2017-2018, Fulton County, Georgia proposed numerous precinct consolidations and polling location changes. Advocates and voters objected to many of these changes. The County has often claimed that it needs to close or consolidate poll locations to save money because of alleged low turn-out since 2008 and 2012 - which were high watermarks for voter turn-out in many of Georgia's minority communities because Barak Obama was on the ticket. In some cases, the alleged low turnout in the majority-minority precincts was on par with or above turnout at other polling locations that were not being proposed for closure or consolidation. Rapid response advocacy efforts were successful in convincing the Fulton County Board of Elections to back down from some, but not all, of the closures, consolidations and relocations.

6) During 2017-2018, the Morgan County elections board proposed closing 2 of the 7 voting precincts/polling places after having previously reduced the number from 11 to 7 in 2012. The county Board of Elections initially took the position that it was not required to allow public comment on the proposal or conduct this change via an open meeting. Ultimately, the proposal failed to pass after objections were interposed by advocates and voters.

7) In 2017, the Fayette County Board of Elections proposed reducing its 36 voting precincts to 19. The proposal would have negatively impacted many minority voters and would have increased the number of voters in the remaining precincts by 45%. After advocates submitted written objections and voters turned out at the Election Board meeting to voice their objections, the Board tabled the proposal. This is the same county which was the subject of a successful vote dilution lawsuit brought under Section 2 of the Voting Rights Act by the NAACP Legal Defense Fund involving the County Commission and School Board.

8) In 2013, advocates persuaded election officials in Baker County, Georgia to keep open all five of its polling places (rather than close four of them) in that impoverished, rural community.

9) In 2018, voting rights advocates fought against efforts to reduce Sunday voting in Fulton County and the hours to vote in Atlanta.

Kansas

Kansas' Documentary Proof-of-Citizenship Requirement for Voter Registration Struck Down as Violative of the Constitution and the National Voter Registration Act

***Fish v. Kobach*, 309 F.Supp. 3d 1048 (D.Kan. 2018)**: After Kansas' then Secretary of State, Kris Kobach, refused to fully process thousands of voter registration applications without documentary proof-of-citizenship, voter registration applicants impacted by the policy sued Kobach, contending that the state's documentary proof of citizenship requirement violated Section 5 of the NVRA and violated the Fourteenth Amendment of the United States Constitution. In June 2018 the District Court struck down

Kansas' proof-of-citizenship law, finding that it violated the NVRA and the Equal Protection Clause of the Fourteenth Amendment.[59]

Voters Were Forced to File Suit Challenging the Relocation of Dodge City, Kansas' Sole Polling Place out of the City to Disadvantage Minority Voters

***Rangel-Lopez v. Cox*, 344 F. Supp. 3d 1285, 1287 (D. Kan. 2018):** Voters filed suit alleging claims under Section 2 of the VRA and the Constitution challenging the decision to move the sole polling place in Dodge City, Kansas, one of the few majority-minority cities in the state, from a centrally located facility to a location outside of the city. While the court declined to grant plaintiffs' motion for emergency relief to reopen the polling place within the city for the 2018 general election, the county clerk later agreed to open two new voting sites within the city for future elections and the plaintiffs voluntarily dismissed the lawsuit.

Louisiana

Voters and Voting Rights Advocates Successfully Challenged Louisiana's At-Large Method of Electing Judges That Diluted Voting Rights of Black Voters

***Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395 (M.D. La. 2017), *appeal dismissed sub nom. Fusilier v. Edwards*, No. 17-30756, 2017 WL 8236034 (5th Cir. Nov. 14, 2017), *and reconsideration denied*, No. CV 14-69-SDD-EWD, 2018 WL 5786215 (M.D. La. Nov. 5, 2018):** Voters and advocates filed suit under Section 2 of the VRA and the U.S. Constitution challenging Louisiana's at-large method of electing judges. Plaintiffs contended the system maintained a racially segregated state court ("32nd JDC") which had jurisdiction over Terrebonne Parish. A Black candidate had never won election to this court in a contested election. Meanwhile, a judge on the court was suspended for wearing blackface, an orange prison jumpsuit, handcuffs, and an afro wig to a Halloween party as part of his offensive parody of a Black prison inmate. In August 2017, following a trial on the merits, the court ruled that the at-large electoral scheme deprived Black voters an equal opportunity to elect candidates of their choice in violation of Section 2 of the VRA and that the scheme had been maintained for that purpose in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution. The Defendant's appeal to the Fifth Circuit was dismissed. On June 3, 2019, the assigned Magistrate Judge issued a report making recommendations for remedial relief. The case remains pending.

[59] Kansas voters also filed a state court challenge to a two-tier voter registration system adopted by Kobach which purported to limit persons using the federal voter registration form to voting in federal elections, but not in state or local elections. See *Belenky v. Kobach*, Case No. 2013CV1331 (District Court of Shawnee County, KS 2013).

Voting Rights Advocates Commence Litigation to Challenge the Constitutionality of Louisiana's Disenfranchisement of Probationers and Parolees

***VOTE v. Louisiana*, No: 2017-CA-1141 (1st Cir. La. App. Ct. Apr. 13, 2018):** Voting advocates filed suit in state court challenging the constitutionality of a Louisiana law that disenfranchises more than 71,000 probationers and parolees who are not incarcerated, but are nevertheless prohibited from voting. Plaintiffs contend that the law violates Louisiana's Constitutional Right to Vote provision, which denies the franchise to those under an "order of imprisonment for a felony conviction." In March 2017, the trial court granted summary judgment to the State and this decision was upheld by the Court of Appeals. On October 30, 2018, the Louisiana Supreme Court, over a powerful dissent by Louisiana Supreme Court Chief Justice Bernette Johnson, denied review.

African American Voters in Baton Rouge Challenged the Method of Electing Judges to the Baton Rouge City Court under Section 2 of the Voting Rights Act

***Hall v. State of Louisiana*, 3:12-cv-00657-BAJ-RLB (M.D.La. 2012):** This action was brought by African-American voters in Baton Rouge, Louisiana, to challenge the method of election for judges to the Baton Rouge City Court. Plaintiffs claimed that the election system violates Section 2 of the VRA because it dilutes African-American voting strength in the city. Since 1993, the City Court's five judges had been elected from two separate districts, called Election Sections. Section 1 was majority black in population and elects two judges, while Section 2 is majority white and elects three judges. Baton Rouge has experienced a change in the racial composition of its population since 1993, with African Americans now constituting a majority. Nonetheless, white voters continued to control the election of 60 percent of the judges in the context of racially polarized voting in judgeship elections and other local electoral factors. Efforts in the state legislature to modify the election system to reflect African Americans' current voting strength have failed.

Trial began in August 2014 and, after a recess of several months, concluded on November 19, 2014. Plaintiffs presented extensive evidence regarding the difficulties African-American voters face in winning judicial elections in the majority-white election section, including the ongoing pattern of polarized voting, Louisiana's long history of discrimination in voting and other spheres, and the substantial socioeconomic disparities between the city's African-American and white residents. Plaintiffs also presented evidence that an additional majority-Black district could be drawn to allow African Americans a fair opportunity to elect an additional candidate of their choice. On June 9, 2015, the District Court ruled in favor of Defendants. Before Plaintiffs had an opportunity to appeal, however, the Louisiana legislature passed a new judicial districting plan which met most of Plaintiffs' concerns, and Plaintiffs moved for an order that the Section 2 claims had been rendered moot and that the judgment in favor of defendants be vacated. The trial court agreed that the Section 2 claims were moot, but declined to vacate its judgment. On March 13, 2018, the Fifth Circuit Court of Appeals affirmed the District Court's decision not to vacate the judgment even though Plaintiffs' claims were rendered moot by the remedial legislation.

African American Louisiana Voters Challenge the State's Congressional Districting Plan under Section 2 of the Voting Rights Act

***Johnson v. Ardoin*, Civil Action No. 18-625-SDD-EWD (M.D.La. 2018)**: This is a vote dilution action brought under Section 2 of the VRA by African American voters who allege that the Louisiana Legislature intentionally "packed" African-American voters into the Second Congressional District and diluted, or "cracked," African-American voters among the other districts in the 2011 Congressional Plan when they could have created an additional majority-minority Congressional District. On May 31, 2019, the District Court denied Defendant's motion to dismiss. The case remains pending.

Massachusetts

Voters and Voting Rights Advocates Successfully Challenged the Lowell, Massachusetts At-Large Voting System that Dilutes the Strength of Latino and Asian American Voters

***Huot v. City of Lowell*, No: 1:17-cv-10895 (D. Mass. 2017):** Plaintiffs filed suit on May 18, 2017 alleging the City of Lowell's at-large municipal election system illegally diluted the vote of Latino and Asian American communities in violation of the VRA and Constitution. Although communities of color make up about half of Lowell's population, its city council and school board have virtually never had minority representatives. The case was ultimately settled in 2019, with Defendants agreeing to change the election system to either a purely district-based system or a hybrid system with districts and at-large ranked choice voting. The city is currently planning a public process to receive community input and planning a comprehensive public education and outreach campaign.

Michigan

Department of Justice Challenges the At-Large Method of Electing Members to the Eastpoint, Michigan City Council

***United States v. City of Eastpointe*, 4:17-cv-10079 (E.D.Mich. 2017):** In one of the very few voting rights enforcement actions taken by the Department of Justice in recent years, the DOJ filed suit against the City of Eastpoint, Michigan, challenging its at-large method of electing members of the city council. DOJ contended that the at-large method of election diluted the voting strength of African American voters in the city. On March 27, 2019, the District Court denied the Defendant's motion for summary judgment. On June 4 2019, the parties reached a settlement in which the city will be one of the first cities in Michigan to implement ranked choice voting in city council elections.

Mississippi

State Senate Candidate and Voters Commenced Litigation Challenging the Boundary Lines of Majority-Black Mississippi Senate District 22

***Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019):** On July 9, 2018, Black Mississippi voters filed a Section 2 of the VRA vote dilution lawsuit challenging the districting plan for Mississippi State Senate District 22. Plaintiffs contend that the plan dilutes the voting strength of Black voters and, combined with racially polarized voting, prevents them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and Defendant has filed an appeal to the Fifth Circuit. Oral argument before the Fifth Circuit was held on June 11, 2019. The case remains pending.

Voters and Voting Rights Advocates Challenge Mississippi's Requirement that Absentee Ballots and Applications Must Be Notarized

***O'Neil v. Hosemann*, No: 3:18-cv-00815 (S.D. Miss. Nov. 27, 2018):** On November 21, 2018, Plaintiffs filed a complaint challenging, on federal constitutional right to vote grounds, Mississippi's unique combination of requiring notarization of both the absentee ballot application and the ballot itself, together with a deadline of receipt of the ballot the day before election day. Plaintiffs also sought emergency relief to compel the counting of ballots post-marked by election day (November 27) in the senatorial run-off, where voters had only 9 days – including Thanksgiving weekend – to apply for, obtain, and cast their absentee ballots. The court denied relief on November 27, 2019 on grounds that it was too close to the election to order relief. The case is still pending.

Mississippi's Felony Disenfranchisement Law is Challenged is Two Federal Lawsuits

***Harness v. Hosemann*, Civil Action No. 3:17-cv-791-DPJ-FKB (S.D.Miss. 2017) and *Hopkins, et al. v. Hosemann*, Civil Action No. 3:18-cv-188-CWR-LRA (S.D.Miss. 2018):** Plaintiffs who are disenfranchised by the Mississippi Constitution's felony disenfranchisement provisions filed suit to strike down the provisions. In *Hopkins*, the Plaintiffs are also challenging the process by which voting rights are restored for formerly convicted individuals. Plaintiffs contend that the disenfranchisement scheme was born from racism embedded in the 1890 Mississippi Constitution, which was created in the wake of Reconstruction, and continues to disproportionately deny the franchise to Black Mississippians. On June 28, 2018, the District Court consolidated the two cases. On February 13, 2019, the District Court granted the *Hopkins* Plaintiffs' motion to certify the case as a class action. The cases remain pending.

Voters Challenge Mississippi's Majority Vote Scheme for the Election of the State's Governor and other State-wide Offices

***McLemore v. Hosemann*, 3:19-cv-00383-DPJ-FKB (S.D.Miss. May 30, 2019):** Four Mississippi Black voters filed suit challenging the state's majority vote requirement for electing the Governor and for other statewide offices. Plaintiffs contend the scheme has its basis in the racism that was at the heart of the post-Reconstruction adoption of the 1890 Mississippi Constitution and that it was intended to prevent African Americans from holding statewide elected offices. Since the enactment of the majority vote requirement in 1890, no African Americans have been elected to statewide offices, despite the fact that Mississippi has the highest percentage of African Americans of any state in the country. Plaintiffs have alleged claims under Section 2 of the Voting Rights Act and the Constitution. The case is currently pending in the United States District Court for the Southern District of Mississippi.

Missouri

Successful Section 2 Challenge to the At-Large Method of Electing Board Members to the Ferguson-Florissant, Missouri School Board

***Missouri State Conference of the National Association for the Advancement of Colored People v. Ferguson–Florissant School District*, 894 F.3d 924 (8th Cir. 2018).** This is a vote dilution lawsuit filed under Section 2 of the Voting Rights Act to challenge the at-large method of election for members to the School Board for the Ferguson-Florissant School District. African Americans are 47 percent of the district's population, but had only been able to elect two candidates of their choice to the board because of the at-large scheme. Plaintiffs prevailed at trial; the Eighth Circuit denied the Defendant's appeal and the Supreme Court denied the Defendant's petition for *certiorari*.

New York

Lawsuit Filed to Restore Voting Rights to New Yorkers Who Were Removed from Poll Books in Violation of Federal Law

***Common Cause/New York v. Brehm*, Case No. 1:17-cv-06770 (S.D.N.Y 2017):** Advocates filed suit to restore the voting rights of millions of New Yorkers ahead of the 2018 election. Plaintiffs alleged that certain eligible but "inactive" voters are improperly removed from poll books throughout New York State in violation of the National Voter Registration Act (NVRA). Plaintiffs contend that the removal of inactive voters from the poll books disproportionately impacts voters of color. The litigation is continuing.

Vote Dilution Lawsuit Filed under Section 2 of the Voting Rights Act to Challenge the At-Large Method of Electing Members of the East Ramapo Central School District

***National Association for the Advancement Of Colored People, Spring Valley Branch v. East Ramapo Central School District*, Case No. 7:17-cv-08943 (S.D.N.Y. 2017):** This is a Section 2 vote dilution lawsuit filed in November 2017 by the Spring Valley Branch of the NAACP and seven Black and Latino voters. Plaintiffs challenge the at-large method of electing members to the Board of Education of the East Ramapo Central School District and contend that it dilutes the voting strength of Black and Latino voters in the District. As a by-product of the dilutive election scheme, Plaintiffs contend that White Board Members are not responsive to the needs of minority students and their parents in the district and have undertaken funding cuts and other actions which deprive minority students of an adequate education. The case is still pending.

North Carolina
Challenge to Voter Suppression Legislation on the Heels of *Shelby* that Targeted Black Voters with almost Surgical Precision

***North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016):** In the immediate aftermath of the *Shelby* decision, North Carolina enacted omnibus voter suppression legislation which included a strict voter ID requirement that excluded the use of out-of-state and college IDs; eliminated same-day voter registration and pre-registration for 16 and 17 year olds; increased opportunities for voters' eligibility to be challenged at the polls; reduced early voting by an entire week; and required the rejection of out-of-precinct ballots. After Plaintiffs' challenge was rejected by the District Court following a trial on the merits, Plaintiffs appealed. The Fourth Circuit then struck down the law's voter ID requirement; cutbacks to early voting; elimination of same-day registration and pre-registration; and the provisions relating to out-of-precinct ballots. In its decision, the Fourth Circuit noted:

"After years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force. But, on the day after the Supreme Court issued *Shelby County v. Holder*, —— U.S. ——, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), eliminating preclearance obligations, a leader of the party that newly dominated the legislature (and the party that rarely enjoyed African American support) announced an intention to enact what he characterized as an "omnibus" election law. Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.

"In response to claims that intentional racial discrimination animated its action, the State offered only meager justifications. **Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation.** "In essence," as in *League of United Latin American Citizens v. Perry* (LULAC), 548 U.S. 399, 440, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006), "the State took away [minority voters'] opportunity because [they] were about to exercise it." As in LULAC, "[t]his bears the mark of intentional discrimination." Id.

"Faced with this record, we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent. Accordingly, we reverse the judgment of the district court to the contrary and remand with instructions to enjoin the challenged provisions of the law."

Id., at 214–15 (emphasis added).

Despite the Fourth Circuit's strongly worded decision and conclusion that the law was enacted with discriminatory intent, North Carolina asked the Supreme Court to stay the Fourth Circuit's decision, claiming that the state did not have sufficient time to make changes before the November 2016 general election. The Supreme Court granted the State's request for a stay. As a result, the law remained in effect

for the November 2016 general election until the Supreme Court eventually denied North Carolina's petition for *certiorari* on the merits in May 2017.

Voters and Voting Rights Advocates Forced to Commence Litigation to Restore Illegally Purged North Carolina Minority Voters to the Registration Rolls ahead of the November 2016 General Election

***North Carolina State Conference of the NAACP v. North Carolina State Board of Elections,* Case No. 1:16CV1274, 2016 WL 6581284 (M.D.N.C., 2016)(order granting preliminary relief); and *North Carolina State Conference of NAACP v. Bipartisan Board of Elections and Ethics Enforcement,* Case No. 1:16CV12742018, WL 3748172 (M.D.N.C. 2018)(order granting Plaintiffs' motion for summary judgment and permanent relief):** Plaintiffs alleged that in the months and weeks immediately preceding the November 2016 general election, boards of elections in three North Carolina counties - Beaufort, Moore, and Cumberland -improperly canceled thousands of voter registrations of predominantly African American voters for changes of residency on the basis of single mailings returned as undeliverable. Specifically, Plaintiffs alleged that a handful of private individuals brought coordinated and targeted *en masse* challenges to voter registrations on change-of-residency grounds pursuant to North Carolina's voter challenge statute, N.C. Gen. Stat. § 163-85, *et seq.* and that this process violated Section 2 of the VRA, Section 8 of the NVRA and the Equal Protection Clause of the Fourteenth Amendment. The Court granted a preliminary injunction in favor of the Plaintiffs to restore impacted voters to the registration rolls ahead of the November 2016 general election and subsequently granted Plaintiffs' motion for summary judgment to permanently enjoin the practice.

Voters and Advocates File a Successful Post-*Shelby* Racial Gerrymander Challenge to Redistricting Plans in Two North Carolina Congressional Districts

***Cooper v. Harris*, 137 S.Ct. 1455 (2017):** Filed in October 2013, this case challenged the redistricting of two North Carolina congressional districts as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment. After a bench trial, a three-judge panel of the United States District Court for the Middle District of North Carolina ruled in favor of the voters. In 2017, the Supreme Court held that deference to the District Court's findings, under a clearly erroneous standard of review, was warranted; finding that race was the predominant factor in drawing one district as majority-minority district was not clearly erroneous; the State lacked a strong basis in evidence for believing that it needed a majority-minority district in order to avoid liability under § 2 of the Voting Rights Act (VRA) for vote dilution; and finding that racial gerrymandering rather than political gerrymandering was predominant factor in drawing the other district as majority-minority district was not clearly erroneous.

Section 2 Litigation Filed to Remedy Dilution of Voting Strength of Black Voters in Jones County, North Carolina Due to At-Large Method of Electing County Commissioners

***Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017):** Plaintiffs challenged the at-large scheme of electing members to the Jones County, NC Board of Commissioners under Section 2 of the Voting Rights Act. Due to the at-large method of electing members to the Jones County Board of Commissioners, which diluted the voting strength of African American voters, no African American candidates had been elected to the Jones County Board of Commissioners since 1998. The parties eventually settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African-American voters constitute a majority of the voting-age population.

Voting Rights Advocates Forced to Commence Litigation Challenging a North Carolina Law Restructuring the Greensboro City Council which also Prohibited Voters from Changing the Restructuring Via Referendum

City of Greensboro v. Guilford County Board of Elections, **251 F.Supp.3d 935 (M.D.N.C. 2017).** In 2015, after the *Shelby* decision, North Carolina enacted a bill which restructured the Greensboro City Council and eliminated the ability of voters to change the restructuring via a referendum. Plaintiffs alleged the legislature's plan diluted the voting strength of African American voters and violated other traditional redistricting principles, including one person, one vote and not pairing incumbents against each other, and that the prohibition against restoring the previous plan via a referendum was unconstitutional. The Plaintiffs eventually prevailed on their claims that the prohibition against a referendum and the violation of one person, one vote violated the Constitution. Because the court found in favor of the Plaintiffs on these claims, the court did not reach the issue of whether the plan was a racial gerrymander.

Voters and Voting Rights Advocates Bring Litigation Successfully Challenging North Carolina's Racially Gerrymandered State Legislative and Congressional Redistricting Plans

***Dickson v Rucho*, No. 11 CVS 16896 (N.C.Super. July 08, 2013)**: This is a state court action challenging North Carolina's racially gerrymandered state legislative and congressional redistricting plans. The state courts upheld the plans. Plaintiffs sought review by the United States Supreme Court. In April 2015, the Supreme Court granted *certiorari* and remanded the case to the state Supreme Court in light of the Court's ruling in *Alabama Legislative Black Caucus v. Alabama.* On remand, in a 4-3 decision, the state Supreme Court affirmed its earlier opinion. On May 30, 2017, the United States Supreme Court again granted *certiorari* and reversed and remanded the case for further consideration in light of *Cooper v. Harris* and *North Carolina v. Covington*. On February 7, 2018, the day after the United States Supreme Court's ruling in *Covington* precluded the special master's new House districts in Wake and Mecklenburg counties from going into effect, Plaintiffs filed an emergency motion in this state court proceeding, seeking relief from the state constitutional violations in the Wake and Mecklenburg County state house districts. On February 12, 2018, the state court three-judge panel denied that motion but entered judgment in Plaintiffs' favor.

Federal Court Determined that 28 North Carolina Legislative Districts were Unconstitutional Racial Gerrymanders in Violation of the Constitution

***Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017)**: Federal court litigation filed in 2015 challenged the racial gerrymandering of the state's legislative districts in 2011. On August 11, 2016, a three-judge panel unanimously found that 28 of the State's districts were racially gerrymandered and ordered all of those districts to be redrawn after the 2016 election. In another unanimous ruling on November 29, 2016, the three-judge panel ordered the General Assembly to redraw the racially gerrymandered house and senate districts, which was upheld by the Supreme Court. On October 26, 2017, the Court issued an order appointing a special master to assist in evaluating the districts and in developing an appropriate remedial plan. The special master submitted his proposed remedial plan on December 1, 2017, and the Court issued a unanimous Order incorporating his recommendations on January 19, 2018.

North Dakota

Spirit Lake Tribe and Native American Voters Challenge North Dakota's Strict Voter ID Law

***Brakebill v. Jaeger*, Civil Action No. 18-1725 (D.N.D. 2018)**; Plaintiffs secured a preliminary injunction prohibiting enforcement of a strict voter ID law which negatively impacted Native American voters. However, after the District Court granted preliminary relief, the state appealed to the Eighth Circuit for an emergency stay of the court's order and the Supreme Court, in a split decision, declined to overturn the stay while the litigation of the case on the merits continues.

Ohio

Sixth Circuit Reverses Trial Court Decision Finding that Modifications to the State's Early Voting Rules Violated the Fourteenth Amendment by Burdening the Right to Vote of African Americans

***Ohio Democratic Party v. Husted*, Case No. 16-3561 (6th Cir. 2015):** In May of 2015, state and county political parties and three individual voters filed suit challenging modifications to state's early voting rules, contending that the changes violated the Equal Protection Clause of the Fourteenth Amendment. After the District Court found in favor of the Plaintiffs, enjoined enforcement of the statute and found it placed impermissible disparate burden on African-American voters, the Sixth Circuit reversed, concluding that the state's justifications for the changes outweighed the burden on African American voters and that the changes did not have a disparate impact.

Tennessee

Advocates Filed Suit to Challenge a Tennessee Law Imposing Severe Restrictions on Voter Registration Activity with Criminal and Civil Penalties that was Enacted in the Wake of Successful Registration Drives in 2018 Targeting Minority and Underserved Communities

***Tennessee State Conference of the N.A.A.C.P. v. Hargett*, Case No. 3:19-cv-00365 (M.D.Tenn. 2019) and *League of Women Voters of Tennessee v. Hargett*, 3:19-cv-00385 (M.D.Tenn. 2019):** Voting advocates filed two lawsuits in 2019 challenging the enactment of a Tennessee law which imposes severe restrictions on voter registration activity by community groups and third parties and includes criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. Defendants filed motions to dismiss in both cases which are currently pending.

Texas

Voters, Voting Rights Advocates, and Congressional Representative Forced to Commence Litigation to Invalidate Racially Discriminatory Strict Texas Voter ID Law

***Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018):** This is a Federal court action challenging the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution. In October 2014, the district judge ruled in Plaintiffs' favor on all claims and blocked the law, holding that it violates Section 2 of the VRA, constitutes an unconstitutional burden on the right to vote, amounts to a poll tax, and was motivated in part by a racially discriminatory purpose. In August 2015, the Fifth Circuit Court of Appeals upheld the district court's ruling that the State's restrictive photo ID requirement violated Section 2 of the Voting Rights Act. The appeals court upheld the finding of discriminatory effect under Section 2, but remanded on the issue of discriminatory intent, asking the lower court to re-examine the evidence. In July 2016, the *en banc* court affirmed the district court's finding of discriminatory effect under Section 2, and remanded the case to the district court for further fact-finding on the discriminatory intent claim. On April 10, 2017, the Court issued a decision re-affirming its prior determination that SB 14 was passed, at least in part, with a discriminatory intent. On June 1, 2017, Texas passed SB5, which it claimed remedied the effects of SB 14. While SB 5 shares provisions in common with the court-ordered interim remedy, there are aspects of concern, including a harsh felony penalty (up to two years of imprisonment) for voters who inappropriately use the affidavit process for voting in-person without an acceptable photo ID. On August 23, 2017, the court granted declaratory relief, holding that SB 14 violates Section 2 of the VRA and the 14th and 15th Amendments to the U.S. Constitution. The court enjoined SB 14 and SB 5, finding that the new law "perpetuates SB 14's discriminatory features." On April 27, 2018, the Fifth Circuit issued its opinion "reversing and rendering" the district court's order for permanent injunction and further relief, finding that the district court had abused its discretion, and further finding that SB 5 constituted an effective remedy "for the only deficiencies in SB 14," and that there was no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c) of the Voting Rights Act.

Voters and Voting Rights Advocates File Suit to Remedy Dilution of Voting Strength of Latino Voters in Texas Due to At-Large Method of Electing Statewide Judges

***Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018):** In 2016, Plaintiffs challenged Texas' method of using at-large elections to elect judges to the two courts of last resort in the state, the Supreme Court of Texas and the Texas Court of Criminal Appeals. The lawsuit alleged that the statewide method of electing judges to these courts is discriminatory and denies Latinos an equal opportunity to elect candidates of their choice. In Texas, whites vote as a bloc resulting in the defeat of candidates supported by the Latino community. If the election process was changed from statewide to single districts, two districts could be created with a majority of CVAP of Latino voters, increasing the likelihood that Latino voters could overcome the bloc voting of White voters and have the chance to elect candidates of their choice to these courts. However, the court ultimately ruled for the Defendants, holding Plaintiffs could not show under the totality of the circumstances that the lack of electoral success by Latino-preferred candidates for high judicial office is on account of race rather than other factors, including partisanship.

Voting Rights Advocates Successfully Challenged Texas' Illegal Flagging of Naturalized Citizens for Removal from Voter Rolls

***Texas League of United Latino American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. February 27, 2019):** In late January 2019, David Whitley, Texas' Secretary of State, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers' license. Naturalized citizens are entitled to full voting rights under Constitution. Voting rights advocates filed lawsuits challenging the purging of voters based upon this flawed process. The case was eventually settled after the U.S. District Court in Texas granted a motion for preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process.

Voter and Voting Rights Advocates Successfully Challenge Law Restricting Language Assistance for Voters with Limited English Proficiency

***OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017):** Litigation was commenced on August 6, 2015, under Section 208 of the VRA challenging a provision of the Texas Election Code that requires interpreters to be registered to vote in the same county as the voter who needs assistance. This state requirement unduly restricts the range of individuals who are permitted to provide language assistance. The Court found, "In short, the State Defendants get the VRA wrong...the Texas Code Interpretation Provisions, restrict voter choice in a manner inconsistent with the Federal Voting Rights Act." The county defendants agreed to settle in light of the decision. In the settlement, the county agreed to revise the poll worker manual and to change the training procedure for interpreter requirements to be consistent with Section 208 of the VRA. The County will also maintain data of Section 208 violations that are reported to them. On August 16, 2017, the Fifth Circuit Court of Appeals affirmed the district court ruling that the Texas law, which requires interpreters to be registered voters, violates the VRA. The Fifth Circuit decision also affirmed the district court's finding that the plaintiff organization, OCA-Greater Houston, had satisfied its standing requirement.

Voters, State and Federal Legislators, and Voting Rights Advocates Successfully Challenged Texas' Redistricting Plan That Diluted Strength of Latino Voters

***Abbott v. Perez*, 138 S. Ct. 2305, 201 L. Ed. 2d 714 (2018):** During the initial challenge to Texas' redistricting plan, Texas was denied Section 5 preclearance. Following the decision in *Shelby*, Plaintiffs again challenged Texas' maps that did not provide for a new Latino-majority congressional seat. The Court concluded that the congressional districting plans diluted Latino voting strength and were intentionally discriminatory against Latinos and African Americans. The case was tried a third time, focusing on Texas State House Districts, and the Plaintiffs prevailed again. Defendant appealed the District Court's rulings to the United States Supreme Court. On June 25, 2018, the Supreme Court reversed the District Court's rulings in Plaintiffs' favor with the exception of House District 90 in Fort Worth.

Voters and Voting Rights Advocates Commence Litigation to Challenge a Waller County, Texas Early Voting Scheme That Did Not Provide a Polling Place for HBCU Prairie View A&M University Voters

***Allen v. Waller Cty., Tex.*, No: 4:18-cv-03985 (S.D. Tex. filed Oct. 22, 2018):** On October 22, 2018, advocates filed a federal lawsuit against election officials in Waller County, Texas, who refused to provide any early voting location on the campus of Prairie View A&M University (PVAMU), an historically Black university, during early voting for the 2018 general election. Plaintiffs contend the County has provided fewer early voting opportunities to PVAMU students who are one of the highest users of this opportunity as compared to other voters in Waller County. Waller County has moved to dismiss Plaintiffs' First Amended Complaint and that motion is currently pending.

District Court in Texas Determines that Redistricting Plan for the City of Pasadena, Texas City Council that was Adopted in the Wake of the *Shelby* Decision Diluted the Voting Strength of Latino Voters and was Enacted with Discriminatory Intent

***Patino v. City of Pasadena, Texas*, 230 F.Supp.3d 667 (S.D.Tex. 2017):** Latino voters filed suit against the City of Pasadena, Texas alleging that city's change from an eight single-member district plan for electing city council members to a plan with six single-member districts and two at-large districts, in 2014 – after the *Shelby* decision, diluted Latino voting strength in violation of Section 2 of the VRA and Fourteenth and Fifteenth Amendments to the Constitution. Following a bench trial, the Court ruled in favor of the Plaintiffs on both their Section 2 and discriminatory intent claims and ordered the restoration of the eight single member district plan for the 2017 city council election. The District Court noted that this was one of the first lawsuits brought to remedy a discriminatory redistricting plan enacted in the wake of the *Shelby* decision. Defendant's request for a stay of the District Court's remedial order was denied by the District Court and Fifth Circuit.

Utah

Lawsuit Filed Against San Juan County, Utah for the Failure to Provide Effective Language Assistance and In-Person Early Voting Sites for Navajo Nation Voters

***Nation Human Rights Comm'n v. San Juan County*, 216CV00154JNPBCW, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017).** San Juan County, Utah is home to a substantial Native American population. The County moved to all-mail balloting in 2014. Coupled with a lack of sufficient in-person early voting sites serving the Navajo Nation's voters, Plaintiffs argued that the county failed to provide effective language assistance to its Native American population. Following a period of intense and sometimes contentious litigation, the parties reached a settlement in which the county agreed to 1) provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election; 2) maintain three polling sites on the Navajo reservation for election day voting, including language assistance; and 3) to take additional action to ensure quality interpretation of election information and materials in the Navajo language.

Washington, D.C.

Voting Advocates File Suit Challenging the Decision by the Election Assistance Commission's Executive Director, Brian Newby, to Include Proof of Citizenship Requirement on Federal Registration Form Instructions

***League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016):** In January 2016, EAC Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs filed suit to enjoin Newby's action and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District Court of Columbia denied Plaintiffs' motion for a preliminary injunction. The parties have fully briefed cross-motions for summary judgment and the action remains pending.

Mr. COHEN. You are welcome, Ms. Clarke, and thank you for your testimony. Because you are leaving, I want to first thank you, and I want you to know we are going to have the hardest questions for you. You still have to answer questions that we give you in writing, and you are going to get the hardest ones.

Ms. CLARKE. I thank you, Chairman.

Mr. COHEN. I am sure you will handle them deftly.

Ms. CLARKE. Absolutely. Thank you, Chairman.

Mr. COHEN. You are welcome. Thank you so much.

I will now recognize myself for an opening statement. The right to vote is the most fundamental right of citizenship in our democracy. It is the base where it all starts, and that is where it happens. Yet, for most of our Nation's history, too many of our citizens have been denied the right to vote. For over a century, women were denied the right to vote, and for a century and a half, African Americans were the most brutally attacked, denying their rights to vote, especially in the deep south.

On August 6 of 1965, our Nation took a momentous step towards correcting that injustice when President Lyndon Johnson signed into law the Voting Rights Act. That was the results of years of efforts by the civil rights monument led by heroes like our colleague, Representative John Lewis, and Dr. Martin Luther King and others, to get Congress to act on protecting voting rights for African Americans.

I fear, however, the developments of the last several years have undermined the Act's basic protections. That is because 6 years ago today in *Shelby County* v. *Holder*, the Supreme Court effectively suspended the Act's Section 5 preclearance requirement by striking down the coverage formula in Section 4 that determined which jurisdictions would be subject to preclearance.

In essence, they said not necessarily that those jurisdictions that had been under preclearance had cleaned up their act, but there were other jurisdictions that were maybe equally as bad or had done bad deeds as well. So they let the bad actors out because they thought there were new bad actors, and they kind of opened the door for everybody.

Under that preclearance requirement, certain jurisdictions, predominantly in the deep south that had a history of discriminatory voting methods, they were required to obtain the approval of the Justice Department or the U.S. District Court for the District of Columbia before any proposed changes to voting practices or procedures could take effect. That preclearance requirement was crucial to vigorous and effective enforcement of the Act's guarantee of equal voting rights.

The purpose of this preclearance requirement is to ensure the jurisdictions that are most likely to discriminate against minority voters would bear the burden of proving that any change to their voting laws were not discriminatory, rather than placing the burden of proof on discrimination victims. By placing the burden on jurisdictions with a history of discrimination to prove their innocence, Section 5 rightly prevented potentially discriminatory voting practices from taking effect before they could harm minority voters. In this way, Section 5 proved to be a significant means of protection for the rights of minority voters.

Section 2 of the Voting Rights Act, which prohibits discrimination voting and remains in effect is, by itself, a less effective and significantly more cumbersome and expensive way to enforce the Act, factors that would dissuade even those with meritorious claims from pursuing enforcement litigation. Most importantly, plaintiffs cannot invoke Section 2 until after an alleged harm has taken place, thereby eroding the effectiveness of the Act, which is to see that the harm doesn't ever take place. The result of these factors would be the many practices and restrictions that undermine equal votes will simply go unchallenged because the harm has been done.

These are reasons why Congress has repeatedly reauthorized Section 5 on an overwhelmingly bipartisan basis, most recently in 2006, when the House passed the VRA by a vote of 390–33, in the Senate 98–0. So at this time, it wasn't the Congress' fault. We were good.

Incredibly, the Court's majority in Shelby County claimed that there was no evidence to support Congress' findings of continued discrimination in voting in the then-covered jurisdictions, notwithstanding thousands of pages of record evidence compiled by this subcommittee in 2006. This subcommittee, then in Republican hands, demonstrated a continuing need for this coverage formula.

Telling events since the Shelby County decision have proved how wrong the Court was in its conclusion. Within hours of the decision, States like Texas and North Carolina that have been the subject of the Act's preclearance requirement, announced their intent to impose strict voting identification requirements. Other States that had also been subject to preclearance also wasted no time pursuing voting restrictions, and, once again, threatened to undermine the minority of voting rights, including practices like restriction or elimination of early voting, same-day registration, and bans on ex-offenders from voting, all of which make it disproportionately harder for racial and ethnic minorities to vote. It has a disparate impact against black voters, African American voters.

Last year's Georgia Governor's race brought into full view the range of voter suppression practices in formerly covered jurisdictions. It may look subtle when viewed in isolation, but are pernicious and devastating in their cumulative effect. As Ms. Stacey Abrams, one of our witnesses, the Democratic nominee for Governor of Georgia in that race, knows from personal experience, her opponent, Brian Kemp, then the Georgia Secretary of State, embarked on what were a series of seemingly naked attempts to shrink the electorate, which was the job of the Secretary of State on those laws, but he chose to go about it in a particular manner. He also was her opponent. He is now the Governor of Georgia.

His office purged more than 1.4 million voters from the rolls since 2010, including more than 600,000 Georgians in the year 2017, and then another 90,000 that were not purged in 2017 in The Cleanup Act in 2018. Numerous voter registrations were cancelled because the voter had not voted in the previous election. Georgia also closed a tenth of its polling places since 2012, with the majority of closings occurring in poor counties, and those with significant African American populations.

Georgia also enacted a, quote, "exact match," unquote, law that resulted in 53,000 more voters being given only pending status on

the voter registration because of minor errors on their registration forms, with more than 70 percent of those voters being African American. This is exactly the kind of attrition on voting rights that preclearance would have stopped from going into effect.

Before the Voting Rights Act, the state of voting rights in the deep south was abysmal. In the mid 1950s, only one in four African American voters in the south was registered. With this robust preclearance requirement, the Act did dramatic positive effect on black voting registration in the south, which increased to 62 percent just 3 years after the Act became law, yet these gains and others are at risk because of the Shelby decision.

The Supreme Court was wrong, in my opinion, to undermine the Voting Rights Act. Congress failed to act the last time we had a chance to do it. Hopefully, we won't fail again. Congress must now respond. It is imperative that we restore the Voting Rights Act preclearance requirement, so it is to stay true to the Act's purpose of ensuring equal voting rights for all.

John Lewis and many others risked their lives. John Lewis was beaten in the head, marching for voting rights in Selma, Alabama. Others were killed in Selma, and other places in the south looking for voting rights. Voting rights are so important, and we can't let those people's deaths, those people's injuries, those people's efforts go for naught.

I thank our witnesses for being here. I look forward to their testimony. I now yield for the opening statement from the ranking member, the Honorable gentleman from Louisiana, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, and thank you all for being here for your interest today. I appreciate the opportunity to speak again on the duty and honor that Congress has to protect the fundamental right to vote in our country. All the sacrifices, the blood and the sweat and the tears that were put in by John Lewis and all those other legends and patriots and heroes will not be forgotten.

While some have raised concerns regarding the Supreme Court's 2013 decision in *Shelby County* v. *Holder*, which struck down just one part of the Voting Rights Act, I would like to quote again from parts of that decision, because I think if we are going to talk about that decision today and its ramifications, it serves us well to articulate specifically what the Supreme Court actually said in that decision. I think the Court aptly described just how far this country has come.

In its majority decision, the Court laid out the Constitutional infirmities of Section 4 of the VRA as follows, and I am just going to read you an important excerpt. Quote, "The Framers of the Constitution intended the States to keep for themselves, as provided in the 10th Amendment, the power to regulate elections. Not only do States retain sovereignty under the Constitution, there is also a fundamental principal of equal sovereignty among the States. Indeed, the Constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. Section 4 of the Voting Rights Act sharply departs from these basic principles. It suspends all changes to State election law, however innocuous, until they have been precleared by Federal au-

thorities in Washington, D.C. In 1966, we found these departures from the basic features of our system of government justified.

At the time, the coverage formula, the means of linking the exercise via unprecedented authority with the problem that warranted it, made sense. Nearly 50 years later, things have changed dramatically. In the covered jurisdictions, voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of Federal decrees are rare, and minority candidates hold office at unprecedented levels.

The tests and devices that blocked access to the ballot have been forbidden nationwide for more than 40 years. The 15th Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The amendment is not designed to punish for the past. Its purpose is to ensure a better future.

To serve that purpose, Congress, if it is to divide the States, must identify those jurisdictions to be singled out on the basis that makes sense in light of current conditions. It cannot rely simply on the past. Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the pervasive, flagrant, widespread, and rampant discrimination that faced Congress in 1965, and it clearly distinguished the covered jurisdictions from the rest of the Nation at that time.

Our country has changed. And while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions," end of quote.

That is what the Supreme Court said. And of course, I am sure everyone in this room agrees with those sentiments, and I have stated this before, Mr. Chairman, myself. At least some on this side agreed with what the Court said.

Of course, we all agree that discriminatory treatment in voting based on race or sex is abhorrent. It is prohibited by the Constitution, as it should be. It is prohibited by Federal statue, as it should be. Regarding discriminatory treatment in voting that is based on race, Section 3 of the Voting Rights Act, which is permanent Federal statutory law, remains in place and full effect, as it should be.

Several years ago, for example, U.S. District Judge Lee Rosenthal issued an opinion in a redistricting case that required the City of Pasadena, Texas, to be monitored by the Justice Department because it had intentionally changed its city council districts to decrease influence by citizens of Hispanic descent. The city, which the Court ruled, has a, quote, "long history of discrimination against minorities," unquote, was required to have their future voting rules changes precleared by the Department of Justice for the next 6 years during which time the Federal judge, quote, "retains jurisdiction to review before enforcement any change in the election map or plan that was in effect in Pasadena on December 1, 2013," unquote.

A change to the city's election plan can be enforced without review by the judge only it if has been submitted to the U.S. Attorney General, and the Justice Department has not objected within 60 days.

We support Section 3 in its application to proven instances of discriminatory treatment in voting, and I look forward to hearing from all of our witnesses here today. That testimony will include that of the Office of the Texas Attorney General, which I understand has argued in the Supreme Court 31 times since 2000, and they have either completely or substantially won the vast majority of those cases. The Texas Attorney General's Office has argued two of the most important VRA cases in recent memory, Evenwel and Perez, and won them both. In those decisions, Texas won a total of 13 votes at the Court for its position compared to just four votes against. This is an office with a proven track record of legal acumen and understanding confirmed at the highest levels, and by the U.S. Supreme Court itself.

Thank you all, again, for your time and testimony. We look forward to hearing from you, and I yield back.

Mr. COHEN. Thank you, Mr. Johnson.

It is now my pleasure to recognize the chairman of the full committee, who was the chairman of this committee for many years, and today I will announce him as the chairman emeritus of this subcommittee, but the chairman, I guess, is emeritus of all committees. Mr. Nadler.

Chairman NADLER. Thank you, Mr. Chairman.

The Voting Rights Act of 1965 is one of the most effective civil rights statutes that has ever been enacted into law. Six years ago today, however, the Supreme Court issued its disastrous decision in *Shelby County* v. *Holder*, thereby effectively gutting one of the Act's central enforcement provisions known as the preclearance requirement, when it struck down as unconstitutional the Act's coverage formula, which determined which jurisdictions would be subject to the preclearance requirement.

Section 5 of the Voting Rights Act contains a preclearance provision that requires certain jurisdictions with a history of discrimination to submit any changes to their voting laws or practices to the Department of Justice for prior approval to ensure that they are not discriminatory.

To understand why the preclearance requirement was so central to enforcing the VRA, it is worth remembering why it was enacted in the first place. Before the Voting Rights Act, States and localities passed voter suppression laws, securing the knowledge that it could take many years before the laws could be successfully challenged in court, if at all. As soon as one law was overturned, another would be enacted, essentially setting up a discriminatory game of whack a mole. Section 5's preclearance provision broke this legal logjam and helped to stop this discriminatory practice.

Indeed, the success of the Voting Rights Act with this effective preclearance requirement was apparent almost immediately after the law went into effect. For instance, registration of African Americans voters more than doubled in the south within just 4 years of enactment. Similarly, African American voter turnout rose from only 6 percent to 59 percent in just 4 years in Mississippi, and it soared to 92 percent in Tennessee, 77 percent in Arkansas, and 73 percent in Texas in that same period.

The Voting Rights Act's success can also be measured in terms of the number of African Americans holding elected office, jumping

from barely 100 prior to the VRA's enactment to more than 7,200 today, with 4,800 holding elected office in the south alone. Moreover, the number of African Americans in Congress doubled almost immediately after the Voting Rights Act was enacted; and today, there are 56 African American Members of Congress. And of course, in 2008, the country elected its first African American President.

In short, the Voting Rights Act was an unqualified success, and much of that success can be attributed to the ability to enforce it vigorously. Central to the ability to enforce vigorously the Act was its preclearance provision. By striking down the formula for determining which States and localities are subject to the preclearance requirement, the Shelby County decision effectively suspended the operation of the preclearance requirement itself, and in its absence, the game of whack a mole has returned with a vengeance.

Within 24 hours of the Shelby County decision, for example, the Texas Attorney General and North Carolina's General Assembly announced that they would reinstitute draconian voter ID laws. Both of these States' laws were later held in Federal courts to be intentionally, intentionally, racially discriminatory. But during the years between their enactment and the Court's final decision, many elections were conducted while the discriminatory laws remained in place. At least 21 other States have also enacted newly restrictive statewide voter laws since the Shelby County decision.

Restoring the vitality of the Voting Rights Act is of critical importance. In 2006, when I was the ranking member of this subcommittee, we undertook an exhaustive process to build a record that demonstrated unequivocally the need to reauthorize the Voting Rights Act, provisions of which, like the preclearance requirement and the coverage formula that undergirded it, were expiring. At the time, the committee found that a majority of southern States were still engaged in ongoing discrimination. For instance, these States in the subdivisions engaged in racially discriminatory practices, such as relocating polling places for African Americans voters, and in the case of localities, annexing certain wards simply to satisfy white suburban voters who sought to circumvent the ability of African Americans to have a fair chance for elected office in their cities.

Since the Shelby County decision, we have also seen the emergence of other voter suppression measures, like burdensome proof of citizenship laws, significant scale-backs to early voting periods, restrictions and absentee ballots, and laws that make it difficult to restore the voting rights of formerly incarcerated individuals. These kinds of voting practices have a disproportionate negative impact on minority voters.

In the most recent elections in November of 2018, voters across the country encountered barriers to voting from State and local laws and circumstances that made it hard, or even impossible, to vote. For example, as our witness, Stacey Abrams, can attest to, in Georgia, 53,000 voter registrants, 70 percent of whom are African American, were replaced in pending status by the Secretary of State, who was also, by happenstance, Ms. Abrams' election opponent, because of minor misspellings on their registration forms.

A Federal court ultimately put a stop to this practice on November 2, 2018, 4 days before the election, because of the, quote, "differential treatment inflicted on a group of individuals who were predominantly minorities," closed quote.

While it is true that those seeking to enforce the Voting Rights Act can still pursue after-the-fact legal remedies even without preclearance, time and experience have proven that such an approach takes far longer and is far more expensive than having an effective preclearance regime. And once the vote has been denied, it cannot be recast. The damage to our democracy is permanent. That is why I hope the members on both sides of the aisle and in both Chambers of Congress will come together and pass legislation to restore the Voting Rights Act to its full vitality. The Supreme Court left us instructions on how to enact a new Section 4 that would pass constitutional muster.

Today's hearing will provide an important opportunity to renew our understanding of the importance of the Voting Rights Act and its preclearance provision, and to support our efforts to craft a legislative solution to restore, where needed, the preclearance provisions of the Voting Rights Act. I thank our witnesses, and I look forward to their testimony.

Mr. COHEN. Thank you, Chairman Nadler.

It is now my pleasure to recognize the ranking member of the full committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman, and it is good to be here, and it is good to have a hearing like this, if for no other reason, to at least correct the record and things that have already been said.

Number one. In Georgia, the six counties mentioned, it is a reminder that in Georgia, all six of those counties are under local control on where they actually place their voting times—their voting locations, how many they actually use, and that has been that way for a long time. We will get into more discussion about that.

It is interesting that we also talk about scaling back early voting in others, because as we will find out in this hearing, myself and actually a witness here today, voted to scale back 3 weeks in Georgia, and add a Saturday. And at the time, it was actually attested to on many occasions that it showed no discriminatory impact.

In fact, actually, some of what we found was actually helpful to minority turnout in that. So as we look at this, this is the reason to have a hearing, and I am glad to see friends and witnesses who are here today.

But the right to vote is of paramount importance in a democracy. Its protection of discriminatory barriers has been grounded in Federal law since the Civil War, and more recently, through the Voting Rights Act of 1965. In 2013, the Supreme Court struck down a single part of the Voting Rights Act, Section 4. That provision automatically put certain States and political subdivisions under the Act's Section 5 preclearance requirements. Those preclearance requirements prevented voting rule changes in covered jurisdictions from going into effect until the new rules had been reviewed and approved, either following a lawsuit in the D.C. District Court, or by more often, the Department of Justice.

When the Voting Rights Act was first enacted, Section 4 identified the jurisdictions automatically subject to the special preclearance requirements according to a formula. The first part of the formula provided a State or political subdivision would be covered if it maintained on November 1, 1964, a test or device restricting the opportunity to register and vote.

The second piece provided a State or political subdivision would also be covered if the Census director determined that less than 50 percent of the persons of voting age were registered to vote on November 1, 1964, or less than 50 percent of the voting age voted in the 1964 presidential election.

In its Shelby County decision, the Supreme Court struck down these automatic preclearance provisions, ruling the original coverage formula was, quote, "based on decades-old data and eradicated practices." In 1965, the States could be divided into two groups, those with a recent history of voting test and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction.

Today, we see a different place, and yet, the Voting Rights Act continued to treat it as if it were still in that time. The courts further criticized Section 4's formula as relying on decades-old irrelevant data to decades-old problems rather than current data reflecting current needs.

In Shelby County, the Supreme Court only struck down that single, outdated provision of the VRA. Significantly, other very important provisions of the Voting Rights Act remain firmly in place, including Section 2 and Section 3.

Section 2 applies nationwide, prohibits voting practices or procedures that discriminate on the basis of race, color, or the ability to speak English, like other Federal civil rights laws. Section 2 is enforced via Federal lawsuits. The United States and civil rights organizations have brought Section 2 cases in court, and still may do so in the future.

Section 3 of the Voting Rights Act also remains in place, authorizing Federal courts to impose on States and political subdivisions that have enacted voting procedures treating people differently based on race in violation of the 14th and 15th amendments. If the court finds a State or political subdivision treated people differently based on race, the court has the discretion to retain supervisory jurisdiction and impose preclearance requirements on the State or political subdivision as the court sees fit until a future date. This means that a State or political subdivision would have to submit all future voting rules and changes for approval to either the court itself or the Department of Justice before enacting those changes.

Per the Code of Federal Regulations, under Section 3(c) of the Voting Rights Act, a court in voting rights litigation can order, as relief, that a jurisdiction not subject to a preclearance requirement of Section 5 preclearance voting changes by submitting them to the court, or to the Attorney General.

Americans continue to safeguard voting rights for every citizen. Increased voter turnout reflects that commitment. In my home State of Georgia, which has been mentioned many times already, and will probably be again, voter turnout has expanded mightily. Between 2014 and 2018, turnout among Hispanics and African

American voters has soared, increasing by double digits in a State that more and more Americans are choosing to call home.

I look forward to discussing more of that, and hearing that as we go forward, but also look forward to ensuring that the ballot box remains open to all eligible voters, and I am looking forward to this hearing. I appreciate the witnesses being here. I am sure this will be an interesting discussion in which hearings tend to set facts straight. And with that, I yield back.

Mr. COHEN. Thank you, Mr. Collins.

We welcome all of our witnesses. Thank you for your indulgence in allowing Ms. Clarke to testify and make her train. I explained to you about the lights: 4 minutes green, yellow, you have got a minute left. Red, you don't have to go to the train, but you have to stop. You are all under the statutes that say that if you say anything that is false in your testimony, perjury, you are subject to up to 5 years in prison or both for making such a statement, so all your written and oral statements to the subcommittee shall be truthful and honest. I am sure of that.

Our first witness is Ms. Stacey Abrams. Ms. Abrams is the founder and chair of Fair Fight Action, an organization dedicated to advancing voting rights and electoral reform. In 2018, she was the Democratic nominee for Governor of the State of Georgia, the first African American woman in U.S. history nominated by a major party as its nominee for Governor. In that election, she received the highest voter turnout of any Democratic candidate in Georgia's history.

Prior to running for Governor, she served in the Georgia General Assembly from 2007 to 2017, serving as the House minority leader from 2010 to 2017, and became the first woman to lead a party in the Georgia General Assembly, and the first African American leader of a party in the State House of Representatives. She received her J.D. degree from Yale Law School, and her Master of Public Affairs from the LBJ School of Public Affairs at the University of Texas at Austin, and her B.A., magnum cum laude, from Spelman College.

Ms. Abrams, you are recognized for 5 minutes. We appreciate your attendance.

STATEMENT OF HON. STACEY ABRAMS

Ms. ABRAMS. Thank you, Mr. Chairman, Ranking Member Johnson, committee members. Thank you for allowing me to address this important hearing today.

The Shelby decision created a new channel for the troubling practice of voter suppression during a time of dramatic demographic change. However, no assault on democracy will ever be limited to its targets. As the franchise is weakened, all citizens feel the effects, which is why restoration of the full power of the Voting Rights Act must occur.

I come today because I was raised in Mississippi, where my parents joined the civil rights movement as teenagers, and they instilled in their six children a deep respect for the right to vote. I came of age in Georgia where I registered voters while in college, served as Georgia House minority leader, and where I stood for office as the Democratic nominee for Governor in 2018.

Jurisdictions formerly covered under Section 5, joined now by States with changing demographics, have raced to reinstate, or create new hurdles to voter registration, ballot access, and ballot counting. Among the States, however, Georgia, has been one of the most aggressive in leveraging the lack of Federal oversight to use both law and policy to target voters of color.

In 2014, I founded The New Georgia Project, one of the State's largest voter registration organizations. Minorities are twice as likely to register through third-party registration as are whites. Post Shelby, legislation and practices in States like Georgia, Tennessee, North Carolina, Texas, Wisconsin, and Florida, seek to impede these activities. Then-Georgia Secretary of State Brian Kemp, who was also responsible for the oversight of local elections officials, refused to take action to process registration forms in a timely manner. Later, we discovered unpublished internal rules, such as the 90-day blackout period during which no voter registration forms were processed, causing delays that denied registrants the right to vote. In 2017, citizens challenged and eliminated the secret policy through the Federal courts.

Due to the volume of new Georgia Project registrations, which we tracked via paper ballots, we also proved the racially discriminatory effect of the exact match process which requires perfect data entry by government employees to secure a proper registration. In 2009, under preclearance requirements, the Justice Department summarily rejected exact match as presenting, quote, "real, substantial, and retrogressive burdens on voters of color."

Post Shelby, however, Mr. Kemp implemented the discredited exact match policies empowered by a lack of Justice Department preclearance. In 2016, Mr. Kemp agreed to process approximately 34,000 suspended applications. Despite this 2016 Federal settlement, Kemp ushered another iteration of exact match through the State legislature in 2017, leading to 53,000 suspended voter registrations in 2018, 70 percent of whom were black voters, who comprise roughly 30 percent of Georgia's eligible voters.

Remaining on the voter rolls also poses challenges. Under Kemp's post-Shelby regime, facially neutral rules for removing voters who have died or left the State, became tools for voter purges. In total, he removed over 1.4 million voters from the rolls, including purging half a million voters in a single day in 2017, an 8 percent reduction in Georgia's voting population. An estimated 107,000 of these voters were removed through arguably unconstitutional application of the use-it-or-lose-it law.

One of the most pernicious effects of Shelby can be found in the very act of casting a vote. Section 5 provided an effective check against hyperlocal suppressive tactics, like excessive poll closures, or challenge proceedings against voters of color as occurred in Georgia in 2015. Of 159 counties in Georgia, 156 counties removed the highest rate of voters from the rolls post Shelby, which resulted in an increase in the number of voter being forced to cast provisional ballots.

Last election cycle, separate Federal courts ruled against Georgia policies for rejecting absentee ballots and valid applications under trivial pretenses for implementing an inconsistent provisional ballot system, and for improperly disallowing access to translators in

the polling booths. While these lawsuits brought remedy to some, thousands more may have faced similar discrimination, without the resources or the knowledge to gain relief.

Post Shelby voting rights groups must too often rely on resource-intensive litigation and advocacy work to protect the fundamental right to vote for voters of color. This anti-voting system has the concomitant effect of harming taxpayers as States must expend tax dollars to defend voter suppression in court.

At the end of the 2018 contest, I acknowledged the legal result of an election marred by widespread election irregularities. I also redoubled my commitment to voting rights through the creation of Fair Fight Action, which has filed a federal lawsuit against the Georgia electoral system, asking for Georgia's preclearance requirement to be reinstated under Section 3. The proposed Voting Rights Advancement Act, and Voting Rights Amendment Act, represent considerable progress towards restoring the power of the Voting Rights Act, including modern-day protections that require nationwide preclearance to attack the broad reach of voter suppression.

I strongly urge Congress to take action today, and I thank you for the opportunity to address this committee.

[The statement of Ms. Abrams follows:]

Statement of Stacey Y. Abrams
Founder & Chair, Fair Fight Action

On Continuing Challenges to the Voting Rights Act Since *Shelby County v. Holder*
Before the House Judiciary's Subcommittee on the Constitution, Civil Rights, and Civil Liberties
June 25, 2019

Chairman Cohen, Ranking Member Johnson, Committee Members, thank you for allowing me to address this important hearing today, marking six years since the U.S. Supreme Court issued its decision in *Shelby County v. Holder*, a decision that has dramatically undermined access to full participation in our democracy by effectively negating the core mechanism for preventing voter suppression as enshrined in the 1965 Voting Rights Act. In so doing, the *Shelby* decision created a new channel for the troubling practice of voter suppression, during a time of dramatic demographic change, and thus has permitted the proliferation of laws and practices that seek to stymie a fundamental exercise of citizenship. However, no assault on democracy will ever be limited to its targets. As the franchise is weakened, all citizens feel the effects and even the perpetrators eventually face the consequences of collateral damage—an erosion of our democracy writ large.

I come today because I was raised in Mississippi, where my parents joined the civil rights movement as teenagers and where, in the wake of the Voting Rights Act, they cherished their right to vote and instilled in their six children a deep reverence for the franchise. I came of age in Georgia, where I registered voters in college, served as House Democratic Leader and founder of a voting rights organization, and where I stood for office as the Democratic nominee for Governor in 2018, an election plagued by voter suppression tactics all too common in a post-*Shelby* world.

Jurisdictions formerly covered under Section 5 have raced to reinstate or create new hurdles to voter registration, access to the ballot box, and ballot counting. New states facing changes to their voter composition have likewise taken up this opposition to full citizen participation by implementing rules that, while facially neutral, result in a disturbingly predictable effect on voter access among minority citizens. Among the states, however, Georgia has been one of the most aggressive in leveraging the lack of federal oversight to use both law and policy to actualize voter suppression efforts that target voters of color.

I. VOTER REGISTRATION IMPEDIMENTS

As founder of the New Georgia Project, one of the state's largest voter registration organizations, I learned first-hand how insidious Georgia's post-*Shelby* obstacles to voter registration have become. Our organization conducted voter registration across 159 counties, well aware that for low-propensity voters, this type of in-person registration is most effective. Third-party voter registration is a critical path to engaging citizens of colors in the democratic process, and minorities are twice as likely to register through a voter registration drive than are whites.

In its report, *State Restrictions on Voter Registration Drives,* which focuses on the challenges posed across the country, the Brennan Center highlights research about the importance of third-party voter

registration for racial and ethnic minorities—namely nearly double the likelihood of registration from these efforts.[1] Specifically, "[i]n 2004, while 7.4% of non-Hispanic whites registered with private voter registration drives, 12.7% of Blacks and 12.9% of Hispanics did the same. In 2008, African Americans and Hispanics nationally remained almost twice as likely to register through a voter registration drive as whites. While 5% of non-Hispanic whites registered at private voter registration drives, 11.1% of African-Americans and 9.6% of Hispanics did the same. [In] the 2010 election, 4.4% of non-Hispanic whites registered at private drives, as compared to 7.2% of African-Americans and 8.9% of Hispanics."

These registration efforts not only create new registrants but also serve to create new and active voters. Research completed by Dr. David Nickerson[2] at the University of Notre Dame sought to understand the impact of drives on voting. To this end, the researchers conducted experiments run in Detroit and Kalamazoo, Michigan and Tampa, Florida, the results of which demonstrate that 20% of low-income citizens who register in a door-to-door drive actually go out and vote. Their findings control for type of election year (municipal, Presidential, midterm) as well as turnout activities, and serve as a baseline to understand what we can expect from a voter registration drive focusing on under-represented groups.

There is no doubt a direct correlation between the effectiveness of such efforts, and the Post-*Shelby* legislation and efforts in states like Georgia, Tennessee, North Carolina, Texas and Florida to impede these activities.

a. Lack of Transparency—Blackout Periods and Exact Match

Through our project and in cooperation with other organizations that work to increase registration among communities of color, we tracked the processing of forms, and we proactively attempted to collaborate with the office of the Secretary of State. In response to our efforts, which submitted thousands of verified forms, then-Georgia Secretary of State Brian Kemp, and those he oversaw as the state's election superintendent, refused to process registration forms in a timely manner.

As a result, we uncovered unpublished internal rules such as the 90-day blackout period during which no voter registration forms were processed and which resulted in untimely delays. Only due to a federal lawsuit in 2017 during a special Congressional election were citizens able to effectively challenge and eliminate this secret policy. Under a fully functional Voting Rights Act, no such period would be permitted without preclearance and transparency.

Due to the unprecedented number of applications submitted from primarily voters of color, we also uncovered the racially discriminatory effect of the "exact match process" that disproportionately captures voters of color. Exact match requires perfect data entry by state employees to secure a proper registration in Georgia. In 2009, under preclearance requirements, the Justice Department summarily rejected exact match as presenting "real," "substantial," and "retrogressive" burdens on voters of color.[3]

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[1] http://www.brennancenter.org/sites/default/files/legacy/publications/State%20Restrictions%20on%20Voter%20Registration%20Drives.pdf

[2] https://www3.nd.edu/~dnickers/files/papers/Nickerson_Registration_temp.pdf

[3] https://www.justice.gov/crt/voting-determination-letter-58

Post-*Shelby*, the policy took effect and led to more than 34,000 applications being suspended under the system, including thousands submitted in 2014. Once the use of exact match was uncovered, in 2016, a group of organizations filed suit in federal court. Mr. Kemp agreed to a settlement and processing of those delayed applications. However, in the following state legislative session, another iteration of exact match passed through the Georgia legislature despite his 2016 federal court settlement. This use of exact match led to 53,000 voter registrations being held hostage in 2018, 80 percent of whom were people of color and 70 percent of whom were black voters, who comprise roughly 30 percent of Georgia's eligible voters. In 2018, Georgia officials lost another lawsuit pertaining to exact match.

In the period between 2015-2018, federal courts admonished both blackout periods and multiple iterations of the exact match process; however, absent a robust preclearance process, these remedies came too late for participants in the 2014, 2016 and 2018 state and federal elections, as well as other elections where voters had no notice of these processes.

b. Excessive Voter Purges

The right to vote begins with being able to get on the rolls, but remaining on the voter rolls has also been implicated by the gutting of the Voting Rights Act. Post-*Shelby*, the former Secretary of State misappropriated practical devices approved to maintain accurate voter files and instead undermined lawful access to the franchise. Under his regime and without the oversight of the Justice Department, facially neutral rules for removing voters who have died or left the state, as demonstrated by tracking voter behavior, have instead become tools for voter purges, where long-time voters find themselves cast from the rolls, forced to prove their rights against an indifferent bureaucracy.

During his tenure, in a state with 6 million voters, the former Secretary of State removed over 1.4 million voters from the rolls. In July 2017, four years free from preclearance scrutiny, he removed more than half-a-million voters from the rolls in a single day, reducing the number of registered voters in Georgia by 8 percent.[4] An estimated 107,000 of these voters were removed through a "use-it-or-lose-it" scheme, under which eligible Georgia voters were designated for removal merely for not having voted in prior elections, something that is a First Amendment right.[5] The process for removal is also shrouded in inefficiencies and challenges, as a number of those removed could demonstrate regular voting patterns.

Of 159 counties in Georgia, 156 counties removed a higher rate of voters from the rolls post-*Shelby*, which resulted in an increase in the number of voters being forced to cast provisional ballots.[6] While the availability of provisional ballots may be seen as a remedy, the operative concern is why the vast majority of counties, with the tacit approval of the Secretary of State, forces citizens to traverse a gauntlet of additional obstacles to exercise a fundamental right.

II. OBSTACLES TO BALLOT ACCESS AND BALLOT COUNTING

As vital as preclearance had been to access to registration, the most pernicious effect of its absence can be found in the very act of casting a vote. Section 5 provided an effective check against hyper-local suppressive tactics that often fly under the radar, like the proposed closing of 7 of 9 polling places in a

[4] https://www.apmreports.org/story/2018/10/19/georgia-voter-purge

[5] Id.

[6] https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf

majority-black South Georgia county last year, or the erroneous institution of "challenge" proceedings against voters of color, including troubling cases in 2015.[7] These groups are forced to scramble considerable resources and organize from a defensive posture. Even in ostensibly positive actions, like in-person early voting, some jurisdictions have opted to locate the sole venue in the police department/judicial complex, where poor relations with law enforcement serve as a chilling effect on engagement. Section 5's restoration would require a clear-eyed and thoughtful calculus not currently mandated.

Last election cycle, Georgia officials lost a series of lawsuits pertaining to access to the ballot and the counting of votes. Over several days, separate federal courts ruled against policies for rejecting absentee ballots and ballot applications under trivial pretenses, for implementing a haphazard and inconsistent provisional balloting system, and for improperly disallowing access to translators in the polling booth. However, these practices have proliferated since the suspension of Section 5, and while these lawsuits brought remedy to some, thousands more may have faced similar discrimination without the resources or the knowledge to gain relief.

The core value of the Voting Rights Act was to, at last, create equal access to the ballot, irrespective of race, class or partisanship. Yet, by denying the real and present danger posed by those who see voters of color as a threat to be neutralized rather than as fellow citizens to be engaged, *Shelby* has destabilized the whole of our democratic experiment. Rather than a Justice Department that prevents discriminatory voting policies from taking effect in the first place, the Supreme Court created a system of disproportionate impact, one in which justice could prevail in select instances and only after multiple federal courts intervened.

As a result, post-*Shelby*, groups dedicated to expanding the franchise for voters of color instead must traverse an obstacle course of discriminatory voting practices, through resource-intensive litigation and advocacy work often aimed at yet another permutation of the same discriminatory policies like exact match, targeted poll closures or rejected absentee ballots. This anti-voting system has the concomitant effect of harming taxpayers, as voter suppressors nonchalantly expend tax dollars to defend voter suppression in court.

At the end of the 2018 contest, I acknowledged the legal result of an election marred by widespread election irregularities. The rules of the process permitted some dubious actions, ignored unconstitutional behaviors and encouraged an abdication of responsibility by too many charged with the guardianship of this sacred trust. Therefore, I have redoubled my commitment to voting rights through the creation of Fair Fight Action. Fair Fight has filed a federal lawsuit against the Georgia Secretary of State, asking for Georgia's preclearance requirement to be reinstated under Section 3 of the Voting Rights Act. Our groundbreaking lawsuit involves numerous co-plaintiffs including Ebenezer Baptist Church, the ancestral congregation of the Rev. Dr. Martin Luther King, Jr.

We are hopeful for judicial relief from voter suppression, including the prevention of any future racially discriminatory voting changes. Costly litigation bankrolled by taxpayers should not be necessary, and

[7] https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf at 139.

members of Congress from both parties should fulfill their responsibility to protect voters of color in Georgia and across the country.

The currently proposed Voting Rights Advancement Act and Voting Rights Amendment Act represent considerable promise towards restoring the preclearance protections of the original Voting Rights Act, including needed modern-day protections like requiring nationwide preclearance to prohibit known discriminatory practices.[8] I urge Congress to act on them as top priorities.

Thank you again for this opportunity to appear today.

[8] https://sewell.house.gov/media-center/press-releases/sewell-leahy-introduce-voting-rights-advancement-act

Mr. COHEN. Thank you very much, Ms. Abrams, and you were perfect on 5 minutes.

Ms. ABRAMS. Not my first rodeo.

Mr. COHEN. Not many people have been to a rodeo on this committee. You have not been a witness.

Mr. ARMSTRONG. I have been to a rodeo.

Mr. COHEN. Okay. Good. Good. Good. Thank you. So have I.

Mr. Kyle Hawkins, who has been to a rodeo, I presume, is the Solicitor General of Texas. He represents the State in high profile matters before the Federal and State appellate courts, including the Supreme Court of the United States. Mr. Hawkins previously practiced law in Washington, D.C. in the Dallas office of Gibson, Dunn & Crutcher, LLP, where he was a member of the appellate and constitutional law practice group. He also served as law clerk to the Honorable Samuel A. Alito, Jr., Associate Justice, United States Supreme Court, and the Honorable Edith Jones of the U.S. Court of Appeals for the Fifth Circuit.

Mr. Hawkins is a summa cum laude graduate of the University of Minnesota Law School, and received his undergraduate degree, magna cum laude, from Harvard. You have been to a rodeo?

Mr. HAWKINS. I have been to many rodeos, Mr. Chairman.

Mr. COHEN. Good. You are recognized for 5 minutes, sir. Thank you.

STATEMENT OF HON. KYLE HAWKINS

Mr. HAWKINS. Chairman Cohen, Ranking Member Johnson, and members of the subcommittee, thank you very much for inviting me here today to testify about the Supreme Court's decision in *Shelby County* v. *Holder*.

In Shelby County, the Supreme Court held that the coverage formula subjecting certain jurisdictions to preclearance under Section 5 of the Voting Rights Act was unconstitutional. When Congress enacted the Voting Rights Act of 1965, it imposed a novel restriction known as preclearance on various southern States and localities that shared two characteristics: the use of tests and devices for voter registration, and the voting rate in the 1964 presidential election at least 12 points below the national average.

Congress tailored the original formula to include those States, because it found that widespread and persistent discrimination in voting in the early 1960s had typically entailed the misuse of test and devices, and this was the evil for which the remedies were specifically designed.

The Supreme Court emphasized in Shelby County that the Constitution's allocation of power to the Federal Government and the States preserves the integrity, dignity, and residual sovereignty of the States. The Court explained that the Constitution also incorporates the fundamental principle of equal sovereignty among the States, and the powers reserved to the States by the Framers include broad authority over the conduct of elections.

As the Supreme Court specifically noted in Shelby County, the Framers of the Constitution intended the States to keep for themselves as provided in the Tenth Amendment the power to regulate elections, that is, States have broad powers to determine the conditions under which the right of suffrage may be exercised.

Preclearance under Section 5 of the Voting Rights Act is inconsistent with those central pillars of federalism because it forbids States to enforce their duly enacted voting laws until they secure permission from the Federal Government. Preclearance is thus an extraordinary measure that entails, as the Court put it in Shelby County, a drastic departure from the basic principles of federalism. So the real question at issue in Shelby County was whether the on-the-ground conditions were sufficient to justify that drastic departure.

The Supreme Court squarely held no. Specifically, it held that preclearance must be reserved for extraordinary situations in which a jurisdiction is guilty of pervasive, flagrant, widespread, and rampant discrimination that cannot be remedied through normal litigation. That is, preclearance is justified only when the State is so determined to evade the commands of the 14th or 15th Amendments, that its citizens will be unable to protect their constitutional rights through traditional litigation under existing law.

To be sure, the Supreme Court has recognized past situations sufficient to justify preclearance. The extraordinary burdens of a preclearance regime could be appropriate in a world in which aggrieved citizens are unable to use traditional litigation to secure relief against a State's flagrantly unconstitutional voting laws. In 1965, Congress found that those conditions existed in the States originally targeted by the preclearance regime, and the Supreme Court upheld that use of preclearance in the Katzenbach case.

However, more than 50 years later, recent voting rights litigation in Texas shows that traditional litigation is more than adequate to identify and prevent violations of the Constitution and the Voting Rights Act. The courts have not hesitated to identify potential legal violations, and the Texas legislature has acted promptly to address them.

For example, in litigation over Texas' voter identification law, the State agreed to a temporary remedial order to address a claim under Section 2 of the Voting Rights Act. In the next legislative session, the Texas legislature amended its voter identification law to incorporate the court-ordered remedy, which allows individuals who cannot secure a qualifying photo ID, to cast a regular in-person ballot by executing an affidavit at the polls.

The Fifth Circuit later held that the amended statute provided an effective remedy for the only deficiencies testified to in the pre-existing law. Those actions bear no resemblance to the conduct that justified preclearance in 1965, when officials in certain States routinely took steps to evade Federal court orders and prolong their resistance to the 15th Amendment. Rather than try to stay one step ahead of the courts in an effort to defy the Constitution, the State of Texas has followed the court's lead in an effort to conform its voting laws to the Constitution and the Voting Rights Act. Under governing Supreme Court authority, those conditions cannot justify preclearance.

Thank you, again, for inviting me to testify. I look forward to your questions.

[The statement of Mr. Hawkins follows:]

Prepared Testimony of Kyle D. Hawkins, Texas Solicitor General
Before the U.S. House of Representatives Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Hearing on "Continuing Challenges to the Voting Rights Act Since *Shelby County v. Holder*"
June 25, 2019

Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee, thank you very much for inviting me here to testify today about the Supreme Court's decision in *Shelby County v. Holder.*

In *Shelby County v. Holder*,[1] the Supreme Court held that the coverage formula subjecting certain jurisdictions to preclearance under section 5 of the Voting Rights Act was unconstitutional. When Congress enacted the Voting Rights Act of 1965,[2] it imposed a novel restriction, known as preclearance, on Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and portions of North Carolina.[3] Those jurisdictions shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average."[4] Congress tailored the original coverage formula to include those States because it found "that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed."[5]

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[1] 570 U.S. 529 (2013).
[2] 79 Stat. 437.
[3] *See* 28 C.F.R. pt. 51, App.; South Carolina v. Katzenbach, 383 U.S. 301, 329-30 (1966).
[4] *Katzenbach*, 383 U.S. at 330.
[5] *Id.* at 331 ("There are no States or political subdivisions exempted from coverage under § 4(b) in which the record reveals recent racial discrimination involving tests and devices.").

Texas did not become a covered jurisdiction subject to preclearance until 1975, when Congress reauthorized the Voting Rights Act. In that reauthorization, Congress expanded the coverage formula to include any jurisdiction in which at least five percent of the voting-age citizens were members of a single language-minority group, election materials were printed only in English, and less than fifty percent of voting-age citizens voted or registered to vote in the most recent presidential election.[6] Texas remained subject to preclearance until the coverage formula was held to be unconstitutional in 2013.

The Supreme Court emphasized in *Shelby County* that the Constitution's allocation of power to the Federal Government and the States "preserves the integrity, dignity, and residual sovereignty of the States."[7] The Court explained that the Constitution also incorporates the "fundamental principle of *equal* sovereignty among the States."[8] And the powers reserved to the States by the Framers include broad authority over the conduct of elections.[9] The Supreme Court specifically noted in *Shelby County*: "The Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections."[10] That is, "States have 'broad powers to determine the conditions under which the right of suffrage may be exercised.'"[11]

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[6] The 1975 legislation "amended the definition of 'test or device' to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English." *Shelby County*, 570 U.S. at 538 (citing Voting Rights Act Amendments of 1975 § 203, 89 Stat. 400, 401-02).

[7] *Id.* at 543 (quoting Bond v. United States, 564 U.S. 211, 221 (2011)).

[8] *Id.* at 544 (quoting Nw. Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193, 203 (2009)).

[9] *Id.* at 543.

[10] *Id.* (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991)).

[11] *Id.* (quoting Carrington v. Rash, 380 U.S. 89, 91 (1965)).

Preclearance under section 5 of the Voting Rights Act removes those central pillars of federalism by forbidding States to enforce their duly enacted voting laws until they secure permission from the federal government. Preclearance is thus an extraordinary measure that entails, as the Court put it in *Shelby County*, "a drastic departure from basic principles of federalism."[12] In *Northwest Austin*, the Supreme Court held that the very existence of a preclearance requirement raises serious constitutional questions.[13] In *Shelby County*, the Supreme Court made clear that "preclearance" must be reserved for extraordinary situations, in which a jurisdiction is guilty of "'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination" that cannot be remedied through normal litigation.[14]

***Shelby County* Confirms that Preclearance Is Appropriate Only in Extraordinary Circumstances.**

Congress created the preclearance regime in 1965 as a last resort to resolve a constitutional crisis. Congress resorted to extraordinary measures because the States initially subjected to preclearance had engaged in "systematic resistance to the Fifteenth Amendment,"[15] demonstrating time and again that they would not allow black citizens to vote, no matter what the Fifteenth Amendment, Congress, or the federal courts said. Congress determined that preclearance was necessary because existing laws, including recently enacted federal civil rights statutes, had proven ineffective in the face of the targeted jurisdictions' "unremitting and ingenious defiance of the Constitution."[16] As the Supreme Court recognized in *South Carolina v.*

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[12] *Id.* at 535.
[13] *Nw. Austin*, 557 U.S. at 205-06.
[14] *Shelby County*, 570 U.S. at 554.
[15] South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966).
[16] *Id.* at 309; *see also id.* at 315 (noting Congress's conclusion that the ineffectiveness of existing law provided "the essential justification for the pending bill").

Katzenbach, "Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination."[17] The Court held that preclearance was constitutionally appropriate only because "case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting."[18]

The Supreme Court explained in *Shelby County* that a regime that "require[s] States to obtain federal permission before enacting any law relating to voting" represents "a drastic departure from basic principles of federalism."[19] Given the grave constitutional concerns that arise from subjecting a State's laws to federal approval, preclearance must be reserved for the most extraordinary circumstances. In *Shelby County*, the Supreme Court threw out Congress's reauthorization of a preclearance regime because the legislative record failed to show "anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time."[20]

The lesson of *Shelby County* is clear: Before imposing a preclearance regime, Congress must make credible findings that a State is so determined to evade the commands of the Fourteenth or Fifteenth Amendment that its citizens will be unable to protect their constitutional rights through traditional litigation under existing law.

That is precisely the situation that Congress faced in 1965. When Congress first devised the preclearance regime, there was no question that officials in the targeted States were deliberately and systematically violating the Fifteenth Amendment, nor was there any question that they would

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[17] *Id.* at 313.
[18] *Id.* at 328.
[19] *Shelby County*, 570 U.S. at 534.
[20] *Id.* at 554.

continue to do so unless Congress could stop them. In *Katzenbach*, the Supreme Court noted that "various tests and devices have been instituted with the purpose of disenfranchising [black citizens], have been framed in such a way as to facilitate this aim, and have been administered in a discriminatory fashion for many years. Under these circumstances, the Fifteenth Amendment has clearly been violated."[21] These devices included requirements that registrants pass literacy or "understanding" tests, which were enforced strictly against black citizens but leniently or not at all against white citizens;[22] and a "good morals" requirement that the Supreme Court described in *Katzenbach* as "so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials."[23] And when particular methods were enjoined, the targeted States "had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees."[24]

Traditional litigation was inadequate in 1965 not only because local officials employed such "obstructionist tactics,"[25] but also because federal judges refused to enforce existing civil rights laws. At that time, many federal district judges in the South had received their appointments through the patronage of Senators who supported racial segregation.[26] In those circumstances, case-by-case litigation did not provide an adequate remedy for Fifteenth Amendment violations in

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[21] *Id.* at 333-34 (footnote omitted).
[22] *Id.* at 312.
[23] *Id.* at 313.
[24] *Id.* at 335.
[25] *Id.* at 328.
[26] *See* Jonathan L. Entin, *Judicial Selection and Political Culture*, 30 Cap. U. L. Rev. 523, 545 n.194 (2002); N.Y. Times, June 9, 1963, § 6 (Magazine), p. 80, col. 4 ("The delay engaged by the courts in handling . . . civil-rights issues is hardly surprising when one considers that a number of Federal District Judges are segregationists.").

covered jurisdictions—especially when the decision whether to issue an immediate preliminary injunction rests largely in the discretion of the district court.[27]

Traditional litigation was inadequate even when plaintiffs prevailed because jurisdictions either refused to comply with federal court orders or deliberately evaded those orders by erecting new obstacles to minority voting. Congress devised preclearance to thwart the "common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down."[28] As the Supreme Court noted when it upheld the original preclearance regime in *Katzenbach*, "Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration."[29] Recognizing that preclearance was "an uncommon exercise of congressional power," the Court held in *Katzenbach* that "exceptional conditions can justify legislative measures not otherwise appropriate"[30] and that preclearance was appropriate to combat "widespread resistance to the Fifteenth Amendment."[31]

When the Court found the preclearance coverage formula unconstitutional in *Shelby County*, it followed the reasoning *Katzenbach* had applied to uphold the original coverage formula. The Court explained in *Shelby County* that the preclearance regime "was 'uncommon' and 'not otherwise

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[27] *E.g.*, H.R. Rep. No. 89-439 (1965), Additional Views of the Honorable William T. Cahill, *reprinted in* 1965 U.S.C.C.A.N. 2437, 2484, 2485 ("I am fully aware of the problems which the Department of Justice has encountered in trying racial cases before some Federal judges in the South whose opinions can only be explained by the supremacy of personal, social predilections over well-established law.").
[28] Beer v. United States, 425 U.S. 130, 140 (1976).
[29] *Katzenbach*, 383 U.S. at 314.
[30] *Id.* at 334.
[31] *Id.* at 337.

appropriate,' but was justified by 'exceptional' and 'unique' conditions" in 1966.[32] But because those conditions no longer prevailed when Congress reauthorized the coverage formula in 2006, the preclearance regime was no longer an appropriate means of enforcing the Fifteenth Amendment. Under the standard articulated in *Katzenbach* and *Shelby County*, before Congress may upset the constitutional balance by subjecting States to preclearance, it must establish "that exceptional conditions still exist justifying such an 'extraordinary departure from the traditional course of relations between the States and the Federal Government.'"[33] *Shelby County* confirms that to make that showing, Congress must identify a congruent and proportional constitutional violation—specifically, that any State subjected to preclearance has engaged in rampant, widespread, recalcitrant discrimination so pervasive that it cannot be adequately addressed by traditional judicial remedies.

Preclearance Imposes Substantial Federalism Costs.

The Supreme Court has consistently noted that preclearance "imposes substantial federalism costs" by upsetting the constitutional balance and depriving certain States of equal sovereignty.[34] But the costs imposed by preclearance are not merely theoretical. Before it may enforce its voting laws, a State subject to preclearance must prove to the Department of Justice or a federal court that its laws have neither the purpose or effect of denying or abridging the right to vote on account of race or membership in a language-minority group. Preclearance thus shifts the burden of proof to the State, relieving challengers of their customary "burden of overcoming the presumption of

[32] *Shelby County*, 570 U.S. at 555 (quoting *Katzenbach*, 383 U.S. at 334, 335).
[33] *Id.* at 557 (quoting Presley v. Etowah Cnty. Comm'n, 502 U.S. 491, 500-01 (1992)).
[34] *Id.* at 540.

good faith and proving discriminatory intent."[35] Because the State must prove a negative—that it did not act with a racially discriminatory purpose—preclearance effectively establishes a presumption of bad faith.

Preclearance also exposes States to the burdens of discovery that would be unheard of in ordinary constitutional litigation. For example, after Texas sought judicial preclearance of its voter-identification law, the Department of Justice insisted on extensive discovery of privileged legislative materials, including testimony from legislators and legislative staff. To justify its invasive discovery requests, DOJ cited declarations from four Democratic state legislators who voted against the voter-identification law. These declarations—which were drafted by DOJ attorneys[36]—offered conclusory allegations that the voter-identification bill had been enacted with a racially discriminatory purpose.[37] DOJ argued that "[t]hese statements by first-hand witnesses of the process by which S.B. 14 was developed and enacted are indicia of discriminatory purpose more than sufficient to warrant discovery of legislators and their staff."[38]

The Department of Justice embarked on a massive fishing expedition in the hope of uncovering some evidence of racially discriminatory purpose. DOJ demanded that dozens of state legislators and their staff sit for depositions to explain their reasons for supporting SB 14. DOJ eventually deposed four members of the Texas Senate, eight members of the Texas House of Representatives, two legislative staff members, three current and former members of the Governor's staff, and three

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[35] Abbott v. Perez, 138 S. Ct. 2305, 2325 (2018).
[36] Two of the legislators testified under oath that their declarations had been drafted by attorneys at the Department of Justice. *See* Texas Proposed Findings of Fact and Conclusions of Law ¶¶ 127, 128, *Texas v. Holder*, No. 12-cv-128 (D.D.C. June 20, 2012), ECF No. 202.
[37] United States' Statement in Support of Its Request to Depose and Seek Documents from State Legislators and Staff 11, *Texas v. Holder*, No. 12-cv-128 (D.D.C. Apr. 10, 2012), ECF No. 69.
[38] *See id.* at 12-13.

current and former members of the Lieutenant Governor's staff. Many of these depositions lasted for seven hours, the maximum time allotted under the Federal Rules of Civil Procedure. These legislators were subjected to questioning not only from DOJ's lawyers but also from the different groups of lawyers representing the 25 intervening parties.

It is virtually unheard of for state legislators to be forced to sit for depositions in ordinary constitutional litigation, even when a plaintiff alleges that a state law was enacted with a forbidden purpose.[39] Yet DOJ routinely seeks to depose state legislators in contested preclearance proceedings, even arguing that "contested preclearance actions" are per se "'extraordinary circumstances' in which legislators may be called to the stand."[40]

Preclearance inevitably causes harm to the political process because the hope of defeating preclearance tends to displace legitimate policy debate with claims of racial discrimination. As a three-judge court in Texas warned, when one loses a political battle, "there are large incentives to reach for the seeming certainty of the Equal Protection Clause's familiar condemnation of purposeful racial discrimination and draw upon its comforting moral force."[41] With opponents focused on litigation or review by the Department of Justice, "[t]he incentive to couch partisan disputes in racial terms bleeds back into the legislative process," "as members of the 'out' party—

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[39] *See* Vill. of Arlington Heights v. Metro. Dev. Corp., 429 U.S. 252, 268 (1977) (holding that litigants cannot compel testimony from state legislators absent "extraordinary instances"); Goldstein v. Pataki, 516 F.3d 50, 62 (2d Cir. 2008) (forbidding plaintiffs in an eminent-domain dispute to depose "pertinent government officials" and discover their "emails, confidential communications, and other pre-decisional documents" because this would represent "an unprecedented level of intrusion").

[40] *See* Defendant's Response in Opposition to Plaintiff's Motion for a Protective Order 6, *Texas v. Holder*, No. 12-cv-128 (D.D.C. Mar. 29, 2012), ECF No. 57.

[41] Session v. Perry, 298 F. Supp. 2d 451, 473 (E.D. Tex. 2004) (per curiam), *vacated on other grounds*, Henderson v. Perry, 543 U.S. 941 (2004).

believing they can win only in court, and only on a race-based claim—may be tempted to spice the legislative record with all manner of racialized arguments, to lay the foundation for an eventual court challenge."[42] And there is no real downside to this strategy, at least not for the accusers. "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed."[43] These incentives increase under a preclearance regime because section 5 shifts the burden of proof to the jurisdiction seeking preclearance. And the burden of proof can determine the outcome, "[p]articularly where race and partisanship can so often be confused."[44]

Preclearance also intrudes on legislative authority by giving the Department of Justice a mechanism to thwart implementation of state laws based on policy disputes. In its letter denying preclearance to Texas's voter-identification law, DOJ criticized Texas's submission because it did not include evidence of "significant" in-person voter fraud occurring in Texas. In a televised interview on NBC's Nightly News, then-Attorney General Eric Holder explained that preclearance was denied because, in his view, "there is no statistical proof that vote fraud is a big concern in this country, in-person vote fraud is a big concern in this country, and as a result, these voter-ID laws are solutions that deal with a problem that does not really exist. . . . [T]here is no proof that our elections are marred by in-person voter fraud."[45] But States do not bear the burden

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[42] *Session*, 298 F. Supp. 2d at 473 n.69 (quotation marks omitted).
[43] Tenney v. Brandhove, 341 U.S. 367, 378 (1951).
[44] Abbott v. Perez, 138 S. Ct. 2305, 2330 n.25 (2018).
[45] Extended Interview: Attorney General Holder on Voting Rights, https://www.nbcnews.com/video/extended-interview-attorney-general-holder-on-voting-rights-44573251665 (last visited June 21, 2019).

of proving that their legislative judgments are correct.[46] And demanding such proof was particularly inappropriate in the case of a voter-identification law because the Supreme Court had previously held, in rejecting a constitutional challenge to Indiana's voter-identification law, that evidence of in-person voter impersonation is not required to justify state voter-identification laws.[47] The Court held, to the contrary, that a State's interests in preventing opportunities for fraud and safeguarding public confidence in the integrity of the election process are so strong that they justify a photo-identification requirement even if there is no evidence that voter impersonation has ever occurred in that State.[48] Refusing to preclear Texas's voter-identification law based on the lack of *significant* evidence of in-person voter impersonation was not consistent with the Supreme Court's holding or with DOJ's limited responsibility to ensure compliance with section 5's substantive requirements. This episode demonstrates the potential for abuse of the preclearance process to thwart state laws not because they are unconstitutional but because the Department of Justice deems them unnecessary.

The "nonretrogression" doctrine exacerbates the burdens of preclearance in several ways. First, the "nonretrogression" doctrine is incompatible with the Supreme Court's equal protection jurisprudence. Under the principle of "nonretrogression," section 5 invalidates *every* voting-related law that results in a disparate impact on racial minorities or on any group that is disproportionately composed of racial minorities—regardless of whether those laws violate the

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[46] *E.g.*, Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 470 (1981); *cf.* Frank v. Walker, 768 F.3d 744, 750 (7th Cir. 2014) ("After a majority of the Supreme Court has concluded that photo ID requirements promote confidence, a single district judge cannot say as a 'fact' that they do not, even if 20 political scientists disagree with the Supreme Court.").

[47] *See* Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 194 (2008) (plurality op.); *id.* at 209 (Scalia, J., concurring in the judgment).

[48] *Id.* at 196-97.

Fifteenth Amendment by denying or abridging the right to vote on account of race or color. Through the "nonretrogression" doctrine, section 5 forces covered jurisdictions to engage in race-conscious decisionmaking; that is the only way for covered jurisdictions to ensure that a new voting law will not inadvertently "retrogress" the position of language and racial minorities "with respect to their effective exercise of the electoral franchise."[49] Yet the lodestar of modern equal-protection doctrine is its promise of color-blind government; only in the most extraordinary situations may a State engage in conscious racial classifications.[50] Compelling a State to engage in constitutionally suspect behavior as a condition of enforcing its voting laws is problematic in itself, but it also exposes the State to a substantial risk—assuming it does secure preclearance—that its initial use of race will allow litigants to challenge the same law under the Equal Protection Clause. As Justice Kennedy noted in *Georgia v. Ashcroft*, "considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 [of the Voting Rights Act] seem to be what save it under § 5."[51]

The "nonretrogression" requirement also invites abuse because it is intolerably vague and fails to give covered jurisdictions fair notice of what laws are permitted and what laws are prohibited. It

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[49] Beer v. United States, 425 U.S. 130, 141 (1976); *see, e.g.*, 28 C.F.R. §§ 51.27(n), 51.28(a) (2012) (requiring jurisdictions seeking preclearance to submit racial-impact data to the Department of Justice).

[50] See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 730-31 (2007); Johnson v. California, 543 U.S. 499, 505-06 (2005); see also Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) ("Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.").

[51] Georgia v. Ashcroft, 539 U.S. 461, 491-92 (2003) (Kennedy, J., concurring); *cf.* Bush v. Vera, 517 U.S. 952, 957 (1996) (plurality op.) (noting that the Department of Justice had precleared the State's congressional plan, which the Court held unconstitutional because the Legislature's reliance on race to create new majority-Hispanic and majority-African-American districts was not narrowly tailored to serve a compelling state interest).

empowers the Department of Justice and district court panels to thwart a state's election-related laws by shifting the goalposts and invoking new theories of "nonretrogression" that could not have been anticipated by a State's legislators—or even by its lawyers.

Texas's attempt to secure preclearance of its voter-identification law illustrates how the vague and shifting definition of "non-retrogression" denies covered jurisdictions fair notice of the standards against which their election changes will be judged. During the administrative-preclearance process, the Department of Justice told the State of Texas that its Voter-ID law failed the "nonretrogression" test because (according to DOJ) registered voters with Spanish surnames were less likely than registered voters without Spanish surnames to have a state driver's license or personal-identification card issued by the Texas Department of Public Safety.[52] This indicated that Texas would satisfy section 5's "nonretrogression" requirement if it could prove that minority registered voters possess driver's licenses or state-ID cards in percentages that equal or exceed the percentages of Anglo registered voters who possess those forms of state-issued identification.

But once the evidence at trial discredited DOJ's "disparity in state-ID possession" theory, the district court proffered another theory of "nonretrogression." Under that theory, Texas would be unable to implement its photo-ID law even if it could prove perfectly symmetrical rates of photo-ID possession across racial and ethnic groups. According to the court, the Texas law failed the "nonretrogression" test because some registered voters who lacked photo identification might have to travel significant distances to obtain a photo ID, and some registered voters who lacked a photo ID might also lack a copy of their birth certificate and therefore might have to pay to obtain

[52] *See* Letter from Thomas Perez to Keith Ingram (March 12, 2012), *available at* https://www.justice.gov/crt/voting-determination-letter-34.

one in order to get a photo ID. Even though there was no evidence showing how many registered voters fell into either of these categories—or the racial and ethnic breakdown of these voters—the court concluded that the law "will almost certainly have retrogressive effect: it imposes strict, unforgiving burdens on the poor, and racial minorities in Texas are disproportionately likely to live in poverty."[53] There is little doubt that if Texas had been capable of acquiring data proving that white, black, and Hispanic registered voters possessed state-issued photo-identification in equal percentages, the Department of Justice could have invoked some other theory of "nonretrogression"—perhaps demanding that the State prove equal rates of ID possession among eligible rather than registered voters. Or, as the district court's opinion suggested, it might have concluded that *any* impact on minority voters constituted retrogression regardless of the corresponding impact on white voters.[54]

Recent experience thus demonstrates that "nonretrogression" is not a concrete standard—it can mean almost anything. Placing the burden of proof on the State to satisfy such a vague and ever-changing standard creates a regime in which the Department of Justice and the federal courts wield a discretionary veto power over election-related laws enacted in covered jurisdictions. That is not consistent with the republican form of government that the Constitution guarantees to the people of every State, nor is it consistent with the dignity that States enjoy as sovereign entities under the Constitution.[55]

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[53] Texas v. Holder, 888 F. Supp. 2d, 113, 144 (D.D.C. 2012), *vacated*, 570 U.S. 928 (2013) (Mem.).

[54] *See id.* at 141 ("Simply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote in the next election. This is retrogression.").

[55] *See* U.S. Const. art. IV, § 4; Fed. Maritime Comm'n v. S.C. State Ports Auth., 535 U.S. 743, 760-61 (2002); New York v. United States, 505 U.S. 144 (1992).

Under Current Conditions, Preclearance Exceeds Congress's Power to "Enforce" the Fifteenth Amendment.

The clear import of *Shelby County* is that placing a sovereign state into federal receivership by automatically delaying the implementation of its duly enacted laws is no longer an "appropriate" means of enforcing the Fifteenth Amendment. That amendment provides:

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.[56]

Section 1 of the Fifteenth Amendment prohibits only laws or practices that are motivated by a racially discriminatory purpose; that is what "on account of" race or color means.[57] Voting restrictions that merely impact different types of voters in different ways do not violate the Fifteenth Amendment, because they do not deny or abridge the right to vote on account of race or color. This remains true even if these laws affect the right to vote on account of a criterion that happens to be correlated with race. Section 2 of the Fifteenth Amendment empowers Congress to "enforce" section 1 of the Fifteenth Amendment by "appropriate legislation." This means that any statute imposing preclearance on a State must satisfy two independent constitutional requirements. First, preclearance must "enforce" the Fifteenth Amendment's prohibition on purposeful racial discrimination. Second, it must be "appropriate" legislation to enforce the Fifteenth Amendment's guarantee.

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[56] U.S. Const. amend. XV.

[57] *See* City of Mobile v. Bolden, 446 U.S. 55, 61-63 (1980) (plurality op.).

When Congress enacts legislation to enforce the Fourteenth Amendment, it must be designed to prevent or remedy actual violations of the Fourteenth Amendment.[58] Congress may not use its "enforcement" power to impose extra-constitutional substantive obligations on the States.[59] The only circumstance in which Congress may prohibit constitutional conduct pursuant to this enforcement power is when prophylactic legislation is needed to prevent or deter state officials from violating the Fourteenth Amendment. And any prophylactic measure of this sort must be "congruen[t]" and "proportion[al]" to the constitutional violations that Congress seeks to prevent.[60] The "congruence" prong requires Congress to demonstrate the need for its prophylactic measure by documenting a pattern of constitutional violations by the States in the legislative record.[61] The "proportionality" requirement prohibits Congress from enacting needlessly over-inclusive prophylactic measures.[62]

The Supreme Court has not explicitly held that the "congruence and proportionality" test governs Congress's power to enforce the Fifteenth Amendment, and the Supreme Court did not resolve this issue in *Northwest Austin*.[63] But there can be no justification for applying a different standard of review when Congress legislates pursuant to its Fifteenth Amendment powers. Section

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[58] *See* City of Boerne v. Flores, 521 U.S. 507, 517 (1997).
[59] *Id.* at 519; *id.* at 527-28 (rejecting the notion that Congress may "enact[] legislation that expands the rights contained in § 1 of the Fourteenth Amendment").
[60] *Id.* at 520.
[61] *See id.* at 530; *see also* Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627, 640-41 (1999).
[62] *See City of Boerne*, 521 U.S. at 532 (holding that preventative measures are permissible only when "there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional."); *see also* Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 86 (2000) (holding that Congress lacked authority under section 5 of the Fourteenth Amendment to enact a nondiscrimination law that "prohibits substantially more state employment decisions and practices than would likely be held unconstitutional").
[63] 557 U.S. 193 (2009).

2 of the Fifteenth Amendment and section 5 of the Fourteenth Amendment are nearly identical in wording.[64] And they were ratified less than two years apart. There is no basis in constitutional text for defining "enforce" and "appropriate legislation" differently across these two constitutional provisions.[65] And it is hard to imagine that the Supreme Court would adopt such an asymmetric regime in defining the scope of Congress's powers to enforce the Reconstruction Amendments.

There are rare situations in which Congress may "enforce" the Fourteenth or Fifteenth Amendments by prohibiting conduct that does not actually violate those constitutional provisions.[66] The effective enforcement of a constitutional command will at times require prophylactic legislation to ensure that the net is cast sufficiently wide to catch all constitutional violations, especially when confronting a history of repeated and longstanding constitutional violations by state officials. Difficulties of proof or ease of administration will sometimes justify a rule that may be slightly overinclusive but that nevertheless ensures full compliance with the constitutional command.[67] For these reasons, the Supreme Court has emphasized that "[l]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional."[68]

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[64] *Compare* U.S. Const. amend. XIV, § 5 ("The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."), *with* U.S. Const. amend. XV, § 2 ("The Congress shall have power to enforce this article by appropriate legislation.").
[65] *See generally* Akhil Reed Amar, *Intratextualism*, 112 Harv. L. Rev. 747 (1999).
[66] *See City of Boerne*, 521 U.S. at 518.
[67] *See, e.g., id.*; South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966); *see generally* David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. Chi. L. Rev. 190 (1988).
[68] *City of Boerne*, 521 U.S. at 518.

But even when prophylactic legislation is authorized, it must be limited in scope. The Supreme Court has held that Congress may prohibit only "a somewhat broader swath of conduct" than that prohibited by the Fourteenth Amendment.[69] And prophylactic legislation must be "narrowly targeted" to prevent and deter a documented pattern of unconstitutional behavior.[70] Congress could not, for example, "enforce" the Fifteenth Amendment by abolishing all voting qualifications in every State.[71] Even though this type of law would "prevent" violations of the Fifteenth Amendment, it is too overinclusive to qualify as "enforcement" legislation. It would simply impose a new substantive legal obligation on the States that cannot be found in the Constitution.

The congressional prohibitions on literacy tests provide an example of permissible prophylactic legislation under the Fifteenth Amendment. When Congress enacted the Voting Rights Act of 1965, the Supreme Court had previously held that literacy tests did not violate the Fifteenth Amendment.[72] But Congress chose to exercise its prophylactic power by suspending literacy tests for five years in the jurisdictions covered by section 5. This measure extended somewhat beyond the Fifteenth Amendment because it banned literacy tests in covered jurisdictions even if those tests were administered in a race-neutral fashion.[73] Nonetheless, the Court properly upheld this targeted prohibition on literacy tests because the congressional record demonstrated that "in most of the States covered by the Act," literacy tests had been applied in a manner that plainly violated the Fifteenth Amendment "for many years."[74] And because litigation challenging literacy tests on

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[69] *See Kimel*, 528 U.S. at 81, 86 (emphasis added).
[70] *See* Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721, 738 (2003).
[71] *Cf.* Oregon v. Mitchell, 400 U.S. 112, 117-118 (1970).
[72] *See* Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959).
[73] *See id.* at 53-54.
[74] South Carolina v. Katzenbach, 383 U.S. 301, 333-34 (1966); *see also id.* at 334 ("Under these circumstances, the Fifteenth Amendment has clearly been violated.").

a case-by-case basis had not proven effective at preventing these unconstitutional practices, Congress enacted a rule that prohibited some constitutional uses of literacy tests but had the virtue of ensuring that violations of the Fifteenth Amendments would cease. In light of the numerous and persistent constitutional violations involving the use of literacy tests that appeared in the legislative record, Congress was justified in invoking its prophylactic enforcement powers, and the rule that it enacted was "narrowly targeted" to the tests and devices that had been enacted with racially discriminatory purposes or administered in a racially biased manner. Congress went a step further in 1970 when it imposed a nationwide prohibition on literacy tests in state and federal elections, which the Supreme Court upheld after concluding that the discriminatory use of literacy tests "is not confined to the South."[75]

The extraordinary burdens of a preclearance regime could be "appropriate" in a world in which aggrieved citizens are unable to use traditional litigation to secure relief against a State's unconstitutional voting laws. In 1965, Congress found that those conditions existed in the States originally targeted by the preclearance regime.[76] If those conditions exist in any State today, and there is no reason to believe that they do, those conditions most certainly do not exist in Texas.

Recent voting rights litigation in Texas shows, to the contrary, that traditional litigation is more than adequate to identify and prevent violations of the Constitution and the Voting Rights Act. The courts have not hesitated to identify potential legal violations, and the Texas Legislature has acted promptly to address them. In redistricting litigation following the 2010 census, for example, a federal district court ordered interim remedial redistricting plans into effect because the

[75] Oregon v. Mitchell, 400 U.S. 112, 134 (1970) (opinion of Black, J.).
[76] *See Katzenbach*, 383 U.S. at 329-30.

legislatively enacted plans had not been precleared. Consistent with the Supreme Court's instructions in *Perry v. Perez*,[77] the district court conducted only a preliminary review of claims against the State's plans, but the court-ordered interim plans made extensive changes.[78] The Legislature repealed its challenged plans and permanently adopted the court-ordered plans in its next session.[79] Similarly, in litigation over Texas's voter-identification law, the State agreed to a temporary remedial order to address a claim under section 2 of the Voting Rights Act. In the next legislative session, the Texas Legislature amended its voter-identification law to incorporate the court-ordered remedy, which allows individuals who cannot secure a qualifying photo ID to cast a regular in-person ballot by executing an affidavit at the polls.[80] The Fifth Circuit later held that the amended statute provided "an effective remedy for the only deficiencies testified to" in the preexisting law.[81] Those actions bear no resemblance to the conduct that justified preclearance in 1965, when officials in certain States routinely took steps to evade federal court orders and prolong their resistance to the Fifteenth Amendment. Rather than try to stay "one step ahead" of the courts in an effort to defy the Constitution, the State of Texas has followed the courts' lead in an effort to conform its voting laws to the Constitution and the Voting Rights Act. Those current conditions cannot possibly justify imposing preclearance on Texas or any other State.

Statutory Violations and Preclearance Objections Cannot Justify Preclearance.

To qualify as appropriate enforcement legislation under the Fifteenth Amendment, any preclearance regime must address a pattern of persistent constitutional violations. Statutory claims

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[77] 565 U.S. 388 (2012) (per curiam).
[78] Abbott v. Perez, 138 S. Ct. 2305, 2316 (2018).
[79] *Id.* at 2317.
[80] *See* Veasey v. Abbott, 888 F.3d 792, 796 (5th Cir. 2018).
[81] *Id.* at 804.

under section 2 of the Voting Rights Act or preclearance objections under section 5 cannot support preclearance for the obvious reason that they do not establish a constitutional violation. Section 2 of the Voting Rights Act already goes beyond the limits of the Fourteenth and Fifteenth Amendments by prohibiting any voting practice that "results in the denial or abridgment of the right of any citizen of the United States to vote on account of race or color," or on account of membership in a language-minority group.[82] The same goes for section 5, which preemptively invalidates every voting law until a State proves to the satisfaction of the Department of Justice or a federal court that the law does not violate the Constitution and that it will not result in retrogression. A preclearance regime based on violations (or alleged violations) of prophylactic measures that already extend beyond the limits of the Constitution cannot be a "congruent and proportional" remedy for Constitutional violations under *City of Boerne v. Flores*.[83]

Past redistricting cycles could not justify preclearance even if they did reflect current conditions because they do not demonstrate pervasive and flagrant constitutional violations by the State of Texas. To the extent the Supreme Court has found constitutional deficiencies in Texas redistricting plans, none of those deficiencies resulted from intentional racial discrimination. In *White v. Weiser*,[84] the Supreme Court found that the State's congressional districts were malapportioned under Article I § 2. In *White v. Regester*,[85] the Court found that two multimember districts were unconstitutional under a now-superseded effect-based theory of Fourteenth Amendment liability. In *Bush v. Vera*,[86] the Court held that the Legislature's reliance on racial data

[82] 52 U.S.C. § 10301(a); *id.* § 10303(f)(2).
[83] 521 U.S. 507, 520 (1997).
[84] 412 U.S. 783, 790–93 (1973).
[85] 412 U.S. 755, 765–70 (1973).
[86] 517 U.S. 952, 957 (1996) (plurality op.).

to create new majority-Hispanic and majority-African-American congressional districts was not narrowly tailored to serve a compelling state interest and therefore failed strict scrutiny. In *LULAC v. Perry*,[87] private litigants successfully challenged a portion of a congressional redistricting plan under section 2, but they failed to prove any constitutional violations. And in *Abbott v. Perez*, the Court affirmed a finding that the Legislature impermissibly relied on race in a single state legislative district when it adopted an amendment "offered by the then-incumbent . . . precisely because it fixed an objection . . . that the district's Latino population was too low."[88] The Court noted, however, that "[t]he Legislature adopted changes to HD90 at the behest of *minority groups*, not out of a desire to discriminate."[89] If anything, previous redistricting cycles show that the State has consistently worked to reconcile its electoral maps with court orders, adopting court-ordered plans in whole or in part in all but one decennial redistricting cycle since 1970.[90]

Preclearance objections under section 5 cannot support preclearance, either, because a denial of preclearance under section 5 does not prove that a constitutional violation occurred. A finding

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[87] 548 U.S. 399 (2006).
[88] Abbott v. Perez, 138 S. Ct. 2305, 2329 (2018).
[89] *Id.* at 2329 n.24.
[90] *See, e.g.*, Act of May 31, 1975, 64th Leg., R.S., Ch. 537, 1975 Tex. Gen. Laws 1390 (adopting a court-ordered congressional redistricting plan with a modification to the boundary between two districts); Act of May 10, 1983, 68th Leg., R.S., Ch. 185, 1983 Tex. Gen. Laws 756 (adopting modifications to the LRB's 1981 House redistricting plan ordered in *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982)); Act of May 28, 1983, 68th Leg., R.S., Ch. 531, 1983 Tex. Gen. Laws 3086 (enacting court-ordered congressional plan from *Seamon v. Upham* with changes to seven districts); Act of May 8, 1997, 75th Leg., R.S., Ch. 133, 1997 Tex. Gen. Laws 258 (enacting a Texas House settlement plan entered in *Thomas v. Bush*, No. 1:95-cv-186 (W.D. Tex. Sept. 15, 1995), with minor changes to Collin, Jefferson, and Williamson Counties). These bills are available, together with every redistricting bill introduced in the Texas Legislature between 1881 and 2013, from the Legislative Reference Library of Texas at http://www.lrl.state.tx.us/legis/redistricting/redistrictingBills.cfm (last visited Jan. 29, 2019).

of discriminatory effect or "retrogression" is not a constitutional violation.[91] And an objection based on discriminatory purpose shows only that the covered jurisdiction failed to prove the absence of discriminatory purpose to the satisfaction of the Attorney General—a standard that does not necessarily incorporate constitutional rules.[92] As one election-law scholar has explained, "A number of DOJ objections over the years have been based on the DOJ's aggressive theories about how Section Five should be enforced."[93]

And violations by subjurisdictions such as cities and counties cannot justify preclearance for the State of Texas because the State is not responsible for the acts of other governmental entities. In any event, imposing preclearance on the State would not prevent other jurisdictions from violating the Constitution.[94] Subjecting a State to preclearance based on the conduct of other governmental entities could not possibly be a congruent and proportional remedy.

Conclusion

The U.S. Supreme Court's decision in *Shelby County* recognized that the Voting Rights Act "employed extraordinary measures to address an extraordinary problem."[95] As Congress revisits the Voting Rights Act, it must adhere to the constitutional principles the Supreme Court

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[91] *See, e.g.*, City of Mobile v. Bolden, 446 U.S. 55 (1980) (plurality op.).
[92] *See, e.g.*, *Abbott*, 138 S. Ct. at 2330 n.25 ("In assessing the significance of the D.C. court's evaluation of intent, it is important not to forget that the burden of proof in a preclearance proceeding was on the State.").
[93] Richard L. Hasen, *Congressional Power to Renew the Preclearance Provisions of the Voting Rights Act After* Tennessee v. Lane, 66 Ohio St. L.J. 177, 192 (2005).
[94] *Cf.* Veasey v. Abbott, 830 F.3d 216, 232 (5th Cir. 2016) (en banc) ("[I]n a state with 254 counties, we do not find the reprehensible actions of county officials in one county . . . to make voting more difficult for minorities to be probative of the intent of legislators in the Texas Legislature . . . .").
[95] Shelby County v. Holder, 570 U.S. 529, 534 (2013).

articulated in *Shelby County* that limit the power of the federal government to impede on fundamental principles of federalism and disturb the coequal sovereignty of the States.

Mr. COHEN. Thank you, sir.

Our next witness is Ms. Leah Aden, Deputy Director of Litigation at the NAACP Legal Defense and Education Fund. She was a member of the Legal Defense Fund's litigation team in *Shelby County* v. *Holder*. Since that decision, she successfully led the Legal Defense Fund's efforts to block the implementation of discriminatory voting changes. She has also recently authored "Democracy Diminished: State and Local Threats to Voting Post Shelby County, Alabama v. Holder," which details State, county, and local voting changes proposed or implemented during the more than 3 years since the Supreme Court decision in Shelby County, and continues to track post-Shelby County voting changes.

She received her J.D. from Howard University School of Law and a B.A. in History and African American Studies from Columbia University, and also served as law clerk for the Honorable John T. Nixon, who is a friend of mine at the U.S. District Court of Appeals for the Middle District of Tennessee, a very great judge, unusual, and a wonderful human being.

Ms. Aden, you are recognized for 5 minutes.

STATEMENT OF LEAH C. ADEN

Ms. ADEN. Thank you. Good afternoon, Chairman Cohen, Ranking Member Johnson, and Chairman Nadler, and other members of the subcommittee. Again, my name is Leah Aden, and I am a Deputy Director of Litigation at the NAACP Legal Defense and Educational Fund. Thank you for the opportunity to share information about what LDF has observed regarding barriers to voting since the U.S. Supreme Court's 2013 decision in Shelby County, Alabama versus Holder.

Since its founding in 1940 by Thurgood Marshall, LDF's mission is, and has always been, to promote racial justice and equality. Beginning with Smith v. Allwright, a case arising out of Texas, our successful Supreme Court case challenged the use of all whites primary elections in 1944. And since then, LDF has fought to overcome the myriad of obstacles put before black voters to ensure our full, equal, and active participation in American life.

The right to vote for black people today, and for other people of color is facing its greatest threat in decades. As you know, the Shelby County decision invalidated the preclearance provision of Section 5 of the Voting Rights Act, removing the obligation of jurisdictions with a history and ongoing record of discrimination from submitting proposed voting changes to a Federal authority for approval. This process ensured that those changes would not discriminate against African American and other voters.

The result of the Shelby decision was predictable. As Chairmen Cohen and Nadler have mentioned, within hours of the decision, the Texas Attorney General tweeted out his intention to implement a photo ID law that the State had been forbidden from implementing under Section 5. Other jurisdictions, including Alabama, followed suit. Even more alarming, voter suppression has metastasized in the years since the Shelby decision with places like Wisconsin, North Dakota, and jurisdictions in Kansas adopting laws and practices which result in voter suppression.

Since the Shelby decision, LDF has tracked and recorded discriminatory voting changes in places previously protected by Section 5 that we can become aware of, and we do so in a regularly updated report, Democracy Diminished, and we have provided copies of this report to each member of this committee. Our documentation and examination of the plethora of discriminatory voting changes proposed or implemented since Shelby, our annual Election Day voter protection work, and our own experience litigating cases, challenging voter suppression schemes enables LDF to state, unequivocally, that there is a critical and urgent need for Congress to act to restore and strengthen the full protections of the Voting Rights Act.

The genius of Congress' Section 5 preclearance mechanism is that it stopped discrimination before the harm occurred. While we still have Section 2, as you all have heard, that authorizes us to challenge discriminatory voting practices in Federal courts, it is not enough. Even when we are successful litigating these cases, the relief comes too late and at too great a cost in terms of time, money, and burden, for hundreds of thousands of voters. Millions.

One case dramatically illustrates this. We successfully challenged Texas' voter ID law, judicially recognized as the most stringent voter ID law in the country. The trial court found that the law violated Section 2's results test and was enacted intentionally to discriminate against African American and Latino voters. We proved at trial that more than a half million registered voters, and up to a million eligible voters were disenfranchised by the ID law. The Fifth Circuit Court of Appeals affirmed that the law violated the Voting Rights Act.

But during the 3 years in which we litigated the case through trial, and before voters received relief, Texas elected a U.S. Senator, all 36 members of the Texas delegation to the U.S. House of Representatives, a Governor, a Lieutenant Governor, Attorney General, Controller, all 150 Members of the State house, over 175 trial court judges, and over 75 District Attorneys. Relief simply was too late for voters across all of those elections.

Since Shelby, Federal courts have found that officials in five different States have passed racially discriminatory voting laws, intentionally for the purpose of discriminating against black and Latino voters. Ms. Clarke mentioned the North Carolina case.

There is a voter suppression crisis in our country, and Congress has an obligation to use the enforcement powers it was bestowed in the 14th and 15th Amendment to the U.S. Constitution, to amend the Voting Rights Act to protect minority voters from racially discriminatory voting schemes.

The Supreme Court, in Shelby, rejected Congress' determination, despite the extensive record that Congress amassed that the preclearance process was necessary. The court, in particular, as you have heard, objected to what it regarded as a targeting of mostly southern States.

I agree with you, Chairman Cohen, that Congress got it wrong in Shelby, and substituted its own judgment for Congress, but the Shelby decision is the law, and any effort by this body to amended the Voting Rights Act must be undertaken with attention to the court's guidance in that case. H.R. 4 does precisely that. It proposes

a nationwide formula without geographic limitation that will require any jurisdiction that engages in systematic discrimination to submit voting changes to a Federal authority for preclearance.

And I look forward to hearing your questions and being able to answer them.

[The statement of Ms. Aden follows:]

Testimony of Leah Aden
Deputy Director of Litigation
NAACP Legal Defense and Educational Fund, Inc.

Before the United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing on

Continuing Challenges to the Voting Rights Act Since Shelby County v. Holder

June 25, 2019

Introduction & Background

Good morning, Chairman Cohen, Ranking Member Johnson, Chairman Nadler and other members of the Subcommittee. My name is Leah Aden, and I am a Deputy Director of Litigation at the NAACP Legal Defense and Educational Fund, Inc. (LDF).[1] Thank you for the opportunity to testify this afternoon on some of LDF's efforts to expand and protect the voting rights of Black people and to share a bit of what we have observed with regard to the barriers to voting since the U.S. Supreme Court's decision in *Shelby County, Alabama v. Holder*.[2] LDF litigated the *Shelby* case and argued in the Supreme Court, defending Congress's reauthorization of Section 5 of the Voting Rights Act (Section 5). The Supreme Court's decision in the *Shelby* case has had a devastating effect on the voting rights of racial minorities in this country.

Since the Court's decision, LDF has tracked, monitored, and published a record of discriminatory voting changes in jurisdictions formerly protected by Section 5, which is regularly updated in a report entitled "Democracy Diminished: State and Local Threats to Voting Post-*Shelby County, Alabama v. Holder*."[3] A copy of the most recently updated version of our report has been delivered to each member of this Committee. Based on our ongoing efforts to expand and protect voting rights and our documentation of various voting challenges post-*Shelby*, we feel particularly qualified to state unequivocally that there is a critical and urgent need for Congress to act to restore and strengthen the full protections of the Voting Rights Act of 1965 (VRA).

The VRA is considered one of this country's most transformative pieces of legislation, authorizing Congress for decades to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution when federal and state governments had thwarted the import of those protections for almost a century. Among the important civil rights statutes passed in the 1960s, the Voting Rights Act has been referred to as "the crown jewel" of the Civil Rights Movement.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. Through litigation, public policy, public education, and other advocacy, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality

[1] LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights.

[2] *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013).

[3] Leah Aden, NAACP LDF, *Democracy Diminished*, LDF's Thurgood Marshall Institute, https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-State-and-Local-Threats-to-Voting-Post-Shelby-County-Alabama-v.-Holder.pdf.

in every area of life. Our mission has remained focused on racial justice and equality. In advancing that mission, from our earliest days, protecting the right to vote for African Americans has been positioned at the epicenter of our work. Beginning with *Smith v. Allwright*,[4] our successful U.S. Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome a myriad of obstacles to ensure the full, equal, and active participation of Black voters.

With voter suppression intensifying each and every year at the local, state, and federal levels, the right to vote for African American people and other people of color is facing its greatest threat in decades. In 2013, the Supreme Court decision in *Shelby* loosened the reins of protection and allowed state and local governments to unleash discriminatory voter suppression schemes virtually unchecked. The *Shelby* decision gutted a key provision of the VRA that for nearly 50 years required jurisdictions across the country, though primarily in the American South, to (a) provide notice of *every* voting change that they proposed implementing[5] and (b) satisfy their burden to receive approval from the federal government *before* they implemented any voting change and show that it would not worsen the ability of people of color to participate equally in the political process.

LDF defended the constitutionality of Section 5 in the *Shelby* litigation in the lower courts and in the Supreme Court. In striking down the preclearance provision that made Section 5 operational, the Court ignored the overwhelming and extensive evidence—contained in a more than 12,000 page record amassed by Congress—of continued voter suppression efforts that demonstrated the ongoing need for the preclearance process. Rather than defer to Congress's determination and the record development over several years, the Court substituted its own judgment about the need for this key civil rights protection.[6]

By invalidating the preclearance provision of Section 5 of the VRA, the Supreme Court allowed jurisdictions with a history and ongoing record of voting discrimination to change their laws *without* scrutiny from any federal authority. The result was predictable. Within hours of the decision, the Texas Attorney General tweeted out his intention to reactivate a voter identification law that the state had been forbidden

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[4] 321 U.S. 649 (1944).

[5] The Department of Justice reports that in just the three years before the *Shelby* decision, between 2010-2013, it considered 44,790 voting changes under Section 5. Section 5 Changes By Type and Year, Total Section 5 Changes Received By The Attorney General 1965 Through 2013, https://www.justice.gov/crt/section-5-changes-type-and-year-2 (last visited June 24, 2019).

[6] Congress most recently reauthorized the VRA in 2006. Between October 2005 and July 2006, the House Judiciary Committee had 12 hearings, called 46 witnesses, and compiled more than 12,000 pages of evidence from over 60 groups and individuals. The Senate had 9 hearings and called 46 witnesses between May and July 2006. *See Shelby Cnty., Ala. v. Holder*, 811 F. Supp. 2d 424, 435 (D.D.C. 2011) (describing the 2006 reauthorization record and acknowledging that it was "one of the most extensive legislative records in the Committee on the Judiciary's history.").

from implementing under Section 5.[7] Other states and jurisdictions formerly covered by Section 5 followed suit. Even more alarming, voter suppression has metastasized in the years since the *Shelby* decision. Places like Wisconsin, North Dakota, and jurisdictions in Kansas have adopted the kind of voter suppression practices that were formerly more closely associated with southern jurisdictions.

Of course, we still have Section 2 of the Voting Rights Act, the provision that authorizes private actors and the U.S. Department of Justice to challenge discriminatory voting practices in the federal courts. Section 2 applies nationwide and places the burden on voters harmed by voting discrimination to bring litigation to challenge a law that has discriminatory results and/or a discriminatory purpose.[8] It is one of the main protections available to people of color after the *Shelby* decision.

As a result of litigation brought under Section 2, some federal courts are serving as democracy's checkpoint, reviewing extensive evidence and ruling that some of the most egregious forms of discriminatory voting changes are unconstitutional and/or violate the VRA. Racial minorities are currently facing an array of schemes designed to restrict and suppress their participation at *every phase of the democratic process*—from their eligibility to vote, to their ability to register to vote, access a polling place, and cast a ballot that counts.

But litigation is a blunt instrument. It is expensive.[9] It is time-consuming. In the years during the pendency of litigation, hundreds of thousands and in some cases millions of voters are effectively disenfranchised. In Texas, for example, the Fifth Circuit Court of Appeals affirmed a finding made by a trial court that over half a million registered voters and up to a million eligible voters were disenfranchised by the state's voter ID law. But during the years during which that litigation unfolded without a remedy, during which Texas implemented its ID law, Texas voters elected a U.S. senator in 2014, all 36 members of the Texas delegation to the U.S. House of Representatives, Governor, Lieutenant Governor, Attorney General, Controller, various statewide Commissioners, four Justices of the Texas Supreme Court, candidates for special election in the state Senate, state boards of education, 16 state senators, all 150 members of the state House, over 175 state court trial judges, and over 75 district attorneys. We proved at trial that more than half a million eligible voters were disenfranchised by the ID law we were ultimately successful in challenging. But it was too late for those elections.

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[7] Ed Pilkington, *Texas rushes ahead with voter ID law after Supreme Court decision*, The Guardian (June 25 2013), https://www.theguardian.com/world/2013/jun/25/texas-voter-id-supreme-court-decision.

[8] 52 U.S.C. § 10301(a).

[9] NAACP LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* (Feb. 14, 2019), https://www.naacpldf.org/wp-content/uploads/Section-2-costs-02.14.19.pdf.

The beauty and innovative genius of Section 5's preclearance mechanism is that it allowed federal authorities to stop voting discrimination *before* its implementation and the inevitable harm. That is why a mechanism to monitor and approve the proposed changes related to voting in states with a demonstrated pattern of discrimination was—and still is—urgently needed to protect the ability of racial minorities to exercise their constitutional right to vote, be free from unreasonable burdens to vote, and to fully participate in our democracy

Congress purposefully designed Section 5 to address our current crisis. Congress's predecessors on both sides of the aisle and with the signature of presidents from both major political parties supported for nearly 50 years Section 5, a provision meant to address racial discrimination in voting and block any practices and procedures which may result in discrimination before they are implemented, elections are held, and harms to voters occur. This was an explicit intention of Congress in 1965, which expressly sought to prevent not only then-existing discriminatory voting schemes, but to also prevent the "ingenious methods" that might be devised to suppress votes in the future.[10]

The simple reality is that at local, state, and federal levels, too many officials are working tirelessly and at taxpayers' expense to maintain their political power even if it means imposing unreasonable burdens on the ability of African American, Latinx, Asian American, and Native American voters to participate meaningfully in the political process. Voting rights are a question not only of civil rights but of democracy. Our system cannot and must not be predicated on laws that establish multiple hurdles for racial minorities to participate in the political process.

It should alarm us all that since the *Shelby* decision, federal courts have found that the legislatures passed racially discriminatory voting laws intentionally, for the purpose of discriminating against Black and/or Latinx voters. In Texas, a trial court held that the state enacted its strict voter ID law with the purpose of discriminating against Black and Latinx voters.[11] In Wisconsin, a federal court struck down various voting restrictions under the VRA, and found one, a limitation on hours for in-person absentee voting, based on intentional discrimination in violation of the Fifteenth Amendment.[12] And in North Carolina, the Fourth Circuit Court of Appeals found that the North Carolina legislature worked with "surgical provision" to ensure that its omnibus voting law would disproportionately disenfranchise African American

[10] U.S. Congress, House, Committee on the Judiciary *Voting Rights,* 89th Cong., 1st sess., 1965, Mar. 18-19, 23-25, 29-Apr. 1 1965.
[11] *Veasey v. Abbott,* No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017).
[12] *One Wisconsin Inst., Inc. v. Thomsen,* 198 F. Supp. 3d 896 (W.D. Wis. 2016).

voters.[13] These findings by federal courts are a shocking condemnation of our voting systems, and demonstrate what the unfettered post-*Shelby* world has wrought.

At its pre-*Shelby* strength, Section 5 would have required that we know about *all* of the voting changes being considered in parts of our country and would have prevented many of the voter suppression schemes that we have encountered over the past six years. Notably, Section 5 did the majority of its work preventing voting changes at the local level—preventing discrimination in elections for such important bodies as school boards and city and county councils.[14] The actions we have seen post-*Shelby* demonstrate a broad and clear pattern of persistent and adaptive violations which cannot be adequately remedied through a case-by-case approach.

Post-*Shelby* Litigation & Other Advocacy in Alabama

Discriminatory Photo ID Required to Vote

In 2011, before the 2013 *Shelby* decision, the Alabama state legislature passed House Bill (HB) 19, a law which required voters to present a form of government-issued photo identification to vote.[15] The law also included a provision that would allow a potential voter without the required ID to vote *if* that person could be "positively identified" by two poll workers, a provision that harkened back to pre-1965 vouch-to-vote systems. Notably, although HB 19 passed the state legislature—alongside judicially-recognized discriminatory redistricting plans[16]—and was sent to the Governor's desk in 2011, it was not implemented until after the *Shelby* decision in 2013—after the state no longer had to submit this and other voting changes to the federal government for review under Section 5.

As reports show, variations of photo ID laws across the country have a disproportionate and burdensome effect on African American and Latinx voters.[17] HB 19 is no different. Record evidence shows that 118,000 already-registered voters lack the photo ID required by this law.[18] Black and Latinx voters are two times more likely than white voters to lack the required ID and Black voters are over four times more likely than other voters to have their provisional ballots rejected because of a lack of acceptable ID.

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[13] *N.C .State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).
[14] In fact, more than 85% of preclearance work previously done under Section 5 was at the local level. Justin Levitt, Section 5 as Simulacrum, 123 Yale L.J. 151 (2013), http://www.yalelawjournal.org/forum/section5-as-simulacrum.
[15] *AL HB 19* (2011), https://legiscan.com/AL/text/HB19/id/327641.
[16] *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (MD Ala. 2017).
[17] *Citizens Without Proof*, Brennan Center for Justice at NYU School of Law (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.
[18] Appellant's Br., *Greater Birmingham Ministries v. Merrill*, No. 18-10151, 2018 WL 1135793, at *3, 20-27 (11th Cir. Feb. 21, 2018).

On top of imposing this unnecessary and discriminatory extra requirement to vote, in 2015 Alabama closed 31 driver's license issuing offices predominately in majority Black counties for the entirety of 2016—a presidential election year.[19] Driver's licenses are the primary form of photo ID that most voters can and do use to vote. Alabama only reopened these offices in December 2016, after the election, because the U.S. Department of Transportation concluded that the closings were racially discriminatory in violation of the Civil Rights Act of 1964.[20]

LDF filed a federal lawsuit in December of 2015, arguing that HB 19 violated the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Section 2 of the VRA.[21] Representing Greater Birmingham Ministries, the Alabama NAACP, and individual voters, we contend that voters of color without photo ID are more likely to lack transportation, and more likely to live below the poverty line, than white voters without a required ID. That makes it extremely difficult—if not impossible—for many people to get to a location that issues photo IDs, even before accounting for other obstacles like taking time off work and being able to afford fees associated with obtaining an ID. We also challenge the "positively identify" provision of HB 19, which places voters at the mercy of poll workers to vote. Indeed, there are reported instances of people who have voted at the same location for decades but could not be "positively identified" by election officials who had just moved to the area. The case is currently on appeal, after a federal judge dismissed our lawsuit in January 2018. We intend to continue to fight on behalf of thousands of voters throughout Alabama who are disenfranchised by a law that unnecessarily burdens voters and is racially discriminatory.

Election Day Monitoring Experiences

All too often, election systems in Alabama work as designed—to frustrate, confuse, and eventually discourage people from voting. Indeed, on election day in November 2018, LDF received reports that poll workers denied people the right to vote because the address on their ID did not match the address that they used to register. However, there is no address-match requirement. Alabama law only requires that a voter have a photo ID, the law being challenged by LDF currently. On November 6, 2018, we sent a letter to Alabama Secretary of State, John H. Merrill, urging him to reissue guidance on the new photo ID law and warned that improper application of the photo

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[19] Mike Cason, *State to Close 5 Parks, Cut Back Services at Driver License Offices,* Alabama.com (Sept. 2015), https://www.al.com/news/2015/09/state_announces_to_close_becau.html#incart_river_home.

[20] Melanie Zanona, *Feds: Closing driver's license offices in Ala. violates civil rights,* The Hill (Dec. 28, 2016), https://thehill.com/policy/transportation/312055-feds-closing-driver-license-offices-in-alabama-violates-civil-rights.

[21] *Greater Birmingham Ministries v. Alabama,* https://www.naacpldf.org/wp-content/uploads/Greater-Birmingham-Ministries-v.-Alabama-Complaint.pdf.

ID law may violate the Fourteenth and Fifteenth Amendments and the VRA.[22] This advocacy, however, does not thwart the damage that is already done when false requirements are implemented and people are denied their right to vote.

Additionally, on election day in 2018, LDF learned that dozens of Black students at Alabama A&M University, a historically Black university in Madison County, were purged from the voter rolls and denied the right to vote. Although these students submitted their completed voter registration forms before the deadline to register to vote, on election day they were informed that they were not registered to vote and would be forced to cast provisional rather than regular ballots. The students received no prior notice from the county that there were any issues with their respective registrations. Indeed, the day following election day, the website for the Alabama Secretary of State listed several of the students as registered to vote.

On November 9, 2018, LDF filed a complaint on behalf of four Alabama A&M students.[23] Ultimately, the provisional ballots of all four students were rejected because when the ballots were submitted on election day, the students were listed as either not registered or registered in the wrong county. This is, unfortunately, not an isolated experience for these four Alabama A&M students. Reportedly, over 175 provisional ballots were cast at the university in 2018—so many that the polling location ran out of provisional ballots multiple times throughout the day, causing long wait lines which forced students to leave before they had the opportunity to vote.

Discriminatory Electoral Systems

Against the backdrop of statewide and local barriers to registration and voting, Black Alabamians also face electoral structures which minimize their power to elect their preferred candidates to local government.[24] Often times, these structures exist in the form of dilutive electoral methods and redistricting plans that disburse voters of color among many districts or pack them into too few districts. While Section 5 blocked many of these structures prior to 2013, Black voters' experiences with discriminatory electoral methods demonstrate that other tools like Section 2 remain necessary to

[22] NAACP LDF, *LDF Sends Letter to Secretary Merrill Over Widespread Confusions Regarding Inactive Voters and the Photo ID Law in Alabama* (Nov. 6, 2018), https://www.naacpldf.org/press-release/ldf-sends-letter-secretary-merrill-widespread-confusion-regarding-inactive-voters-photo-id-law-alabama/.

[23] NAACP LDF, *NAACP Legal Defense Fund Files Complaint on Behalf of Alabama Students Denied Voting Rights in Tuesday's Election* (Nov. 9, 2018), https://www.naacpldf.org/press-release/naacp-legal-defense-fund-files-complaint-behalf-alabama-students-denied-voting-rights-tuesdays-election/.

[24] Nationwide, racial and ethnic minorities are underrepresented in city government, including offices elected at-large, with Black communities comprising approximately 12% of our country's population, but only 4.3% of city councils and 2% of all mayors. Zoltan Hajnal, *Averting the Next Ferguson: One Simple Solution*, Political Violence at a Glance (Aug. 28, 2014), http://politicalviolenceataglance.org/2014/08/28/averting-the-next-ferguson-one-simple-solution/.

uproot discrimination.[25] The right to vote is so fundamental and core to democracy that any and all tools must be used to address efforts to deny and/or suppress voting.

Since *Shelby County*, LDF has warned officials in at least four local jurisdictions that the at-large aspects of their electoral systems may violate Section 2 of the VRA and potentially also the U.S. Constitution. This includes cases currently in litigation or other active advocacy in which we challenge at-large voting systems that have kept African Americans from electing their representatives of choice to various offices in Pleasant Grove, Madison County, and Morgan County.[26] At-large elections can allow 51 percent of voters to control 100 percent of the seats on an elected body, which, in the presence of racially polarized voting and other structures, can dilute a racial minority group's voice in the electoral system. It is no surprise then that for decades congressional, state, and many local officials have been elected by districts.

Elections Come and Gone

Notably, these voting rights barriers only include the instances in which LDF has been directly involved and not the work of other advocates to combat polling place changes, discriminatory redistricting schemes, and felony disenfranchisement barriers in Alabama. All the while, critical elections for the presidency, congress, state legislative seats, and scores of seats at the local levels have come and gone.

Since the *Shelby* decision, Alabama has held a total of 6 statewide elections voting on 403 seats and 25 amendments to the state constitution. They have voted for a President of the United States, U.S. senators, and U.S. congressmen. In the 6 years since the *Shelby* decision, Alabama has voted for Governors, Lieutenant Governors, Attorneys General, Secretaries of State, members of the State Senate, members of the State House, and 71 judgeships—some to the Alabama Supreme Court.

In two elections in 2014, Alabamians voted on 205 seats and 6 constitutional amendments under policies shown to disenfranchise voters.

In two elections in 2016, Alabamians voted on a total of 25 seats and 15 constitutional amendments under policies shown to disenfranchise voters.

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[25] And still there are jurisdictions like Pasadena, Texas, that reverted to these structures in the absence of Section 5, only to be blocked since 2013 by a federal court under Section 2 and the Fourteenth Amendment. *Patino v. Pasadena*, 2017 WL 10242075 (S.D. Tex. Jan. 16, 2017).

[26] NAACP LDF, *LDF Files Complaint Against Pleasant Grove, Alabama Over Voting Rights Act Violations* (Dec. 13, 2018), https://www.naacpldf.org/press-release/ldf-files-complaint-pleasant-grove-alabama-voting-rights-act-violations/; NAACP LDF, *LDF Sends Letter to Madison County Official Over Voting Rights Concerns* (Jan. 1, 2019), https://www.naacpldf.org/press-release/ldf-sends-letter-madison-county-officials-voting-rights-concerns/; NAACP LDF, *LDF Sends Letter to Alabama County Commission Expressing At-large Voting Concerns* (Feb. 7, 2019), https://www.naacpldf.org/news/ldf-sends-letter-alabama-county-commission-expressing-large-voting-concerns/.

In three elections in 2017, Alabamians voted on 3 seats under policies shown to disenfranchise voters.

In three elections in 2018, Alabamians voted on 170 seats and 4 constitutional amendments under policies shown to disenfranchise voters.

The importance of the vote cannot be overstated. Each, and every, election provides an opportunity for citizens of this country to engage with and influence policy, to elect members to our government to represent them and their concerns, and to participate in the political process enshrined in the foundation of our nation. For a community that has for so long been denied the right to vote, the right to free and fair elections has an added significance. In local elections and presidential elections alike, each vote is sacred. Thus, it must be protected and any and all efforts which may cause a suppression of the vote must be scrutinized before implementation to ensure that there is no harm to this sacred right.

Notable post-*Shelby* litigation in other states

The transgressions in Alabama are disturbing, but they are also indicative of a larger, nationwide trend which warrants attention. LDF has investigated and filed suit against similar abhorrent methods of suppression in states across the country since *Shelby*. As referenced above, in Texas, for example, LDF has been embroiled in a statewide lawsuit for more than seven years involving the state's photo ID law, and, more recently, at the local level, has challenged limitations on early voting in Waller County, a jurisdiction with a judicially-recognized and notorious record of voting discrimination targeted at Black college students.

In *Veasey v. Perry*, civil rights groups—including LDF, other advocates, and at one point, the U.S. Department of Justice—challenged the Texas photo ID law, State Bill (SB) 14, after the state implemented it within hours of the *Shelby* decision. On behalf of individual voters and organizations, including Black college students, harmed by the strict photo ID law, plaintiffs sought redress under Section 2 of the VRA and various provisions of the U.S. Constitution.[27]

In 2014, a federal district court struck down that photo ID law, holding that "SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African Americans [i.e., they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the requisite photo ID], and was imposed with an unconstitutional discriminatory purpose," and that it "constitutes an

[27] Texas adopted and implemented a law that permitted concealed hand-gun license owners to vote with that ID, a form disproportionately held by white Texans; the law prohibited the use of student ID, and employee or trial state or federal government-issued IDs.

unconstitutional poll tax."[28] Following that decision, the Fifth Circuit Court of Appeals affirmed that SB 14 had a discriminatory impact on Black and Hispanic Texans.[29] Currently, plaintiffs collectively have filed for $8 million in attorneys' fees and costs as prevailing parties in that case; this figure is a reduction in the actual expense of challenging this statewide law and says nothing of the monies drawn from taxpayer dollars that Texas has borne defending a racially discriminatory law.

In 2018, LDF filed suit on behalf of students at Prairie View A&M University (PVAMU), a historically Black university located in the majority-Black city of Prairie View, Texas in Waller County. Plaintiffs challenged the county's decision to limit early voting opportunities to Black and Latinx student voters and Black voters in the county while simultaneously offering ample early voting opportunities to white, older, and more resourced voters in other areas of the county.[30] Indeed, in an election season, where the eyes of the nation witnessed a statewide contest for U.S. Senate and other important positions, Waller County initially decided to provide no early voting anywhere in the City of Prairie View, including on PVAMU's campus, during the first week of early voting. During the second week, the County initially provided the City of Prairie View with five early voting days, though two of them were at an off-campus location, inaccessible to many PVAMU students who lack transportation. After plaintiffs filed their pending lawsuit, Waller County provided one day of Sunday voting off-campus in Prairie View and extended voting hours on-campus at PVAMU over three days. Ultimately, while the City of Prairie View had a total of six early voting days (only three of which were accessible to students on-campus), some areas in Waller County that have majority-white and older voters had up to 12 total days of early voting over a two-week period and, collectively, opportunities to vote for substantially many more hours than Black voters in Prairie View, including PVAMU students.[31]

Waller County adopted and implemented this 2018 early voting schedule even though PVAMU students have been fighting for on-campus early voting for years—first to gain it, and, since they won it in 2013, to preserve it. Since then, the County has acted to limit the usefulness to PVAMU students of an on-campus voting space that they have long fought for, including because of the reality that many college students lack transportation. In addition to the county's 2018 actions, in 2016, civil rights and pro-democracy organizations, including LDF, successfully urged County officials to protect early voting locations in a majority-minority precinct in the City of Prairie

[28] *Veasey v. Perry*, 71 F. Supp. 3d 627, 693 (S.D. Tex. 2014).
[29] *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).
[30] NAACP LDF, *NAACP Legal Defense Fund Files Suit Against Waller County, Texas for Restricting Early Voting Rights of Black Students* (Oct. 23, 2018), https://www.naacpldf.org/press-release/naacp-legal-defense-fund-files-suit-waller-county-texas-restricting-early-voting-rights-black-students/.
[31] Ibid.

View, reminding those elected officials that closing early voting locations potentially violates the VRA. The County Commission had voted to drastically reduce (from eight to two) the number of early voting locations in advance of the March 2016 primary. In response to this advocacy, election officials voted to increase the early voting locations in the City of Prairie View for the 2016 election, including by adding one location within walking distance of PVAMU. And, of course, officials in Waller County adopted this early voting plan in 2018 against the backdrop of a long and judicially-recognized record of voting discrimination against PVAMU students since at least the late 1970s.

In addition to those cases where LDF is specifically involved, over the last few years, we also are aware of numerous states and localities across the country that have implemented laws and practices which impeded and/or discouraged individuals from exercising their right to vote. For example:

In North Dakota, we saw the state implement a law requiring voters to provide IDs with a residential street address, threatening to disenfranchise thousands of Native American people who live on rural reservations where residential addresses are uncommon.[32] Studies commissioned by Native American rights groups who sued to challenge the law revealed that roughly 35 percent of that population did not have an acceptable ID with a residential address.

In Dodge City, Kansas, voting was limited to one polling location, which was outside of town and inaccessible via public transportation. The nearest bus stop was more than a mile away and at times freight trains in the area block traffic, slowing access to the polls. Dodge City's population is 60 percent Hispanic, and the voter turnout among Latinx voters is lower than the national average.[33]

And, in Wisconsin, the state implemented a law requiring voters to present a current driver's license, passport, or state or military ID to cast a ballot. There were substantial legal challenges to the state's voter ID law; however, aspects of it were allowed to stand for the 2016 election. Post-election surveys and other evidence, clearly demonstrate that the law discouraged and/or prevented many people for exercising their right to vote.[34]

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[32] Cheyenne Haslett, *North Dakota Native Americans fight to protect their right to vote after court ruling*, ABC News (Oct. 21, 2018), https://abcnews.go.com/Politics/native-americans-north-dakota-fight-protect-voting-rights/story?id=58585206.

[33] Kansas City Star Editorial Board, *Voter suppression at its worst: This Kansas town aims to keep people away on Election Day*, The Kansas City Star (Oct. 24, 2018), https://www.kansascity.com/opinion/editorials/article220341790.html.

[34] Ari Berman, *Rigged: How Voter Suppression Threw Wisconsin to Trump And Possibly Handed Him the Whole Election*, Mother Jones (Nov./Dec. 2017), https://www.motherjones.com/politics/2017/10/voter-suppression-wisconsin-election-2016/.

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With this sampling of challenges to voting at every stage of the voting process since *Shelby*, we should understand that there are numerous methods of voter suppression and that they are effective and successful in their goal: to confuse, discourage, make burdensome, or deny the right to vote. The intimidation and disenfranchisement of Black voters has always been central to the American story and the nation's attachment to white supremacy. Indeed, the loathsome methods of voter suppression that we see today are not dissimilar from the methods of the past in their intent or results. Much of what we see is a modernization of old tactics, a modernization of the poll tax and grandfather clauses. But we also see the same strategies that were used during legal apartheid—e.g. confusing and ever-changing registration requirements and discriminatory at-large elections. What is different is that we are operating today without the protection of Section 5 of the VRA—at great costs to our democracy.

The need for full restoration of the Voting Rights Act

Evidence of widespread discrimination against Black voters is overwhelming and growing and the need for legislative action is urgent. The undermining of the VRA by the *Shelby* decision has made our democracy vulnerable and allowed for voter suppression to go unchecked. One election in which the fundamental right to vote is restricted is one election too many. Yet, we have seen six statewide elections in Alabama alone with discriminatory restrictions in place. As federal, state, and local elections happen across the country and as the nation prepares for the 2020 presidential election, it is now more critical than ever that Congress act to restore federal preclearance, using provisions such as those proposed in the Voting Rights Advancement Act or Voting Rights Amendment Act. While LDF continues to vigorously pursue litigation to protect voting rights under Section 2 of the VRA, the U.S. Constitution, and other laws, we know that this is not enough.

The VRA must not only be fully restored but also must be strengthened. Congress should consider what can be done to lessen the burden on plaintiffs to achieve preliminary relief against discriminatory voting laws; they should not have to wait the 2 to 5 years on average or spend the exorbitant amount of money it takes to adjudicate a Section 2 case.[35]

Congress also must work to remove obstacles to voting in federal elections faced by the nearly 4.7 million disenfranchised citizens who have been released from prison and are still denied the right to vote.

Moreover, as our democracy faces new and pervasive threats, Congress must act to ensure the actual integrity of our elections. Digital platforms are actively impacting

[35] *See supra* n.3, *Democracy Diminished* at 5 (referencing Br. of Joaquin Avila, et al. as Amici Curiae in Supp. of Resp'ts at 22, 27, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

our elections as evidenced by their use to sow seeds of hate and racial division in the 2016 election season.[36] It is critical that Congress act to investigate and legislate these activities, reframing the intervention from the narrow consideration of privacy and data breaches to one that examines the issue within the context of the historic role of race in the public space.

Conclusion

The growing record of discriminatory voting changes since the *Shelby* decision requires Congress to fulfill its obligation to protect the right of every eligible person to vote and have their vote count. Since 2013, there have been at least nine federal court decisions finding that states or localities *intentionally* discriminated against Black and other voters of color.[37] There is no doubt that new and ingenious methods of voter suppression are relentlessly pursued by those invested in white supremacy. LDF and other advocates have a responsibility to fight those injustices whenever and wherever they occur. However, Congress also has an obligation to use the enforcement powers it was given in the Fourteenth and Fifteenth Amendments to the U.S. Constitution to amend the VRA to protect minority voters from racially discriminatory voting schemes.

The Supreme Court in *Shelby* rejected Congress's determination—despite the extensive record Congress amassed—that Section 5's preclearance formula was necessary. The Court, in particular, objected to what it regarded as a targeting of southern States whose history of disenfranchising African American voters created the need for passage of the VRA. We believe the Court got it wrong in the *Shelby* case, and substituted its own judgment for that of Congress. But *Shelby* is the law of the land and any effort by Congress to amend the Voting Rights Act must be undertaken with attention to the Court's guidance in that case.

HR 4 does precisely that. It proposes a nationwide formula—without geographic limitation—that will require any jurisdiction engaged in systematic discrimination to submit voting changes to a federal authority for preclearance.

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[36] NAACP LDF, *LDF Responds to Facebook's New Policy on False Voter Information Ahead of Election* (Oct. 16, 2018), https://www.naacpldf.org/press-release/ldf-responds-facebooks-new-policy-false-voter-information-ahead-election/.

[37] *See, e.g., Perez v. Abbott*, 250 F.Supp.3d 123 (W.D. Tex. 2017); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Stout v. Jefferson County Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 730 (S.D. Tex. 2017); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395 (M.D. La. 2017); *N.C .State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Allen v. Evergreen*, No. 13-107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014).

Mr. COHEN. Thank you. And I will proceed first with the 5-minute rule and recognize myself.

First, in your statement, I believe you said the court had it—Congress had it wrong and the court had it right. Is that what—did I hear it wrong, or did you say it wrong?

Ms. ADEN. If I misstate, misspoke, I definitely mean that Congress had it absolutely right, and the Supreme Court had it wrong.

Mr. COHEN. I thought that is what it was. Yeah. Congress finally got it right.

Ms. ADEN. And they got it right on multiple times over multiplied decades under different administrations.

Mr. COHEN. Right after the Holder case, Texas had a photo ID law. Ms. Aden, do you know what happened with the attack on that law and what the Supreme Court—what the courts ruled in those voter ID?

Ms. ADEN. I know it quite well, because I am part of the team among many members who have been litigating that case now for 7 or 8 years.

So we have to step back and also remember that the Texas photo ID law, which has been recognized as the strictest in the Nation at one time, was adopted in the context of a legislature that had also adopted racially discriminatory voting plans that had been found to be intentionally discriminatory for the State House and for Congress.

That same body, post 2010, adopted a strict photo ID law, and it was blocked by Section 5, because the record then, as the record came to show after trial and after several appeals, prohibited up to 600,000 registered Texas voters, and up to 1 million eligible voters to vote. This was a law that was crafted to allow people with handgun licenses disproportionately held by white voters, to vote, but student IDs, tribal IDs, Native American tribal IDs, Federal and State employee IDs were carved out of that law, so that people could not participate in the political process.

We went to trial in 2014, and the Court found that the law violated the results test of Section 2, and also violated various provisions of the U.S. Constitution. That case went up, and the en banc court of the Fifth Circuit confirmed that that law, and by "en banc," I mean the full panel of the Fifth Circuit affirmed that that law has discriminatory results. And our position is that the—and subsequently, remanded the case.

There was an interim remedy. Well, frankly, Texas had to be forced to come up with a remedy for voting—for its discriminatory photo ID law. They had to be forced after they were told by Section 5, after people provided testimony before them, that the law was discriminatory, they had to be forced into an interim remedy. That interim remedy was subsequently upheld by another three-judge panel of the Fifth Circuit. Frankly, our position is that that decision did not disturb the intent ruling.

Mr. COHEN. Was that remedy that possibly the law that Mr. Hawkins said was passed——

Ms. ADEN. Yeah, and that is part of——

Mr. COHEN [continuing]. But was that after an election had taken place?

Ms. ADEN. That was after many elections.

Mr. COHEN. So what remedy was available to those voters who were affected by a law that the court said was discriminatory?

Ms. ADEN. Absolutely none. Millions, if not hundreds of thousands of votes were lost after——

Mr. COHEN. So it is not a rodeo, but the cattle are out of the barn. They have gone. There is nothing you can do at that point.

Ms. ADEN. They are over. People have been elected. That was genius behind Section 5, that Congress understood that elections would take place, and we need to block harm before elections take place, before the cancer of racial discrimination takes root, before people get the benefit of discrimination, and the victims of discrimination have to then race into court at the cost of hundreds of thousand, if not millions of dollars, to uproot discrimination.

Mr. COHEN. Thank you so much.

Ms. Abrams, Mr. Hawkins said in his written testimony that the current conditions in terms of voting rights aren't so bad, that we have really done a great job, and it is not like 1965, and we are just doing wonderful, good things, in essence, and the preclearance requirement is not necessary. In other words, he thinks the Supreme Court got it right in Shelby when he concluded that Congress exceeded its constitutional authority to impose preclearance requirements on certain States and localities. This is federalism, but sometimes the States go too far, and they interfere with the Federal statutes or Federal constitutional privileges, and then the Feds have to come in.

What do you think about Mr. Hawkins' position that we don't need the preclearance requirement anymore?

Ms. ABRAMS. I vehemently disagree. I grew up in Mississippi, I live in Georgia, and I recently went through a fairly public display of the need for preclearance. Mr. Kemp, the current Governor, then Secretary of State, had been denied the ability to impose the exact match policy under preclearance. The moment Shelby was passed, he reinstituted this policy.

In 2016, he had to enter into a Federal settlement, because 34,000 voters were denied the right to vote in an election cycle; in fact, over two elections cycles. He agreed to the settlement in 2016, and the very next year, ushered through a different iteration of the exact same discriminatory policy. And in 2018, a third court told him to stop it because—sorry, a second court, because 53,000 voters were suspended from being able to register to vote. That is a small kernel of an example.

The State of Georgia has found itself in multiple lawsuits where upon adjudication, the State has been told that their actions were racially discriminatory. That means that people have been denied the right to vote. They will never be able to unring that bell. And I believe that preclearance—in fact, we know empirically that preclearance would have permitted more voters to cast their ballots because the policies that denied them the right to vote would not have been enacted.

Mr. COHEN. Thank you. And I just have to say, because it is one of the things I think about a lot. You said you are from Mississippi, and I want to say some nice things about Nina Simone.

Ms. ABRAMS. Thank you.

Mr. COHEN. You are welcome.

Mr. Johnson, you are recognized.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Hawkins, Texas has been evoked a number of times today, and at the outset, let me just ask you: Is there anything that has been said here today or submitted in the written record that you would like to respond to as Solicitor General of that State?

Mr. HAWKINS. Yes, Representative. I would like to do that. Thank you for the opportunity. There has been a lot said about the Texas voter ID law and litigation, and I would like to set the record straight on that.

First, no District Court has ever found that any number of voters were disenfranchised. The Fifth Circuit found that 95 percent of Texas voters already had a qualifying photo ID, and the ones who didn't could simply get a qualifying photo ID to comply with that law, which, by the way, has been supplanted by new legislation and is now obsolete. That is not disenfranchisement under any reasonable definition.

In any event, the notion that minority voters were targeted by the voter ID law was contradicted by the plaintiff's own expert witness, who offered data showing that the small percentage of Texans who did not already have a qualifying photo ID, the majority of them were white voters.

I would also like to speak to the importance of voter ID set against the context of Supreme Court precedent. The Supreme Court held, in *Crawford* v. *Marion County*, that voter ID laws serve the legitimate State interest of protecting the integrity and reliability of the electoral process and increasing public confidence in elections.

As former President Jimmy Carter once explained, the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud, or to confirm the identity of voters. The Texas legislature studied this issue and concluded that in-person voter fraud is a problem. The legislature concluded in reliance on Crawford, and on the Carter Baker report, that a photo ID requirement would help combat in-person voter fraud. Furthermore, voter ID is a key method for detecting in-person voter fraud. It is very hard to spot in-person voter fraud absent a photo ID requirement.

Finally, I think the Supreme Court's decision in *Purcell* v. *Gonzalez*, is very instructive on this point, and I would like to briefly read the key portion of the Supreme Court's binding analysis:

"A State indisputably has a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." That is a quote from *Purcell* v. *Gonzalez*.

Just a couple of other points on the voter ID litigation. There were 14 individual plaintiffs in that case, and the evidence showed that not a single one of those plaintiffs had been disenfranchised. Nine of them were eligible to vote by mail without a photo ID.

Three had a compliant ID. One chose to get a California ID instead of a Texas ID, and one had the documents that were necessary to get an ID.

Finally, voter turnout was unaffected in the elections following the implementation of S. 14, which was the voter ID law at issue there. As I indicated, the Texas legislature passed a new voter ID law, S. 5. That is now law in Texas. It has not been challenged.

Mr. JOHNSON. Thank you for clarifying the record. That is important today. Could you walk us through how a generic case could be brought under Section 3 of the Voting Rights Act? In other words, in what steps would it proceed?

Mr. HAWKINS. Yes, Representative. I would be happy to do that. That raises an important point that Section 2 and Section 3 of the Voting Rights Act remain fully intact notwithstanding the Supreme Court's decision in Shelby County. I believe all of the witnesses before the subcommittee today agree on that point.

When somebody believes that they are the victim of intentional discrimination, they can bring an action under the Voting Rights Act Section 2. And if, indeed, the conditions are those that resemble the conditions in 1965 that justified preclearance in the first place, Section 3(c) provides a remedy to address that called the bail in process.

The bail in process is like a targeted form of preclearance. It can be set for a certain amount of time, it can cover certain areas. It is a surgical ability to impose a type of preclearance regime on a locality that truly demonstrates the same conditions that existed in the early 1960s that justified preclearance in the first place. Those two parts of the Voting Rights Act are still very much in place. They are being litigated to this day, notwithstanding Shelby County 6 years ago which had nothing to do with those provisions.

Mr. JOHNSON. I am out of time. I appreciate all of you. I yield back.

Mr. COHEN. Thank you, sir. I now recognize Mr. Nadler for 5 minutes.

Chairman NADLER. Thank you.

Ms. Abrams, as we have in numerous cases, challenging discriminatory voting laws since the Shelby County decision, litigation takes years to resolve and can cost millions of dollars to completion. Moreover, discrimination victims can initiate such litigation only after they have been harmed. Even while litigation is ongoing, States that continue to advance more restrictions on the right to vote.

In a world that is effectively without a preclearance requirement, how has the cost and length of private litigation impacted the ability of civil rights groups to protect voters?

Ms. ABRAMS. It is a crippling burden that has been placed on organizations that have to seek outside financial support in order to secure fundamentally guaranteed rights to vote. My organization, The New Georgia Project, which we founded in 2014, had to pursue years of litigation to undo some of the challenges we discovered.

As I mentioned earlier, the exact match process only came to light because of the 34,000 applications that were suspended. And under a settlement in 2016, 2 years after the initial election, Secretary Kemp then agreed to restore their right to vote. We had a

90-day rule, which created a blackout period during which thousands of applications to register to vote were not processed, which meant that at least 20,000 that we know of were held up until after the election. They were not timely processed because of an unwritten rule, that had preclearance been in effect, would have come to light.

It took us 2½ years of litigation and discovery for us to discover this problem. And in 2017, 3 years after we uncovered this issue, they finally had a Federal court to essentially eliminate the ability to use this 90-day suspension rule.

These are only two examples of what has hit organizations, is that they are being forced to combat massive State budgets that allow taxpayers to fund voter suppression until such time as those who are most vulnerable and most harmed can muster the resources to defend themselves and to restore the right to vote.

Chairman NADLER. Thank you.

Ms. Aden, Mr. Hawkins argues that Congress must identify congruent and proportional constitutional violations. Specifically, that any State subjected to preclearance has engaged in rampant, widespread, recalcitrant discrimination so pervasive that it cannot be adequately addressed by judicial remedies, in order to constitutionally justify imposing substantial federalism costs for the preclearance requirement.

He also asserts that based on current facts, Congress could not meet such a standard and, therefore, may exceed its authority under the 15th Amendment if we now impose a preclearance requirement. How would you respond to that?

Ms. ADEN. Thank you for that question. So I agree that Section 5 is meant to get at the whack a mole, the adaptive discrimination, but I do adamantly disagree that we have to demonstrate that conditions existed like they were in 1965 or before then, because Congress surmised with the evidence before it that discrimination is ingenious, that it morphs into the next bad thing.

And I think it is important that we also talk and continue to look at Texas, because the record there is one of many that shows the pervasiveness of discrimination. The Fifth Circuit has ruled on the Texas voter ID law, and the merits of that case have been decided, so I am not going to continue to dispute that the Fifth Circuit has determined that the law was racially discriminatory.

But then we can look to what, again, the legislature did with its redistricting plans. They had found 2011 Congressional and State House plans had been determined to be intentionally discriminatory, and I heard members of the commission say that is abhorrent, that intentional discrimination is abhorrent. We have seen abhorrent behavior in Texas. And if you look not just at its ID law, but if you look at the redistricting plans, you can look at the intentional discrimination found by a District Court in Pasadena where the Federal court has ordered that jurisdiction to be subject to bail in. You can see what Waller County has done, decade after decade, trying to discriminate against historically black students at Prairie View and AMU. You can see what the legislature tried to do this last session with S.B. 9 trying to put through an omnibus voter suppression bill. I mean, you can look at that one jurisdiction, and

Ms. Abrams can talk in detail about Georgia, and we can look across the country, and that record exists.

Chairman NADLER. Thank you.

Ms. ADEN. Yes.

Chairman NADLER. Thank you. I have one more question——

Ms. ADEN. Yes.

Chairman NADLER [continuing]. Before we run out of time.

Should the Department of Justice, or perhaps the court, be granted, in a new Voting Rights Act jurisdiction, to retroactively invalidate an election and order a new election when it is proven that there was substantial discrimination that exceeds the margin of victory of a candidate?

Ms. ADEN. You know, before answering that directly, Congress is operating at the apex of its power by enforcing the 14th and 15th Amendments. And what we saw during the Section 5, nearly 50 years of Section 5 operating, is that it was necessary on certain occasions to invalidate elections.

In fact, the case that came to the Supreme Court in Shelby County was the result of white voters, someone mentioned annexations, annexing black voters out of a district. It went from being 80 percent black to under 30 percent black in a majority black district, and those annexations over time weren't precleared.

Ultimately, the law required that an election be held under a fair electoral system. And so, I do think that that is more the exception than the rule, and that we need to think about going forward what mechanism do we have in place so that people don't have to marshal the resources to run into court.

Congress should also look at strengthening the preliminary injunction standard, because that is another thing that makes it very difficult for the victims of discrimination to be able to stop discrimination before it happens. But to your question, I do think there are exceptional circumstances where redoing an election when there has been a racially discriminatory, abhorrent practice is something that can take place, but we need a mechanism where no election takes place under a racially discriminatory regime.

Chairman NADLER. Thank you. My time has expired. I yield back.

Mr. COHEN. Thank you, Mr. Chair.

I now recognize Mr. Cline, the distinguished member from the far western part of Virginia.

Mr. CLINE. Thank you, Mr. Chairman. I thank the witnesses for being here.

In 1965, Congress enacted the Voting Rights Act to address deep-rooted racial discrimination in voting. The Voting Rights Act was the most significant statutory change since the Reconstruction period following the Civil War and the relationship between State governments and the Federal Government in terms of voting, and it was immediately challenged in the courts. Between 1965 and 1969, the Supreme Court issued several key decisions upholding the constitutionality of Section 5, and affirming the broad range of voting practices for which preclearance was required.

Now we have the decision in Shelby where the court ruled Section 4(b) is unconstitutional because it covers formulas based on data over 40 years old, thereby making it no longer responsive to

current needs and an impermissible burden on the constitutional principles of federalism that equals sovereignty of the States.

The Supreme Court decision in Shelby is now considered a landmark case regarding the constitutionality of the Voting Rights Act, and with many questions remaining, I am happy to have this hearing to discuss the impact of Shelby. I would first—well, let me first ask Mr. Hawkins if there is anything he would like to respond to that was said.

Mr. HAWKINS. Thank you, Representative. Just a couple of things in response. My colleagues have referred to purposeful discrimination findings made by District Courts. Not a single one of them has survived appeal. In the voter ID case, for example, the court, the Fifth Circuit explicitly vacated and reversed the District Court's purposeful discrimination finding in that case. All other findings have met the same fates.

As to the claim that Texas' behavior demonstrates a need for preclearance, I think the opposite is true. What we have seen in the redistricting case in the voting rights, or the voter ID case that we have been talking about today, is Texas has responded to that litigation by working to conform its laws to the requirements of the Voting Rights Act, and the requirements of the Constitution.

As I discussed earlier, when Texas' voting rights—or excuse me—voter ID law was challenged, S.B. 14, rather than pursue another appeal to the Supreme Court following the en banc vote, Texas changed its law. Likewise, in the redistricting case, in redistricting litigation following the 2010 Census, a Federal District Court ordered interim remedial redistricting plans into effect, because the legislatively enacted plans had not been precleared.

Consistent with the Supreme Court's instructions in *Perez* v. *Perry*, the District Court conducted only a preliminary view of claims against the State's plans, but the court-ordered interim plans made extensive changes. The Texas legislature repealed its challenged plans and permanently adopted the court-ordered plans in its next session.

So what we have seen in the case of Texas is a State conforming its laws to the requirements of the Constitution, the Voting Rights Act, and the Supreme Court. That is a far cry from the landscape in 1965 when the covered jurisdictions were deliberately acting in bad faith to evade the review of the Supreme Court, forestall their compliance with the 15th Amendment, and suppress voters illegally.

Mr. CLINE. In fact, that is federalism at work, is it not, the States responding to the court's direction with affirmative legislative action?

Mr. HAWKINS. It is, Representative, and that is one of the Supreme Court's core themes in the Shelby County decision. The States created the Federal Government. In no other context do States have to run their laws by the Federal Government to get permission in advance of enforcing them.

The preclearance regime that the Voting Rights Act created was the one exception to that general rule, and it was justified only by the extreme conditions on the ground in the south in the early 1960s. That is the core holding of the Supreme Court's Shelby County decision.

Absent those extreme concerns, federalism and the co-equal sovereignty of the States does not allow Congress to impose that type of regime, and that is the core holding of Shelby County in 2013.

Mr. CLINE. In fact, laws such as regular maintenance of voter rolls and photo ID laws are commonplace among States at this point, correct?

Mr. HAWKINS. Absolutely, Representative. There is nothing unusual or noteworthy about a State auditing its voter rolls to ensure that only eligible voters are registered to vote. In fact, I have just seen in the news this week reports that California is looking at its own voter rolls to ensure that only eligible voters are registered.

The coverage I have seen indicated that in Los Angeles County, there are far more registered voters than there are eligible voters, and I understand that jurisdiction is taking a look at that to figure out what is going on. States and counties do this all the time. They have an obligation to do so consistent with Federal law to ensure that only eligible voters are voting.

Mr. CLINE. Thank you, Mr. Chairman. I yield back.

Mr. COHEN. Thank you, Mr. Cline.

Mr. Raskin is recognized for 5 minutes.

Mr. RASKIN. Mr. Chairman, thank you.

The States did not create the Union. We, the people, created the Union in the Constitution. That is what we fought the Civil War about. It was the claim of the confederacy that it was a handshake among the States, and Lincoln explicitly rejected that and said the people created the Union and the Constitution, and no State could opt out of it. No State could secede, so I think we settled that question a century and a half ago.

Disenfranchisement used to be relatively simple. In the first century, the law simply said that African Americans couldn't vote. Before the Civil War, the States just made it plain that—then we had a Civil War. We passed the 13th and 14th and 15th Amendments, which established that the States could not discriminate on the basis of race, and for a period, the Constitution worked. That was Reconstruction, and we had African Americans voting in huge numbers throughout the former confederacy and African Americans getting elected to high offices in the States and getting elected to this body.

And then there was a savage assault on Reconstruction. Some of it was through violence led by the KKK, and the former confederates. But a long period of subtle, legal disenfranchisement began with literacy tests, poll taxes, grandfather clauses, white primaries, character exams. And the second Reconstruction, which was the modern civil rights movement, targeted all of those practices with the Voting Rights Act of 1965, and specifically, with Section 5, which Ms. Aden has elaborated so well here. It said before the States that engaged in massive disenfranchisement and extinguishment of people's political rights for decades could make changes to voting practices, they had to first go to the Department of Justice, or to the U.S. District Court for the District of Columbia. Because if we allow them to go ahead and impose another disenfranchising mechanism, and they finally get to court 6 months or 8 months or 12 months later, it is too late to do anything. It is meaningless.

That is what Section 5 and the preclearance requirement is all about.

Now, we are living in a period where there is an attack on the second Reconstruction, on the modern civil rights movement and the Voting Rights Act, and we got it from a gerrymandered conservative Supreme Court in 2013 in *Shelby County* v. *Holder*, which basically decapitated the Voting Rights Act in *Shelby County* v. *Holder*.

Now, Ms. Abrams, it is an honor to have you here before the House Judiciary Committee. I heard you mention a bunch of new techniques of disfranchisement, voter purges, 90-day blackout period, refusing to process voter registration, exact match process. Can you tell me quickly what are the one or two worst techniques that were used in Georgia that disfranchised the people of the State in the last election?

Ms. ABRAMS. Certainly. Thank you for the question. Exact match, I think, is the most obvious and deliberate and the strongest proof point for the need for preclearance, because it was denied under preclearance and only existed because preclearance disappeared.

Mr. RASKIN. Will you explain just very briefly again what exact match is?

Ms. ABRAMS. Exact match requires perfect data entry by government employees. When you submit your application, if there is a hyphen missing, if your last name is spelled with a space, and they decline to enter the space, your application can be rejected. And in Georgia's system, there is no notice to the applicant of what the problem is.

So you receive this circular firing squad of receiving information that you have been rejected. You resubmit the information. Likely, the government employee resubmits it the way they typed it the first time, and you never know that the reason you were rejected was a typographical error.

Mr. RASKIN. Very good. Thank you very much. Let's see.

Mr. Hawkins, let me come to you. Texas put out a voting advisory in January that alleged that as many as 95,000 non-citizens were on the Texas voter rolls. This advisory fell apart within days because it became clear that tens of thousands of people on the State's list were actually U.S. citizens and were wrongfully included on this list. The State pulled the advisory back in April in order to resolve multiple Federal lawsuits that were brought against it.

Now, had Texas counties moved forward with removing people from the rolls based on this flawed advisory, Texas would have disenfranchised thousands of people, and yet, presumably, you would be here to say that that is not something that should have had to go through the preclearance process, and if it had happened, they could have sued later. What would you have said to the thousands of people who had been disenfranchised under that situation?

Mr. HAWKINS. Representative, thank you for bringing up that example. I would like to address the premise of that question. The bottom line is that not a single person had his voter registration cancelled, not a single——

Mr. RASKIN. Because of the lawsuits that were brought against it, right?

Mr. HAWKINS. Because Texas did the right thing. There was an error, a miscommunication between the Texas Department of Public Safety based on incorrect——

Mr. RASKIN. I guess that is the whole point here. Who should bear the burden of the errors of the State? Should it be the people of the State who are trying to vote, or should it be the government officials who should get their hands slapped in a preclearance investigation by the Department of Justice?

Mr. HAWKINS. Your Honor, I—or excuse me. Representative, I don't think——

Mr. RASKIN. That is fine.

Mr. Hawkins. I don't think that the experience that you are referring to implicates that question. The Secretary of State does not have the power to remove individuals from the voting rolls. County officials are responsible for maintaining the voting rolls in each county, and those county officials may remove a voter from the voting rolls only after a number of safeguards have been satisfied, including post removal judicial review, which is very much a part of the process.

Mr. RASKIN. Well, let me ask you this.

Mr. COHEN. Your time is over by a minute. Thank you, Mr. Raskin.

Mr. RASKIN. Thank you, Mr. Chairman.

Mr. COHEN. Do you have to leave for the airport?

Mr. HAWKINS. Yes, Mr. Chairman. I have got a flight back.

Mr. COHEN. I am just going to ask you for the heck of it. What time is your—when does your flight leave?

Mr. HAWKINS. My flight leaves at, I believe, 5:50.

Mr. COHEN. You can make it in plenty of time. I don't want to stop you. But Ms. Abrams' flight is at what, 5:15?

Ms. ABRAMS. 5:40.

Mr. COHEN. 5:40.

Mr. RASKIN. You guys can share a taxicab.

Mr. COHEN. We have got three more people, which is 15 minutes. Can you wait 15 minutes? You will make it, believe me. I leave in an hour, and I make it.

Mr. HAWKINS. Understood, Mr. Chairman.

Mr. COHEN. All right. Let's go. 5 minutes on the nose. Ms. Garcia, you are on.

Ms. GARCIA. I will dispense with any preliminary remarks. I just want to dive into the comment you just made in response to my colleague, Mr. Raskin. I mean, I just am sitting here in disbelief that you are suggesting that Texas did the right thing in this whole purging order of these 95,000 registered voters. I mean, the Secretary of State's office and the Governor and it seems like everyone up in Austin was suggesting that this was not happening, that it was really, you know, something that they didn't mean to do. I mean, it took almost 5 months, and the entire Senate not voting for the Secretary of State which he still did not get confirmed. And to have you sit here now and say that they were doing the right thing just as you are suggesting that Texas always is taking the lead, I am telling you. I was there sitting in the Texas Senate

when we voted on the agreement on the Voting Rights Act—I mean, Voter ID. We were not taking the lead. I did not like some of it. I thought it wasn't good enough, but we were pretty much forced to do it because of the pending Federal court case.

So I just want to clarify the record that some of the statements that you are making are, quite frankly, quite misleading, and I take offense to some of them and the characterizations that you have made.

But having said that, because I said I was not going to make a preliminary remark, Texas is really almost the poster child for Voting Rights Act violations. I testified before the Senate Judiciary Committee back in 2014, and as I reflected on the testimony I presented there then, not much has changed. When I testified back in 2014, between 1982 and 2005, for example, Texas had earned 107 Section 5 objections to voting policy, second only in number to Mississippi; 97 concerned local laws and affected about 30 percent of Texas counties home to disproportionate share, nearly 72 percent of the State's non-voting population. And it is true, Ms. Aden. How many times have Federal courts found intentional intent discrimination? Is it seven, eight? I have lost track.

Ms. ADEN. Across five States, there are about 9 decisions of intentional discrimination since Shelby.

Ms. GARCIA. Since Shelby. And how many of those have been vacated completely, and not sent down for rehearing and another trial?

Ms. ADEN. I believe all of the nine across those five States are still standing decisions of intentional discrimination under the Constitution.

Ms. GARCIA. Right. They are still standing. Now, which one of our redistricting maps are we working under? Is it not true that most—we are still under the temporary maps because we are still in litigation since the last Census?

Ms. ADEN. So the two—there are decisions from after—decisions related to the 2011 maps that forced the interim plans that were, in large part, upheld by the Supreme Court, but those early decisions that led to the interim remedy, those were based upon findings, preliminary findings of intentional discrimination, and those have not been disturbed.

When this case eventually made it to the Supreme Court, while an entire decade had passed and many elections had taken place, the Supreme Court upheld the discrimination in one district. So it is a very complicated posture, but our position is that there are intentional discrimination rulings from 2011. That is the basis for the bail in relief that advocates are still continuing to urge in District Courts in Texas. And Texas represents—it is the poster child, but there is also evidence from many other States that this body should examine that warrants Section 5 preclearance.

Ms. GARCIA. But the only one where we have a bail-in provision would be the Pasadena case which actually you said in my district, in working together with MALDEF, we were able to litigate that. In fact, I testified about Pasadena at the Senate Judiciary Committee in the Galveston County case. It just seems like a lot of that, because my district is 77 percent Latino, and that is where a lot of stuff happens.

Ms. ADEN. And I would just correct you. That was the only court-ordered bail in Pasadena. Since Shelby, Allen Evergreen, Alabama, a court found intentional discrimination, and the parties agreed to bail-in, so there two jurisdictions that since Shelby have been subject to bail-in, but that is far insufficient.

Ms. GARCIA. I am almost losing my time here, but just one quick question. On this, Section 5 was meant to, as you said, to get to the harm before it starts. How much does this litigation cost? I mean, some of these cases go on 5, 6, 7 years. Just ballpark figure. I know every case is different, but just generally speaking, how much do we have to spend on this?

Ms. ADEN. On average, hundreds of thousands of dollars, if not millions, and that includes not just challenges to statewide measures, but even suing one county can cost hundreds of thousands, if not millions of dollars, and that is both taxpayers' money to fight discrimination, and that is taxpayer money drawn by the discriminators to defend discrimination.

Ms. GARCIA. Thank you. And Mr. Chairman, I would like to ask unanimous consent to enter into the record the entire 20 some pages——

Mr. COHEN. Without objection, it will be done.

[The information follows:]

MS. GARCIA FOR THE OFFICIAL RECORD

SYLVIA R. GARCIA
STATE SENATOR
DISTRICT 6

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you for the opportunity to submit this testimony concerning the continuation of discrimination in voting in Texas, and the critical importance, for my constituents, Texans, and voters around the country, of modernizing federal voting rights protections.

My name is Sylvia Garcia. Currently, I represent District 6 in the Texas State Senate, which includes parts of Houston, Pasadena, Baytown, Jacinto City, Galena Park, and northern and eastern Harris County. I have also served as Presiding Judge of the Houston Municipal Courts, Houston City Controller, and Commissioner of the Harris County Commissioner's Court. I am the current Vice Chair of the Texas Senate Hispanic Caucus, as well as the past President and a current member of the Board of Directors of the National Association of Latino Elected and Appointed Officials (NALEO).

I am a Texas native, from the South Texas farming community of Palito Blanco. As a social worker, attorney, and now a public official, my career has revolved around ensuring that every Texan has an opportunity to be heard. The needs and desires my clients and constituents have shared with me in the course of many years of public service have reinforced values I have always held close and tried to live out in my work: to make sure that no one is forgotten; that precious resources are used wisely; and that community decision-makers do so openly and transparently, and maintain accountability to those affected by their decisions.

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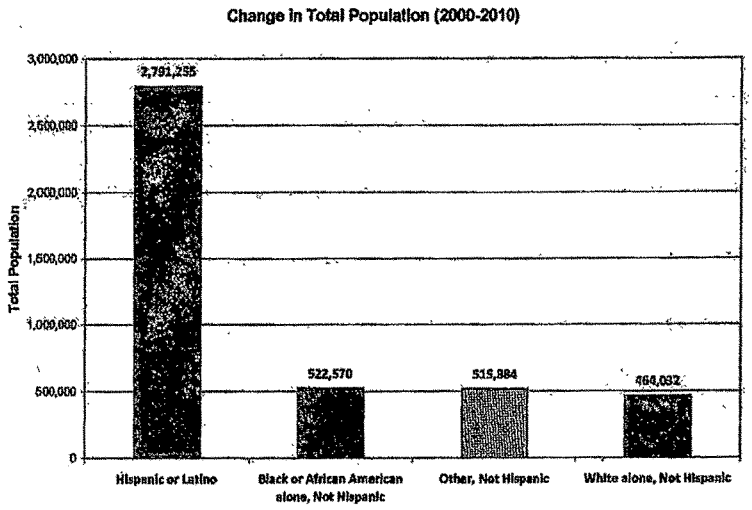
These same values that have guided my work for so many years motivate me to speak out on behalf of the millions of Texans whose opportunities to cast a ballot and to have a meaningful influence on elections remain under threat. A democracy offers empty promises if the citizens the government is intended to serve are not treated equally, regardless of race, ethnicity, or linguistic ability, and if citizens are prevented or dissuaded from participating in civic affairs. Unfortunately, we have too many such instances occurring in my home state today. For the sake of the integrity of our elections and our democracy, Texas urgently needs a modernized fully functioning Voting Rights Act (VRA).

The Rapid Growth of Historically Underrepresented Communities Makes Ensuring Equal Access to the Ballot Particularly Critical for the Health of Democracy

My District, as well as Texas more broadly, illustrates why defending and promoting equal access to the ballot box for voters of all races, ethnicities, and linguistic abilities is particularly critical. In my District and throughout the state, a disproportionate number of residents are members of communities that have historically suffered the brunt of discrimination in voting, education, employment, and other domains. I represent a population that is about 70% Hispanic and about 12% African American. These two groups along with other ethnic or language minority populations constitute significant shares of Texas' population overall. Today 37.6% of Texans now report Hispanic ethnicity. About 12% of Texans are African American, and about 4% are of Asian American, Native Hawaiian or Pacific Islander descent. My constituents and Texans are linguistically diverse as well. Though a majority also speaks English, nearly two-thirds of District 6 residents, and more than one-third of Texans statewide, who are 5 years old or older speak a language other than English at home. The Census Bureau calculates that 7% of all Texans eligible to vote are not fully fluent in English and need language assistance to cast an informed ballot, compared to 4.5% of all eligible voters nationwide.

These minority populations, vulnerable to discrimination in voting, are becoming an increasingly large segment of the electorate. Between the 2000 and 2010 decennial Censuses, Texas' Latino population increased by nearly 2.8 million people, accounting for 65% of statewide population expansion, as illustrated in the chart below. Minorities overall accounted for 89% of Texas growth in the past decade. During the same period, Latinos accounted for a similar, outsized 55.5% of all population growth nationwide. In the year 2000, 31.2% of Texas residents

reported speaking a language other than English at home; according to the most recent Census Bureau figures, this share has increased to 34.6%. Likewise, the percentage of United States residents speaking a language other than English at home grew from 18% in 2000 to 20.5% at most recent count.



Data Sources: Census 2000 Redistricting Data (Public Law 94-171) Summary File PL002 Table; 2010 Census Redistricting Data (Public Law 94-171) Summary File P2 Table

Texas, and our nation as a whole, is growing increasingly diverse and we must do a good job of engaging these communities as voters and candidates. Instead, voting discrimination based on race, ethnicity, and language ability continues in our state, and is alienating communities of color from participating in elections.

Discrimination in Voting in Texas Continues

As Congress considers legislation that would modernize VRA protections, both houses must acknowledge and address the fact that discrimination in voting has deep roots and continues, even today.

Texas has a long record of troubling and pointed attempts to exclude Latino, African American, and other historically underrepresented groups from full

participation in politics and governance. As early as the first half of the 19th century, delegates to Texas's constitutional convention who were preparing for U.S. statehood attempted to preclude the territory's Mexican Americans from the franchise. A second attempt originated in Texas in the 1890s to prohibit people of Mexican heritage from becoming naturalized American citizens and gaining the right to vote. In the first half of the 20th century, Texas jurisdictions developed evolving tactics to limit minority electoral participation and influence. A poll tax was added to the Texas Constitution in 1902, and remained in effect until the state was forced to repeal it in 1966. A 1923 state law barred African Americans from voting in Democratic primary elections, and in the following years numerous jurisdictions prohibited Latino and other voters from participating in white-only primary elections.

The enactment of the VRA in 1965, and its extension in 1975 to provide comprehensive protection to Latino and other language minority voters, ended the use of some of these well-known discriminatory techniques. However, Texas and its sub-jurisdictions have continued to adopt voting policies that impair and prevent minority citizens from casting ballots. Between 1982 and 2005, for example, Texas earned 107 Section 5 objections to voting policies, second only in number to Mississippi. Among them, 97 concerned local laws and affected about 30% of Texas counties home to a disproportionate share – nearly 72% – of the state's non-white voting age population. During this same period, aggrieved voters and candidates brought at least 206 successful lawsuits under Section 2 of the VRA against the state of Texas and Texas municipalities and counties.

In the years immediately preceding the Supreme Court's decision in *Shelby County v. Holder*, Texas and political subdivisions within the state adopted more policies that ran afoul of the VRA's preclearance protections than any other state. In the most recent 15 years, Texas has also amassed more violations of other VRA provisions – Sections 2, 203, and 208 – than any other state. Sadly, the number of discriminatory incidents, prompting litigation, has accelerated in the last five years. These troubling laws aimed at restricting access to the ballot box and voter influence of historically underrepresented voters will only exacerbate Texas' lagging and racially-disparate levels of voter turnout and registration. According to Census Bureau data on the 2012 Presidential election, for example, just 39% of Latino Texans eligible to vote cast a ballot, compared to 48% of Latinos nationwide, 61% of white Texans, and 64% of white Americans. In my own district, the fabric of the community has changed, and unfortunately not everyone

is embracing that change. For instance, two local colleges resisted alterations to their board compositions from at-large districts to single-member districts, and there are plenty of other examples of resistance to progress for voters across Texas.

There is New and Heightened Danger to Latino and Underrepresented Texans' Voting Rights in the Wake of *Shelby County*

In the year since *Shelby County* was decided and preclearance obligations in Texas lifted, policymakers in our state demonstrated an alarming eagerness to move forward both with new voting changes highly likely to impair underrepresented communities' civic participation, and to revisit old proposals already found to be discriminatory, but that were placed on hold. Preclearance coverage was effective in halting the use of many of these provisions *before* they could negatively affect minority voters in Texas. Currently-pending cases under the remaining sections of the VRA are proceeding slowly, and so far have not stopped troubling practices from taking effect, to the detriment of many of my constituents, as well as millions of Texans.

2013 – City of Pasadena

Recent developments in the city of Pasadena are particularly familiar to me, and of particular concern, because many of its residents are also my constituents. In Pasadena, the voting-eligible Latino population has grown exponentially in recent years. Today, just over one-third of Pasadena's potential electorate, and just over half of its adult population, is Latino. Given this increasing Latino presence, it is not surprising that Latinos have been elected to fill two of the eight single-member seats on the Pasadena City Council. The increasingly Latino face of Pasadena residents and governance has, however, sparked some apparent tensions. Facing a Latino majority, Pasadena's mayor Johnny Isbell unilaterally pushed a vote on a controversial plan to convert the city's method of election from eight single-member districts to six single-member districts and two at-large seats. The proposed change from eight to six single-member districts will reduce Latino voting strength in City Council elections. In describing the city, Mr. Isbell was quoted by the *Wall Street Journal* as stating, "The town's identity is plant workers . . . western . . . . It's a heritage that we are proud of." (See Attachment A).

The proposal had been discussed in Pasadena, but never implemented until, as the city's mayor said of conditions post-*Shelby County*, "The Justice Department can

no longer tell us what to do." (See Attachment B). The mayor pursued the change, despite receiving significant expressions of concern from residents in public hearings and in spite of a contrary recommendation by a Review Committee commissioned to study the proposal. The measure was approved by a very slim margin. In the course of public debate, the mayor reportedly expressed racially-themed concerns about the future makeup of a single-member city council. He also argued –without any support or factual validation—that the purported reason more Latino candidates were not elected to municipal positions was because 75% of Latinos in Pasadena were "illegal aliens."

Elections have not yet been held under the new hybrid election system, but there are ongoing community concerns about the new scheme. Four of the current city council districts contain Hispanic citizen-voting age population majorities. At least one incumbent Latino city councilmember may face a difficult re-election campaign in a reconstituted district, which is also home to a neighboring incumbent councilmember. The mayor recognized that Latino candidates of choice were on the cusp of becoming an effective majority of the council in Pasadena and as a way to dilute Latino political power he ramrodded this hybrid redistricting plan. Given racially polarized voting in Pasadena, it is unlikely that a candidate of the Latino community's choice would win a race for an at-large seat. The most likely consequence of the change – a reduction in Latino citizens' influence on elections and presence on governing bodies – combined with its timing and the racial element in related public debate make this a quintessential case for preclearance. (See Attachment C). In the absence of a fully functioning Voting Rights Act, this suspect change will proceed in the next year, with city council elections slated for May 2015.

2013 – Galveston County

In August 2013, Galveston County followed the state's lead in ceasing upon the *Shelby County* decision to move a controversial election change. The *Houston Chronicle* observed that Galveston County was, "the first Houston area government to take advantage of the June 25 U.S. Supreme Court decision to change an election law that otherwise might have been blocked by the Justice Department." (See Attachment D). County Commissioners moved quickly after *Shelby County* to adopt an initiative to reduce the number of justice of the peace and constable districts in the county from eight to four, similar to another change recently rejected for being discriminatory. No public hearings were held on the

topic. Both the rejected and enacted plans reduced the number of districts containing African American and Latino voter majorities. Incumbent officials and a resident challenging the move allege that the measure was adopted to intentionally limit African American and Hispanic voters', noting that the county went ahead with the change with full knowledge of its discriminatory effects.

2013 – Statewide Re-Implementation of Voter ID and Intentionally Discriminatory Redistricting Plan

On June 25, 2013, the Supreme Court announced the *Shelby County* decision, our state proclaimed its newfound ability to put into use the voter ID requirement and redistricting plan that had each been determined by a federal court to be discriminatory. On that very same day, our Attorney General celebrated, in tweets, that, "Eric Holder can no longer deny #VoterID in #Texas after today's #SCOTUS decision. #txlege #tcot #txgop" and "Texas #VoterID law should go into effect immediately b/c #SCOTUS struck down section 4 of VRA today. #txlege #tcot #txgop." The Attorney General also stated that day that, "Redistricting maps passed by the Legislature," meaning those rejected by the federal court in 2012 as intentionally discriminatory in part, "may also take effect without approval from the federal government."

While the Texas legislature ultimately adopted a new set of district plans, based on interim court-created maps that had replaced the intentionally discriminatory redistricting scheme, the state moved forward with its voter ID requirement that was found to be retrogressive in federal court. Mismatches between information in voter registration records and that appearing on IDs have been widely reported, and *The Dallas Morning News* concluded that use of provisional ballots skyrocketed in most of Texas's largest counties in November of 2013 when voter ID was first mandated at polling places. (See Attachment E). The full impact of the law on minority voter communities will become more apparent as Congressional and Presidential elections occur: the best available data on voter registration and turnout by race and ethnicity, from the Census Bureau's Current Population Survey, are collected only on these occasions, once every two years.

The following case examples are a non-exhaustive illustration of the forms in which Texans, including my constituents, have confronted voting discrimination in the immediate past.

Testimony of The Honorable Sylvia R. Garcia
June 25, 2014

Texas Statewide Violations

2001 – Statewide Redistricting

Following a significant increase in Texas's Latino population between 1990 and 2000, a redistricting plan was proposed for the state House of Representatives that would have caused a net loss of districts in which Latinos constituted a majority of registered voters, and in which registered Latino voters enjoyed a realistic opportunity to elect the candidates of their choice. This redistricting plan failed to win approval under the VRA because of its pointed, prospective negative impact on Texas minority voters.

2004 – Statewide Redistricting

Following rejection of discriminatory redistricting plans, the Texas Legislature was ultimately unable to agree on Congressional and statewide district maps post-2000 Census. The state moved forward with court-created maps; nonetheless, in 2004 the Legislature adopted yet another set of new maps to replace the court plan. As Supreme Court Justice Anthony Kennedy observed, "the State took away the Latinos' opportunity because Latinos were about [to] exercise it. This bears the mark of intentional discrimination . . . ." The Court required changes to be made to the state's new maps in order to eliminate the discriminatory impact on Latino voters.

2007 – Statewide Candidate Qualifications for Fresh Water Supply District Supervisors

The Texas Legislature adopted a change to qualifications required of candidates for fresh water supply district supervisor positions, mandating land ownership. The state failed to provide complete demographic information about affected districts and supervisors in the course of the preclearance process, but investigators determined that every incumbent supervisor who would have been prevented by the law from running for re-election because of lack of land ownership was Latino. Moreover, there were significant disparities throughout the state between Anglo and minority rates of land ownership that supported the conclusion that the rule was discriminatory and could not go into effect.

2011 – Statewide Congressional and Legislative Redistricting

In 2011, as our state undertook redistricting for Congressional and state legislative seats, the rapid Latino population growth described above had resulted in Texas gaining four additional seats in Congress. Yet the new district map ultimately approved by the Texas Legislature failed to create even one new district in which Hispanic or other minority voters were likely to have the opportunity to elect the candidate of their choice. A federal district court reviewing the plan found clear evidence that the maps had been enacted with intent to racially discriminate against Latinos and African Americans, pointing to email messages between legislative staff that revealed plotting to move important landmarks and actively voting minority communities from districts in which minority voters were previously able to exert notable influence. For as long as they remained in effect, preclearance procedures prevented use of district maps intended to diminish Latino and other voters' voices.

2011 – Statewide Voter ID

Texas recently adopted a particularly restrictive version of a requirement that voters provide one of a limited number of documents to prove their identity before voting. The law excludes some government-issued documents, such as student IDs, from the list of acceptable forms of proof. It also mandates "substantial" similarity between a voter's name as it appears on voter registration records and ID, a rule that has already caused complications and difficulties in voting for married and divorced women who have used various last names, and for Latino voters who alternately use one or both of their parents' last names. Moreover, reviewers found in 2012 that Latino and African American voters in Texas were not only less likely than others to possess the documentation they would need to vote under the law, but were more likely to face significant hurdles to obtaining ID. Latino Texan households, for example, are nearly twice as likely as white Texan households to lack access to a car, which is often needed to reach an ID-issuing location. As in the case of Texas's most recent statewide redistricting, preclearance procedures prevented this voter ID law from taking effect when they were in place.

Texas Political Subdivision Violations

2002 – City of Freeport

In the 1990s, a near-unbroken history of losses by Hispanic-preferred candidates and successful litigation resulted in Freeport's adoption of single-member city council districts. Under this new system, Hispanic-preferred candidates experienced increased electoral success, but a mere ten years later, the city tried to revert back to use of the at-large system that had put the city's minority voters at distinct disadvantage. Upon review, it was determined that racially-polarized voting persisted in Freeport, and would likely cause minority-preferred candidates to uniformly lose at-large elections. This change was rejected, and today Freeport has a Latina mayor and additional Latino representation on its city council.

2002 – City of Seguin

In 1978, Latino plaintiffs sued the city of Seguin for failing to redistrict after the 1970 Census. At the time, the city elected eight council members from four multi-member wards, and the city was 40% Mexican American and 15% African American, yet there had never been more than two minority candidates elected at once to the Seguin City Council. After protracted litigation the U.S. Court of Appeals for the Fifth Circuit required the redistricting plan to be precleared. Nevertheless, Seguin failed to redistrict after the 1980 and 1990 Censuses. By 1993, 60% of the city was minority, but only three of nine City Council members were Latino. Again, Latino plaintiffs won a settlement in 1994 resulting in the creation of eight single-member districts. Yet, following the 2000 Census, Seguin enacted a redistricting plan that fractured the city's Latino population across the districts to maintain a majority of Anglos on the City Council. Seguin amended the plan, following Department of Justice (DOJ) objection, but proceeded to close its candidate filing period so that the Anglo incumbent would run for office unopposed. Latino plaintiffs sued and secured an injunction under Section 5 of the VRA. A new election date was set as part of a settlement agreement, and today, a Latino majority serves on the Seguin City Council. The persistence of the opposition to minority voting power in Seguin presents powerful evidence that the equality principles protected by the VRA would not be vindicated in Texas absent vigilant enforcement of a fully functioning Voting Rights Act.

2006 – North Harris Montgomery Community College District

Officials proposed significant changes to the conduct of elections for seats on the North Harris Montgomery Community College District, located in The

Woodlands, Texas. The changes would have drastically reduced the number of polling places, and created a bifurcation of the community college district and school board elections that would have required voters to make two different trips to vote for candidates for the leadership of both bodies. Emblematic of the disproportionate negative effect these changes would have had on minority voters was the finding by reviewers that, "the [polling] site with the smallest proportion of minority voters will serve 6,500 voters, while the most heavily minority site (79.2 % black and Hispanic) will serve over 67,000 voters." The preclearance process stopped these changes from being implemented.

2007 – Waller County

Waller County is home to Prairie View A&M, a historically black university whose student population accounts for a considerable portion of the county's voting age population. Many of these students typically registered to vote with the assistance of designated volunteer deputy registrars. In 2007, the county changed its criteria for acceptance of registration applications submitted by volunteer deputy registrars, adding several conditions to the list of factors that would result in rejection. The county refused to seek preclearance, despite its obligation to do so. These changes threatened to impair registration of predominantly African American Prairie View A&M students. In settlement of a Section 5 action, the County agreed to stop applying its new criteria for rejection, and to register those applicants who were wrongfully rejected.

2008-09 – Gonzales County

Today, approximately 15% of the adult population in Gonzales County is estimated to be not fully fluent in English, according to the Census Bureau. The County adopted bilingual election procedures in 1976, but attempted to gut them in 2008 and again in 2009. In attempting to gain approval of a plan to reduce assignment of bilingual pollworkers and to use a computer program such as Google Translator to produce bilingual materials, the county election official was quoted in local press as wildly speculating that, "language minority voters are not citizens if they do not speak English." The proposed reductions in language assistance were stopped because of preclearance procedures.

2010 – Runnels County

Like Gonzales County, Runnels County, Texas abruptly changed its long-standing Spanish-language election procedures for the November 2008 general and November 2009 statewide constitutional amendment elections, despite 38% of Hispanic voting-age citizens speaking English less than very well. DOJ interposed an objection to the county's 2008 and 2009 oral assistance procedures. Specifically, half the county voting precincts did not have a bilingual poll worker in 2008 and no precincts had one in 2009, and the county only had one on-call bilingual assistor available by phone that received no calls for assistance in years. The county did not test the Spanish-language proficiency of its bilingual poll workers or provide training for the assistors. Runnels County failed to provide data to demonstrate that the reduction in quality and quantity of oral assistance procedures did not have a retrogressive effect, or even dispute the changes were not motivated, in part, by discriminatory purpose. But for a fully functioning Voting Rights Act, Runnels County would have abandoned its obligation to Latino voters needing language assistance at the polls.

2011 – Nueces County

Nueces County has experienced notable growth in its Latino population and decline in its white population over the past 20 years. Shifting demographics resulted in a Commissioner's Court that for some time had a majority of Hispanic candidates of choice. However, just before post-2010 Census redistricting was to occur, close contests resulted in the election of a majority of Commissioners favored by white voters. These Commissioners were responsible for a 2011 redistricting plan that was determined to "have been undertaken to have an adverse impact on Hispanic voters," according to the DOJ, and to preserve the new majority on the Commissioner's Court, preferred by a majority of white voters. County officials failed to offer reasonable non-discriminatory justification for their district boundary-drawing decisions, and the Commissioner's Court redistricting plan was rejected.

2011 – City of Galveston

Galveston moved to alter the method by which it elects candidates for municipal offices multiple times. In 1993 the city agreed to adopt single-member districts, but just five years later, in 1998, it attempted to revert back to a hybrid single-

member/at-large system that had previously been rejected as discriminatory. Once again in 2011 the city sought to eliminate some single-member districts of the city council, but was stopped because reviewers concluded that the proposed new district plan would have eliminated minority voters' opportunity to exert meaningful influence on elections for at least one seat. The city did not provide any justification for its repeated attempts to eliminate single-member districts, and was adjudged to have failed to prove that its actions were not motivated by discriminatory intent.

2011 – Galveston County

In the same year the city of Galveston pursued at-large elections, Galveston County adopted a redistricting plan for County Commissioner's Court precincts, and a proposed reduction in the number of constable and justice of the peace seats in the county. Unlike in previous years, the County avoided adopting criteria to guide the redistricting process; the Commissioner's Court also specifically avoided notifying its one minority member in advance that a map that would significantly reduce the minority population in that member's precinct would be considered and voted upon. In addition, the proposed elimination of constable and justice of the peace positions would have reduced the number of seats to which minority voters could elect candidates of choice from three to one. The timing of the change – virtually as soon as a previous court order requiring expansion of opportunities for minority voters expired – was not lost on reviewers who noted, "A stated justification for the proposed consolidation was to save money, yet, according to the county judge's statements, the county conducted no analysis of the financial impact of this decision." Both proposed changes failed to pass muster as having been adopted without discriminatory purpose.

2011-13 – Beaumont Independent School District

The African American population of the city of Beaumont is slightly larger, but votes in slightly smaller numbers, than its white population. In 2011, citizens of Beaumont approved along racially polarized lines an initiative to convert from electing seven members of its school board from single-member districts to a "5-2" plan in which two of the seven seats would be elected at-large, by the entire electorate of the city. It was determined that this change would be discriminatory, and the "5-2" plan was blocked through the preclearance process. Soon after this occurred, the three sitting African American members of the school board, who

were not up for re-election until 2015, were challenged pursuant to proposed changes to terms of office, election date, and candidate qualification procedures. These changes would have resulted in the effective and seemingly targeted removal of all three African American school board members, who received no advance notice that an election would be held in their districts, or of requirements for qualifying for re-election. Accordingly, they were prevented from taking effect.

Texans Need a Modernized Fully Functioning Voting Rights Act

The Voting Rights Act provisions that remain in effect today are not enough to meet the significant task of enforcing equal voting rights in Texas. As the numerous examples presented in this testimony demonstrate, municipalities and state officials in Texas continue to adopt laws and policies that selectively impose challenges for minority voters, and disproportionately reduce the value of their votes. Texas has surpassed and continues to outpace every other state in enacting discriminatory voting policies, and must be subject to the strongest protections we can devise.

For nearly fifty years, preclearance procedures did the best job possible of subverting gamesmanship and evolving tactics that denied and limited the minority vote. Preclearance was uniquely effective in preventing discrimination from becoming standard practice and from further diminishing minority voters' opportunities and participation rates in the places – like Texas – with the most egregious patterns of treating voters differently based on their race, ethnicity, and linguistic ability. For instance, Texas withdrew far more requests for approval of proposed voting changes after being asked for further clarifying information than any other jurisdiction between 1982 and 2005. These withdrawals included at least fifty-four instances in which the State canceled discriminatory voting changes after it became evident they would not be precleared. I fear the state legislature will follow with similar actions that could have a discriminatory impact on minority voters, in the absence of the deterrent effect of Section 5 of the VRA: Previous legislation has included residency requirements for voter registration, proof of citizenship for voter registration, reduced early-voting periods, and restrictions on third party voter registration efforts.[1]

[1] *See generally* Tex. H.B. 148, 83d Leg., R.S. (2013); Tex. H.B. 927, 83d Leg., R.S. (2013); Tex. H.B. 966, 83d Leg., R.S. (2013); Tex. H.B. 3074, 83d Leg., R.S. (2013); Tex. H.B. 174, 82d Leg., R.S. (2011); Tex. H.B. 47, 81st Leg., R.S. (2009); Tex. H.B. 157, 81st Leg., R.S. (2009); Tex. H.B. 208, 81st Leg., R.S. (2009); Tex. S.B. 268, 81st

The Voting Rights Act without preclearance cannot meet the needs to combat the vestiges of discrimination in a state like Texas. Section 5 is the most efficient means of alternative dispute resolution of contested voting changes. The revival of several discriminatory initiatives in Texas post-*Shelby County* conclusively establishes the fact that in the absence of a fully functioning Voting Rights Act problematic laws will slip through cracks. We are left with protracted and expensive litigation as the only remaining method of attack against a discriminatory voting change. Litigation imposes a greater burden on everyone concerned, including plaintiffs, defendants, and affected voters and candidates whose fate hangs in the balance, than does administrative review under the preclearance process.

The Voting Rights Amendment Act, S. 1945, proposes solutions to the present gaps in voter protection that are well-tailored to Texas voters' needs. In addition to preclearance coverage, this legislation would increase transparency around election policymaking, redressing the pointed secrecy that has often been used in Texas to limit minority communities' input and obscure suspect changes. By expanding opportunities to send neutral federal observers to monitor compliance with obligations to provide bilingual assistance at the polls, the Voting Rights Amendment Act would reveal those shortcomings that have impaired and frustrated thousands of Latino and other language minority voters. This has been the case in at least ten Texas jurisdictions that have settled charges of violating language assistance requirements in the past 15 years. Additional provisions would give federal courts more discretion to apply pre-emptive protections where warranted. In sum, the Voting Rights Amendment Act would provide effective checks against the kinds of rampant discriminatory actions described herein, and I implore you to take action to restore teeth to and modernize the Voting Rights Act and advance this legislation.

I will conclude by quoting the words of President Lyndon B. Johnson in his Voting Rights Act address before a joint session of Congress on March 15, 1965:

Leg., R.S. (2009); Tex. S.B. 363, 81st Leg., R.S. (2009); Tex. S.B. 391, 81st Leg., R.S. (2009); Tex. H.B. 1143, 81st Leg., R.S. (2009); Tex. H.B. 101, 80th Leg., R.S. (2007); Tex. H.B. 600, 80th Leg., R.S. (2007); Tex. H.B. 626, 80th Leg., R.S. (2007); Tex. H.B. 979, 80th Leg., R.S. (2007); Tex. H.B. 1146, 80th Leg., R.S. (2007); Tex. H.B. 1462, 80th Leg., R.S. (2007); Tex. H.B. 1463, 80th Leg., R.S. (2007).

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June 25, 2014

> "Experience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books—and I have helped to put three of them there—can ensure the right to vote when local officials are determined to deny it.
>
> In such a case our duty must be clear to all of us. The Constitution says that no person shall be kept from voting because of his race or his color. We have all sworn an oath before God to support and to defend that Constitution.
>
> We must now act in obedience to that oath."

Thank you for the opportunity to testify today.

Respectfully Submitted,

Sylvia R. Garcia

The Honorable Sylvia R. Garcia
Texas State Senate, District 6

Enclosed Attachments (5):

A. Voting-Rights Fights Crop Up, *Wall Street Journal*, Nov. 1, 2013.
B. All in With Chris Hayes, *MSNBC*, Nov. 8, 2013, pages 6-9.
C. Plans to Redistrict Pasadena City Council, *Houston Chronicle*, Aug. 15, 2013.
D. Suit Blasts Galveston Judge Plan as Biased County Commissioners Are Trying to Cut Number of Justice of Peace Courts, *Houston Chronicle*, Aug. 27, 2013.
E. Voter ID Woes Could Soar in Higher-Turnout Elections, Officials Fear, *Dallas Morning News*, Nov. 24, 2013.

Attachment A

Voting-Rights Fights Crop Up; Court Ruling Opens Door for Redistricting by Cities-and Suits by Minorities

The Wall Street Journal Online
November 1, 2013, WSJ.com Edition

Section: US

Length: 1117 words

Byline: Ana Campoy

Body

PASADENA, Texas-When *Johnny Isbell* first became mayor here in the early 1980s, Hispanics were a minority in this refinery town, famous as the setting for the movie "Urban Cowboy."

Now the Houston suburb is more than 60% Hispanic and Mexican ballads are sung here as often as "Lookin' for Love" from the 1980 film. Gilley's honkytonk bar here burned down more than 20 years ago.

Mr. Isbell, again the mayor, believes it is high time for voters to eliminate two of the city's eight City Council districts, all of which were created to help ensure that Hispanics had a voice in politics, and replace them with two council seats elected citywide. He said the move, on the ballot here Tuesday, would result in more local leaders focused on the good of all of Pasadena.

"They don't care about citywide issues," said the 75-year-old Mr. Isbell of council members chosen to represent sectors of the city.

Until recently, Mr. Isbell's proposal would have required approval from the U.S. Department of Justice under the Voting Rights Act. The department screened revisions to local political districts in mostly Southern regions where discrimination historically had taken place, to ensure that minorities weren't disenfranchised.

But the U.S. Supreme Court ruled this summer that such oversight is no longer necessary, because minorities have made strides since passage of the 1965 law. That opened the door to change in cities such as Pasadena-and spurred new debates about what constitutes fair political representation.

In southeast Texas alone, legal challenges to redrawn voting maps in Galveston County and Beaumont have been complicated by the Supreme Court's ruling, which stemmed from a case involving Shelby County, Ala. The moves are being challenged by minority residents, who claim they would decrease the number of minority officeholders.

Other election changes have taken place in the South following the court decision, ranging from measures by counties to move polling locations in places with large minority populations to statewide laws, like one recently passed in North Carolina, that impose stricter identification requirements for voters.

"Before Shelby County, Galveston had the burden of showing what they were doing was not discriminatory," said Chad Dunn, a lawyer representing minority residents who filed a suit in federal court to block the county's redistricting proposal. "Now, we have the burden."

Joseph Nixon, a lawyer who represents Galveston County in the suit, said the maps were redrawn to eliminate certain unnecessary judicial positions and wouldn't dilute minority voting power.

Voting-rights experts expect the disputes to continue, especially in municipalities that previously were subject to federal oversight under the Voting Rights Act.

In Arizona after the ruling, state Attorney General Tom Horne, a Republican, gave the go-ahead to a redistricting plan for the Maricopa County Community College District that previously had been subject to federal review. Critics of the plan to add two at-large seats to the district's board say it could lead some parts of the region to end up with more representatives than others.

"The likelihood is very much there that it will work against minority representation," said Ben Miranda, one of five existing board members. Mr. Horne's office declined to comment.

In Pasadena, which has a population of roughly 150,000, some residents say special election protections for minorities are no longer necessary due to the city's Hispanic majority. But others say the changes in the city's racial composition haven't yet changed politics due to a lack of voter participation by Hispanics.

More than 55% of Pasadena's *voting*-age population is *Hispanic*, but people with a Spanish surname, a proxy for those of *Hispanic* origin, represent only around 35% of the registered *voters*, according to city data.

"It doesn't punch its weight," said Walter Wilson, a political-science professor at University of Texas, San Antonio, of the minority electorate in general.

Pasadena elected all City Council members citywide in 1981, when Mr. Isbell, who has been elected to a total of five four-year terms, first became mayor. A decade later, local activists sued the city, seeking council districts to ensure representation for the growing Hispanic community. The tension was defused a year later, when city leaders moved to create council seats by geographic region.

The proposal before voters on Tuesday would turn two of the eight council seats back into citywide positions, and redraw the remaining six geographic districts to represent regions of the city.

Supporters say the change would unify the council and focus its attention on economic opportunities around Pasadena, including a new cruise-ship terminal and an entertainment district that could include a new version of Gilley's, the rollicking bar that put Pasadena on the map in "Urban Cowboy," starring John Travolta as a refinery worker.

"The town's identity is plant workers...western," said Mr. Isbell, as he swayed on a rocking chair in his office. "It's a heritage that we are proud of."

Opponents say the change would dilute Hispanics' voting power and make it harder for them to voice their needs, such as sprucing up the city's faded, heavily Hispanic north side.

"This city is no longer a Gilley's town," said Councilman Ornaldo Ybarra, 34, who keeps a bobble-head doll of President Barack Obama on his desk.

Mexican flags fly alongside American flags nowadays at Pasadena's car lots, and Hispanic businesses have taken over entire strip malls, including one that houses Cinema Latino, which mostly shows movies subtitled in Spanish and serves tamarind and hibiscus drinks along with Coke.

In a tiny storefront next door to the theater, Jorge Armando, a 32-year-old from the Mexican state of Puebla, sells CDs with music spanning his native country. He said that when people like him can vote-Mr. Armando is a permanent resident seeking citizenship-"things will be very different" for Hispanics in the U.S.

In the meantime, Cody Wheeler, a recently elected council member whose family hails from Mexico, is knocking door to door to urge those who are eligible to vote against the mayor's proposal on Tuesday. Overall turnout in Pasadena is regularly less than 10%.

"We're doing everything in our power to engage the electorate," said Mr. Wheeler, who won his seat last May by 33 votes.

He hadn't convinced Iris Gutierrez, 18, a college student, who could legally vote, but chose not to register because she feared she would be called for jury duty.

"I don't have much interest in it," she said of Tuesday's election.

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ALL IN WITH CHRIS HAYES for November 8, 2013

MSNBC ALL IN with CHRIS HAYES 8:00 PM EST
November 8, 2013 Friday

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Length: 8102 words

Byline: Chris Hayes

Guests: Bill Carter, Eric Boehlert, Steven Reiner, Julie Fernandes, Mike Pesca, Emily Bazelon, Roman Oben, Barbara Buono

Highlight: CBS News is retracting, apologizing for and plans to correct a story it broadcasts on "60 Minutes" about the attack on the U.S. consulate in Benghazi, Libya, that killed four Americans last year. The city of Pasadena, Texas, is attracting attention for one thing related to their government, their effort to suppress the Latino vote.

Body

CHRIS HAYES, MSNBC HOST: Good evening from New York. I'm Chris Hayes.

We begin with a story that has refused to go away and not because of the facts involved, but because of the concerted effort on the right to stoke scandal at any cost.

Tonight, CBS News is retracting, apologizing for and plans to correct a story it broadcasts on its crown jewel program "60 Minutes" about the attack on the U.S. consulate in Benghazi, Libya, that killed four Americans last year -- a story it broadcasts using a government contractor who claimed to be an eyewitness to the attack, but who it appears was not in fact where he said he was on the night in question. The so-called eyewitness did not apparently see the events he claimed to describe.

On "CBS This Morning", "60 Minutes" correspondent Lara Logan acknowledged the mistake.

(BEGIN VIDEO CLIP)

LARA LOGAN, "60 MINUTES" CORRESPONDENT: You know, the most important thing to every person at "60 Minutes" is the truth. And today, the truth is that we made a mistake. And that's very disappointing for any journalist. It's very disappointing for me.

Nobody likes to admit they made a mistake, but if you do, you have to stand up and take responsibility, and you have to say that you were wrong. And in this case, we were wrong.

(END VIDEO CLIP)

HAYES: The explosive charge in Logan's original report was that there was an eyewitness account from a British security contractor named Dylan Davies who used the pseudonym Morgan Jones, who claimed the U.S. could have sent back-up to the besieged facility because he himself was able to go enter it and do battle with the bad guys.

(BEGIN VIDEO CLIP)

LOGAN (voice-over): Morgan Jones scaled the 12-foot high wall of the compound still overrun with al-Qaeda fighters.

MORGAN JONES, CONTRACTOR: One guy saw me. He just shouted, I couldn't believe that it's him because it's so dark. He started walking towards me.

LOGAN: And as he was coming closer --

JONES: I just hit him with the butt of the rifle in the face.

LOGAN: And no one saw you do it?

JONES: No.

LOGAN: Or heard it?

JONES: No, there was too much noise.

(END VIDEO CLIP)

HAYES: To a Benghazi scandal fire that was finally in its dying embers, the "60 Minutes" report was a gallon of gasoline.

The next morning, the FOX News tour began featuring Steve Doocy and Senator Lindsey Graham.

(BEGIN VIDEO CLIP)

STEVE DOOCY, FOX NEWS: CBS did this story on Benghazi and I see criticism from the left where they go, you guys are covering a phony scandal. "60 Minutes" doesn't cover phony scandals.

SEN. LINDSEY GRAHAM (R), SOUTH CAROLINA: If we don't have a joint select committee to get out of this stove-piping problem, we're never going to get the truth. And where are the survivors? Fourteen months later, Steve, the survivors, the people who survived the attack in Benghazi, have not been made able to the U.S. Congress for oversight purposes.

So I'm going to block every appointment in the United States Senate until the survivors are being made available to Congress. I'm tired of hearing from people on TV and reading about stuff and books.

(END VIDEO CLIP)

HAYES: Because of the "60 Minutes" segment, Senator Lindsey Graham was going to block every appointment made by the president.

But even then, that day, even on that Monday, it was apparent that the so-called eyewitness may have had some pretty questionable motives. Media Matters founder David Brock on our show that night disclosed that even FOX News itself was evidently weary of using Dylan Davies as a source.

(BEGIN VIDEO CLIP)

DAVID BROCK, MEDIA MATTERS: And the other witness appears to be some type of British mercenary who apparently in conversations with FOX News, asked for money to talk and so, you know, FOX News even drew a line there, but it was good enough for CBS.

(END VIDEO CLIP)

HAYES: It turns out, CBS was also publishing Davies book, through its company Simon & Shuster, the connection "60 Minutes" did not disclose during that original report.

As for Davies, while FOX News may have shied away from him because he asked for money, it didn't stop the very same FOX News from running more than 13 segments over 11 different shows inspired by the CBS report. The right's delight at mainstream validation of their own pet obsession was even comically evident at a campaign rally for the now defeated Virginia gubernatorial candidate, Ken Cuccinelli, a week before Tuesday's election.

Cuccinelli's warm-up act for stoking the crowd in Benghazi, including Congressman Frank Wolf.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The man who was going to get to the bottom of what's going to happen in Benghazi.

Thank you, Jeremiah. I appreciate that introduction, and we are going to get to the bottom.

(CHEERS)

And if anyone watched "60 Minutes" last night, you can see why we need a --

(END VIDEO CLIP)

HAYES: Then, last Thursday, "The Washington Post" reported that Davies account to "60 Minutes" and the story in his book were different from an incident report he himself filed with his employer, but Blue Mountain Security.

But CBS News stood by their story, continued to defend it, despite multiple queries. CBS News chairman and "60 Minutes" executive producer Jeff Fager said he was proud of the program's reporting on Benghazi and, quote, "confident the source told accurate versions of what happened that night.

But the bottom fell out yesterday when "The New York Times" reporter that Mr. Davies told the FBI he was not in fact on scene until the morning after the attack.

(BEGIN VIDEO CLIP)

LOGAN: What we now know is that he told the FBI a different story and that was the moment for us, when we realized that we no longer had confidence in our source and that we were wrong to put him on air and we apologized to our viewers. We will apologize to our viewers and we will correct the record on our broadcast on Sunday night.

(END VIDEO CLIP)

HAYES: Joining me now is Bill Carter, a reporter for "The New York Times", who covers the television industry. He wrote "The Times" story on this today.

Bill, my head's spinning. How did this happen?

BILL CARTER, THE NEW YORK TIMES: Well, I think it happened because CBS was looking to get a new angle on the story. They got a book and in the book, this security man claimed that he was there and went through what they considered a betting process and decided he was credible and put him on the air. I think they needed a new angle because I don't think they had a lot of other new material in that report.

So, they really needed this guy to be truthful and they were in the middle of this situation where you know, he was saying one thing to his boss and a different thing to them, but it was a credible reason for that, because he had left his villa when he was supposed to not go to the scene, and what he told was a dramatic story and that added a lot of drama to what CBS wanted to report.

HAYES: What's interesting to me is that even when the issues start to be raised about his credibility, Media Matters is raising issues, then on Thursday, there's a "Washington Post" report, you know, it follows this kind of classic cycle, which is ignore, deny, double down, and then eat crow.

CARTER: Yes. And I spoke to Lara Logan before it blew up and she was very adamant about how credible this guy was.

HAYES: She was adamant about how credible he is to you when you talked to her?

CARTER: Yes, she said she believed in what he said and she didn't think he had given two versions and the FBI report would prove that. That he gave the same report to the FBI that he gave to CBS. And so, that became really the critical aspect of, with the FBI report corroborates it.

HAYES: So, you got two versions of the event, you got the diversion of event, the incident report, I stayed in my villa, I wasn't there the night I said I saw these dramatic things. You have what he told the CBS cameras and the audience of "60 Minutes", and the tiebreaker was what did he tell FBI and the tiebreaker goes to he was not there.

CARTER: And it turns out he gave three interviews to the FBI. They interviewed him three separate times. And, you know, each occasion, he told the story the way it came out in the incident report. He stayed at the villa, he didn't go to the scene.

I spoke to CBS about that last night and they were obviously taken aback by that. They then spent the next couple of hours themselves checking with their FBI sources and by this morning, they had gotten the same report we had, which is that the FBI version was not their version.

HAYES: I want to bring in Eric Boehlert, senior fellow at Media Matters for America; Steven Reiner, former producer for "60 Minutes" and CBS, now director of broadcast and digital journalism at Stony Brook University.

Eric, well, you guys -- I mean, in some ways, this is not to be uncharitable here, but I'll tell the truth. This is a little over- determined in the case of Media Matters, like you guys are a liberal group. You fact check conservatives, conservatives obsessed with Benghazi, people might say maybe people like to say, well, Media Matters stopped clock being right, you know, twice a day.

But, you guys were right about this.

ERIC BOEHLERT, MEDIA MATTERS: No, we have been right about Benghazi for 13 months. I mean, we have been fact checking the story to death, and when CBS decided we want to piece of that pie, we want a piece of that right wing media narrative, there are lingering questions when there are none, when this story has been exhaustively researched by Congress. Military have talked about what the reinforcement responsible was.

When they decided to sort of key into that buzz machine, you talked about you know, FOX News the next day for an hour, the senator talking about it. What's the number one way to know you hit a home run? The next day, a senator's talking about your story.

They knew it was all predetermined. They couldn't resist it. The story didn't add up. There were no lingering questions.

The conflicts of interest should have stopped them. The discrepancies in the narrative should have stopped them. They should have apologized a week ago.

This whole thing is a train wreck, conception, execution, denial.

HAYES: I want to make clear here, Steven, I don't want to like put a dagger in "60 Minutes." I have tremendous admiration for "60 Minutes". I really do. It's incredible franchise. It's incredible they do the journalism they do. That they get the ratings they do. That they produce the profit they do.

In some ways it's like a miracle it exists in television journalism, which I think is why all of us take it so seriously. What is it like in that building today?

STEVEN REINER, FORMER CBS "60 MINUTES" PRODUCER: It's obviously a very, very difficult day for everyone there, but my question is how much real self-examination is being done there. I watched Lara this morning on CBS this morning and even though there was an apology, and even though it was borderline mistakes were made, I don't believe there was still an adequate explanation of just what kind of vetting really was done, at the end of the day.

Journalism 101, you have a single source.

HAYES: Yes, exactly.

REINER: And you have --

HAYES: The most dangerous thing in the universe.

REINER: And you have a single source who is a self-interested source because the source is trying to sell books. Then, you have a story, which is a political hot potato, which can be red meat to certainly one side of the argument and it seems to me that raises the bar and makes it more crucial that you do your due diligence.

And I didn't hear anything in the explanation of what we did to vet that leads credibility to can be red meat to certainly one side of the argument we were fooled. You shouldn't have been fooled.

HAYES: So, the Boehlert piece is here, right, is that this was basically, you see this story, you think this is going to light up the right.

BOEHLERT: It did.

HAYES: And it did and it's also like a box for us to check the next time we're accused of liberal media. Remember, we did that Benghazi story.

Just so folks understand the universe this is coming out, Threshold is the imprint of Simon and Shuster, that was publishing the book, although it has now been recalled. Being pulled out of -- we're trying to get video of them packing up the books. That would be a good --

CARTER: By the way, that's a CBS decision.

HAYES: Right, that's a CBS decision, its' getting pulled from the top.

Now, Threshold is a conservative imprint that publishes books by Glenn Beck, Sarah Palin, the book, "Censorship: The Threat to Silence Talk Radio", Mark Levin. I mean, that's the world this story is coming out of. Those are some red flags.

BOEHLERT: Yes. You know, they wants to key into it, like I said, there's an automatic audience there. But when you're going to wade into that, you have to be careful. You cannot stain your reputation just because you want to sort of fuel this.

One other quick point, after the National Guard story, you know, 2004, "60 Minutes," their last real huge embarrassment, they appointed a panel. Came outside, did lots of interviews, hired lots of lawyers and looked at this. I don't see, if they did that for that, how do they don't --

HAYES: I want to talk about that. Mary Mapes, who is famously Dan Rather's producer on the story of the National Guard documents, which were forged documents about President George W. Bush's record in the National Guard, famous Rather-gate scandal.

Mary Mapes had this to say, "My concern is the story is done very pointedly to appeal to more conservative audience's beliefs about what happened at Benghazi. They appear to have done the story to appeal specifically to political conservative audience obsessed with Benghazi, believes that Benghazi is much more than a tragedy".

You can't avoid the parallels here, Bill.

CARTER: Well, you can't avoid them because everybody's going to think of it.

I mean, I do think -- to me, this is a far lesser scandal because I don't see this as people aren't doing this sort of in a presidential election, trying to influence voting, et cetera. I think, I may be wrong, but I think people have to step back and say, look, there's a lot of agendas that were being played out here.

You're saying CBS wanted to court the right or whatever.

HAYES: Well, I was saying, I call it the Boehlert piece.

CARTER: OK, that's (INAUDIBLE).

But my sense is they were wanting to do something on Benghazi, spent a lot of time doing it and didn't have a lot. And then this guy's book showed up. That's what I think. That's my guess.

REINER: It was a mini perfect storm. They needed to inject a big B12 shot into that Benghazi story.

(CROSSTALK)

REINER: One of the things we try to tell some of our students is how to watch television and be aware this that fellow's story, had nothing. I mean, in essence, had nothing to do with the same old story they were telling in the rest of the piece. This was a little bit of smoke and mirror -- let's inject a dramatic, heroic story, and somehow we'll give the rest of it deeper meaning.

CARTER: I want to say one thing. Getting involved in this, you then see the impact, because the State Department didn't like this at all. They didn't like this at all. And they kind of went after this guy. They wanted to go after.

And so, reporting on this is a minefield. It's a minefield.

HAYES: Right. And what I don't want to happen is to, well, if something is an ideological minefield, let's not step into it.

What does have to happen --

(CROSSTALK)

BOEHLERT: How about debunking it?

HAYES: Or just do diligence and put up what appears to be a fabricator and put the credibility of the crown jewel of CBS News on the line.

Bill Carter from "The New York Times", Eric Boehlert from Media Matters, Steven Reiner from Stony Brook University -- thank you all really.

Coming up, this is the city of Pasadena's Web site. See here where it says we have the kind of community, culture and responsiveness that are attracting attention. They are attracting attention for one thing related to their government. Their effort to suppress the Latino vote.

Why a Texas ballot initiative was the most important election of the week you haven't heard about, coming up.

HAYES: Later on the show, we're going to talk about Jonathan Martin, a Miami Dolphins offensive lineman who was allegedly bullied so mercilessly, he left the team. Sadly, Martin's experience is not unique. Extreme locker room hazing is pretty uncommon.

So, on a more sober note, tonight, I want to know, what questions would you ask someone who spent a lot of time in an NFL locker room? Tweet your answers @allinwithchris, or post to Facebook.com/allwithchris. I'll share a couple later in the show when we talk to someone who was in an NFL locker room for 12 years.

Stay tuned. We'll be right back.

HAYES: Earlier this year, the Supreme Court dealt the Voting Rights Act its most devastating blow in the 48 years since its enactment, when by a 5-4 vote, it suspended the important enforcement of the crucial section five of the act. It got a very core of the law and it meant that nine states would be free the change their election laws without getting preclearance approval from the federal government.

We've been talking for months about the potential and likely ramification of this decision and this week, we saw it play out in dramatic fashion on Election Day in one city in Texas.

(BEGIN VIDEOTAPE)

HAYES (voice-over): Pasadena, Texas, a suburb of Houston, sometimes calling stinkadina from the smell of its chemical plants and oil refineries, home of 150,000 people, and the setting, the iconic film, "Urban Cowboy".

UNIDENTIFIED MALE: Cowboy?

UNIDENTIFIED MALE: Depends on what you think a real cowboy is.

HAYES: But like a lot of Texas towns, Pasadena has changed radically since the days when John Travolta walked the streets in a 10 gallon hat.

UNIDENTIFIED FEMALE: Pasadena not longer a small town, but a not so small city.

HAYES: The changes come in the last ten years thanks to growth in the Hispanic population, which has risen from 48 percent to 62 percent, making white people a minority in the new Pasadena.

Luckily for them, they are still a majority of the *voting* population. While the *Hispanic* population accounts for a majority of Pasadena residents, Hispanics make up only 32 percent of the city's voters, but the people who are running Pasadena see the writing on the wall. They know there are only a few voter registration drives and maybe a comprehensive immigration reform bill away from being relegated to minority status.

So, this summer, Pasadena Mayor *Johnnyisbell* came up with a plan. Right now, the city is run by maybe and eight council members. Each member is elected from one of eight districts each representing a section of the city.

And for the first time in the city's history, there are now two Hispanics on the council. One is Cody Ray Wheeler.

CODY RAY WHEELER, PASADENA CITY COUNCIL MEMBER: We kind of came in there, looking to bring change, reform, to really engage in the community and we've called the mayor out on a lot of things we thought weren't very honest.

HAYES: In August, Isbell started pushing a plan to shrink the number of districts from eight to six, and replace those two with at large seats to be voted on by everyone in Pasadena, and by everyone, we mean the town's white voting majority.

WHEELER: He decided to make a full power grab and he didn't care who you'd have to step over to get it.

HAYES: To the community, the goal of the plan was pretty clear.

PATRICIA GONZALES, PASADENA RESIDENT: I think what he's trying to do is trying to stop us from being able to get the things we need and be able to be the majority. He doesn't like it.

HAYES: Dilute the power of the *Hispanicvote* and hand two council seats to the majority white voting population. Ensuring the citywide, majority white population could band together and retain their power.

WHEELER: What this effectively does is give the south part of town the majority of council.

HAYES: It turns out this is precisely the sort of thing section five of the Voting Rights Act was designed to block. In fact, Supreme Court Justice Ruth Bader Ginsburg cited this precise type of discrimination from a pre-section five world when a Voting Rights Act came before the court earlier this year.

RUTH BADER GINSBURG, SUPREME COURT JUSTICE: These second generation barriers included racial gerrymandering, switching from district voting to at large voting.

HAYES: Did you hear that? At large voting -- it's the oldest trick in the book and it's so immediately recognizable that when a neighboring Texas town of Beaumont cooked up a similar at large plan, it was blocked by the Justice Department in December of 2012.

But then, the Supreme Court killed section five of the Voting Rights Act in their 5-4 decision in Shelby v. Holder. And the mayor of Pasadena, *Johnnyisbell* made his move.

WHEELER: He blatantly said at the first meeting we had, now that the preclearance from the Voting Rights Act is gone, we're going to redistrict the city.

HAYES: In the mayor's own words --

MAYOR *JOHNNYISBELL*, PASADENA: The Justice Department can no longer tell us what to do.

HAYES: So, this summer, Isbell arguing that certain council members don't care about citywide issues, moved to put his own at large plan on the ballot.

WHEELER: The mayor's quite aware of what this does, but he just seems to not care.

HAYES: On Tuesday, the folks of Pasadena went to vote on proposition one and the majority won by a margin of 87 votes. Now, that section five is dead, there are thousands of potential Pasadenas all across the South.

(END VIDEOTAPE)

HAYES: We should note that Patricia Gonzalez who we spoke to in that report is a resident of Pasadena, also community activist with the Texas Organizing Project.

Joining me now is Julie Fernandes, former deputy assistant attorney general in the civil rights division of the Department of Justice, now, a senior policy analyst at the Open Society Foundations.

All right. You used to work at a desk, getting applications from places that wanted to do changes like this. How common or anomalous is the story of Pasadena?

JULIE FERNANDES, OPEN SOCIETY FOUNDATIONS: Well, I think changes to the method of election are actually the second most common type of voting change, that drew objections during the days of section five, so they were once that often got a lot of scrutiny because you always have to ask the question why and assess the impact in the way your piece described.

HAYES: I think what's interesting about this story, (a), if I'm not mistaken, the Shelby County case that came before the court that initiated the court striking down was not dissimilar case. It was actually a change to the gerrymandering of a district of a relatively small town.

And what I think is interesting is we talk about voter ID and stuff happening at the state level. There is a lot of stuff that happens at the municipal level where these fights can get really nasty, and when the stakes are high -- property taxes, school equity, things like that that we don't necessarily see from the national level.

FERNANDES: That's part of what we lost here when we lost section five, is we lost the ability to know about this stuff. Everybody's going to know about statewide redistricting, everybody is going to know about statewide law changes. But places like Pasadena, Texas, or little towns, Clara, Alabama, Shelby County, all over the country, they're going to be doing things to manipulate the system, things that sort of define who the electorate is for their advantage, that has a significant minority impact and we're just not going to know about it because we don't have section five.

HAYES: Just so people can see in that map, these are the entire states that were formerly subject to preclearance which (INAUDIBLE). They range from Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia.

Talk to me about the case of Beaumont because that was a case in which you had basically a very similar set of facts and precisely the sort of thing the Justice Department said no way.

FERNANDES: Right. Just in December of 2012 is the perfect analogy, just in December of 2012, the Beaumont ISD made a change, I think it was from seven single member districts to five single member and two at large.

HAYES: Sounds familiar.

FERNANDES: Yes, very similar story and the same region of the state. And DOJ determined that was going to have an impact. In this case, I think from your piece, it's also clear that there's a concern about there being a discriminatory purpose as well, which is a constitutional violation.

And I think, you know, in fact, we see in Texas, a similar thing in Galveston, Texas, twice. I think once fairly reasonably, one in the late '90s. This is not an unusual technique and the situation where the minority population is growing, you have districts and there's an attempt to say how do you stop that growth from impacting the outcome of the election. It's classic.

HAYES: So, what is the recourse now that section five isn't there, preclearance is gone, the vote happened on Tuesday. The people who want to change, the mayor got his way. That's the change -- I think the city's constitution essentially, the charter.

So, what can people do?

FERNANDES: I think the resource is and I think there are people looking at whether or not there's a way to challenge in under section two of the Voting Rights Act, the part of the act still there, that you can use to bring a lawsuit to say this action was purposely discriminatory or had discriminatory effect. But those lawsuits take forever, Chris, they take a long time, they're expensive.

If the plaintiffs have such a case and if they prevail, we're looking at two years or more before we're going to have a resolution. That's two years with this -- a council elected this system, which is an arguably discriminatory system, setting the policy for that town.

HAYES: Right. Two careers in which we have these two at large districts, which we may lose all Hispanic representation in this town that is majority Hispanic, what could be past in the interim, which is the whole entire reason section five and four of Voting Rights Act, the preclearance was there.

Julie Fernandes from the Open Society Foundation, thank you so much.

FERNANDES: Thanks.

HAYES: Coming up --

(BEGIN VIDEO CLIP)

BARBARA BUONO (D-NJ), GUBERNATORIAL CANDIDATE: New Jersey represents the last vestiges of the old boy machine politics that used to dominate states across the nation. And unless more people are willing to challenge it, New Jersey's national reputation will suffer.

(END VIDEO CLIP)

HAYES: That was Democratic candidate for governor of New Jersey, Barbara Buono, in her speech following loss to Governor Chris Christie. She has a lot to say about the race and the governor and her fellow Democrats, and she will be my guest right here, next.

(BEGIN VIDEO CLIP)

BARBARA BUONO, (D) NEW JERSEY GUBERNATORIAL CANDIDATE: The democratic political bosses, some elected and some not, made a deal with this governor despite him representing everything they are supposed to be against. They did not do it to help the state. They did it out of a desire to help themselves politically and financially.

(END VIDEO CLIP)

HAYES: That was former democratic New Jersey State Senator, Barbara Buono, on Tuesday, following her --

SEN. BUONO: Hey, I am still a senator.

(LAUGHING)

HAYES: Still senator -- good point, following her blowout loss to Chris Christie in the governor's race in a speech in which she also thanked her supporters for withstanding, quote, the onslaught of betrayal from our own political party. It is a victory speech/announcement for his 2016 presidential run that night. Christie suggested, he is the one guy who is figured out how to bring people together in a time of political polarization.

(BEGIN VIDEO CLIP

CHRIS CHRISTIE, (R) NEW JERSEY NEWLY ELECTED GOVERNOR: I know that tonight a dispirited America angry with their dysfunctional government in Washington -- looks to New Jersey to say, "Is what I think happening really happening?" Are people really coming together? Are we really working African-Americans and Hispanics, suburbanites and city dwellers, farmers and teachers? Are we really all working together?

Let me give the answer to everyone who is watching tonight, under this government, our first job is to get the job done and as long as I am governor, that job will always, always be finished.

(END VIDEO CLIP)

HAYES: There is a lot more to the story of how Chris Christie brought people together in New Jersey and the governor wants to tell you and there is no one better to tell that tale than current state Senator, Barbara Buono of New Jersey. Senator, thank you so much for being here.

BUONO: Great to be here.

HAYES: You use this word, betrayal, in your concession speech.

BUONO: Yes.

HAYES: It is a strong word. Why did you use that word?

BUONO: Well, I just thought it would be important to be honest. You know, I struck a positive note as well because I think that this is an election first woman to run for governor of the state of New Jersey in a Democratic Party, definitely a ground breaking event.

And I want to make sure that all the young women and young men for that matter and minorities knew that it can be done, even in the face of insurmountable odds. That said, the Democratic Party unfortunately cut deals with Chris Christie and we really never had a chance in terms of gaining the financial support and institutional support that we really needed.

HAYES: You were outfund raised, I think of 6-1, if I am not mistaken --

SEN. BUON: That is academic at this point.

HAYES: Well, the question -- I mean what do you mean by cut deals? I think the story - here is the story that the national media is saying about Chris Christie. In these polarized times, here is the guy who hugs President Obama after Sandy, who is in a Obama state that went Obama by 17 points, democratic state, won by a whopping, you know, whatever was 30 points on Tuesday night, you know? And, is bringing people together. What about the bringing people together, do people outside of New Jersey politics not understand?

BUONO: Well, I can tell you in New Jersey, he ha not brought people together. People are -- you know, we have the highest unemployment in the region for the last four years. People are struggling. But, what this governor has done, people's eyes glaze over when he tells jokes on late night T.V. and he talks about Sandy, Sandy, Sandy, and the fact of the matter is, you know, the Democratic Party bosses and Chris Christie struck a deal.

HAYES: What does it mean? What strike a deal mean?

BUONO: Well, you know? It can mean different things for different people. You know, for those in South Jersey that meant that Chris Christie would not mount an offensive against their senators and assembly people in that district.

It could mean different things in the Northern end of the state depending on what your political interests are and what your business interests are. And, the fact to the matter is, I think that people of New Jersey deserves someone to represent them and not someone's narrow political and business interests.

HAYES: So, there is a kind of nonaggression pact, essentially, that is struck between members of your party in the state senate, George Norcrossis one of them in South Jersey, right? Yes?

BUONO: Yes.

HAYES: That basically, they are not going to go after Christie because it is in their own interest to be able to work with him to deliver whatever goods they need for their district.

BUONO: Look, Chris Christie -- nobody is more enamored with Chris Christie than himself. And, he said, he is a straight talker; but, let me just tell you this. You put a political boss in front of him and say this is what you need to do to get elected in the next election and you will see him fold like a cheap suit.

HAYES: You say Christie?

BUONO: Yes.

HAYES: What do you mean by that?

BUONO: Well, you know he really does not -- he said it himself when he was in Boston a few months ago. He said if you want someone who stands for anything, or ideology or conviction, then I am not your guy because I am in it to win it. And, honestly, I do not care that he is running for president. It is how he is running for president.

HAYES: But, then what is wrong with this mono. I mean when you look at Washington, right, the thing that everyone is talking about warning for are the days of transactional deal making politics.

BUONO: They are?

HAYES: Well, people, when people look at the shutdown, they say, "Well, if we had things like earmarks, if there are ways to have kind of these transactional deals, that things would work."

BUONO: There is a big difference between having a deal that benefits the people of New Jersey or the people of the nation or any state and a deal that is solely to benefit the political or business interests of someone. That is the big difference. Compromise and transactional politics, I think, are two very different things and I have a very different impact on the people and the democracy.

HAYES: What is work going to be for you like as a member of the senate caucus in the state of New Jersey after saying the things you said, after being abandoned and betrayed by your fellow democrats?

BUONO: Look. I have always run against the bosses. Back in 1994, when I first transfer the assembly, I ran against the political bosses' candidate and I won. And, then again when I ran in the senate, they said I could not win, and I did.

And, I became the first woman majority leader, first woman budget chair because there were all these deals that were being made. You know I am always going to be the person I am. I have been there and I will continue to be there for the people of New Jersey and that is it. Very simple.

HAYES: All right. State Senator, Barbara Buono, thank you so much for your time.

BUONO: Thanks for having me.

HAYES: Coming up, the story everyone is talking about this week: NFL bullying. My guest will include a former NFL player, who says fans have demanded total access and immersion in the game and then complain about the culture in the same breath. Stay with us.

HAYES: Earlier in the show, we asked you what questions you would ask someone who spent years in an NFL locker room. We got a ton of answers on Twitter and Facebook. Here is just a few. Sean from Twitter asked, "Was there any discussion about harassment laws and your rights when you were hired by the NFL?

Stevie wonders, "If you saw this happening, would you intervene. I was choke it in the first place." And, Cindy wants to know, "Who sets the code of conduct in a locker room? How is that person chosen and is the code of conduct condoned by the coaches?" Those are great questions. Thanks to HBO's series "Hard Knocks," we can actually take a look inside a real NFL locker room. Here is what was happening last year with the Miami Dolphins.

(BEGIN VIDEO CLIP)

RICHIE INCOGNITO, MIAMI DOLPHINS GUARD: You check your Facebook lately? Maybe you should not use your (EXPLICIT WORD) number for your iPad password, bud. 8484.

UNIDENTIFIED MALE SPEAKER (1): I used it.

INCOGNITO: Weird.

UNIDENTIFIED MALE SPEAKER (2): Got him.

INCOGNITO: It is a good guess. You might want to check your Facebook, bud.

UNIDENTIFIED MALE SPEAKER (1): What does it say? (EXPLICIT WORD)

INCOGNITO: I was going to put something up there rude, but then I saw the picture of your girlfriend, I felt bad.

(END VIDEO CLIP)

HAYES: He seems, nice, right? Charming Facebook (inaudible) that clip Dolphins Lineman, Richie Incognito is at the center of a bullying harassment hazing scandal that is rocking the NFL this week. In just a few short minutes I will be joined right here in the studio by a former player who said this week that you only get bullied in an NFL locker room if you allow it to happen.

HAYES: It is the bullying scandal that has shaken a multibillion dollar business to its foundation. The story is absolutely thrown into disarray. The organization Forbes calls the most lucrative sports leak in the world. The $9 billion industry that is, The National Football League.

Well, it began last week when reports emerged that Miami Dolphins Jonathan Martin had left the team after a prank his teammates pulled on him in the cafeteria. A prank Martin apparently did not find funny. He sings that in a reporting he got frustrated and smashed his tray on the floor and left the facility.

Initially, the story out of Miami was that Martin left the team because he needed quote, "Assistance for emotional issues." In the days since, new allegations have emerged indicating that Martin was the victim of intense sadistic and persistent bullying and hazing in the locker room.

And, according to reports, the chief instigator of that bullying was his team Richie Incognito. Incognito for his part has quite a story. In 2003, he was suspended by his college coach of Nebraska. A year later convicted a misdemeanor assault, same year suspended indefinitely by Nebraska and he was dismissed from Oregon's program after only a week with the team then after a few years in the NFL in 2009, he was voted the league's dirtiest player in a poll of fellow players.

Fellow teammate Cam Cleeland remembers Incognito as and I am quoting directly, "An immature unrealistic scumbag with no personality and locker room cancer who just wanted to fight everybody all the time." Earlier this week, Incognito jumped on Twitter to defend himself and challenge a reporter from ESPN tweeting, "If you or any of the agents you sound off for have problem with me, you know where to find me. #bringit."

Which the reporter did by tweeting some of the messages Incognito allegedly left on Martin's phone like, "Hey, what's up, you half N-word piece of expletive." On Sunday, the dolphins announced Incognito had been suspended for conduct detrimental of the team. Now, the NFL is investigating just yesterday, Martin's camp released this statement. Jonathan Martin's toughness is not an issue. He endured harassment that went far beyond the traditional locker room hazing.

Jonathan looks forward to getting back to playing football. In the meantime, he will cooperate fully with the NFL investigation. The scandal has just ripped back the curtain in the part of the football world we do not get to see every week, when we tune in to watch what is essentially managed to televise violence, which also happens to be the most successful form of entertainment in America today.

Joining me now is Mike Pesca, Sports Correspondent for NPR. Emily Bazelon, Senior Editor of legal affairs, writer for "Slate." Also author of a great book, "Sticks And Stones: Defeating The Culture of Bullying and Rediscovering the Power of Character and Empathy."

Mike I want to begin with you. This has blown up. I mean, it is kind of remarkable to me what a fire storm this has created. And, I think the entry point into why it is, is you see Jonathan Martin, who is just a massive human being, who does one of the most physically demanding, intimidating, strenuous jobs in America probably and you think, how could this guy be bullied. Right? That is the core of it.

MIKE PESCA, NPR SPORTS CORRESPONDENT: Right. And, it is the job of so many Americans, so many armchair quarterbacks that they say -- you to them, it speaks to toughness and it speaks like this lost ideal of whatever their version of masculinity is.

And, this is why when it came out, you did not need a lot of information. In fact people did not have a lot of information. The first day when people were debating it, they did not even know about the death threats that he got from Incognito and some of the slurs that you read.

But, you know, the debate was, how do you not stand up for yourself? How do you not punch the other guy in the nose? And, that came from players, former players, the GM of his team, just everyone.

HAYES: From the GM of his team. Former players, coming out like Ricky Williams, who I like and respect.

PESCA: Yes. I am a football fan of Jeff.

HAYES: He is a really thoughtful guy. Emily, as someone who wrote about and studied bullying, I am really curious to hear your reaction to the kind of disbelief that is being expressed both in the league and I think people watching that someone of that size could be bullied. And, I want you to talk about that right after we take this break.

HAYES: We are back. I am here with Mike Pesco and Emily Bazelon. And, joining us now is Roman Oben a former NFL player, who is a left tackle, now a football analyst for MSG and MY9 News. He is wearing a super bowl ring. I never held a super bowl ring in person. It is massive.

All right, Emily, I want to go to you on this -- This bullying question. What was your reaction to someone who wrote a whole book on bullying to the reaction of so many people, how could this massive individual be bullied?

EMILY BAZELON, WRITER FOR SLATE: Look, Jonathan Martin is a big guy in a locker room with a lot of other big guys. And, I think what matters here is the context. He is the new player. Richie Incognito is the veteran, who is in a leadership position and you can be socially excluded and made to feel harassed and terrible about yourself by other people. You can go through that kind of psychological torment and bullying, no matter how big you are.

HAYES: Yes. I think the psychological component of this is key. But Roman, you are someone -- you have been tweeting basically being like -- what a lot of other players have said, which is, "Look, if you can't take the heat, get out of the kitchen," I guess? I mean how are you reacting to this?

ROMAN OBEN, FORMER NFL PLAYER: Well, I think given this incident, there is different levels between what is a rookie responsibility, or getting the donuts and doing all those things and what Richie Incognito did to Jonathan Martin. And, as these ten levels have saw in between there and I think -- At those cases, someone should have said hey, lay off this kid, I'm a man first. Deal with it in the parking lot.

And, obviously in regular society, in bullying in the bigger picture, you can't deal with it that way, but talking about a football environment because I played football in the locker, I mean that is how you deal with it. So, you deal with the locker room with locker room issues and unfortunately, this story has become so huge that you have PhDs and people in education and if this is the workplace, you would not have to buy lunch for everyone everyday. You would not be in the hazing. But, unfortunately, this has come out, a lot of things I have seen throughout my whole career and college.

HAYES: OK. So, what I think we need to do here is distinguish between a few different categories and things.

OBEN: Right.

HAYES: So, there is hazing, which is like "Hey, rookie, pick up my pads," which I think is a kind of -- I guess kind of a jerk move; but, like that is okay. That is not the worst thing in the universe.

OBEN: No. Not at all.

HAYES: And, there is a rookie dinner, where we run up a $15,000 tab and you have to pay for it. Well, that sucks, I mean -- but -- OK that is not violent. Then, there is physical violence. I want to hear the story because this Incognito guy seems to me, just diagnosing like something of a psychopath.

This is a former player Cam Cleeland, who was clubbed in the face by a sock filled with coins that free-agent linebacker Andre Royal had spent all day collecting from teammates -- Incognito. It shattered Cleeland's eye socket and nearly cost him his eye, which now provides him only with partial vision. That is not hazing. That is assault. Right? Am I wrong about that? Or does that happen in locker rooms all the time.

OBEN: It is assault and when we read it, it is awful, but in the football environment, we always tow that line between what is a passionate head coach and what is the appropriate. What is motivation? What is getting in a guy's face and what is inappropriate? What's getting a rookie tougher, seeing what a guy is made of and what's a racist comment and I think Richie Incognito absolutely went too far. We have all acknowledged that. But, there is an unwritten rule, and this has not been discussed this week. If you cannot deal with the Richie Incognito, and I do not feel this way, but if you can't deal with Richie Incognitos of the world, what are you going to do on third and ten against Jared Allen?

HAYES: That is -- I am sorry. That is crap.

OBEN: Hey! Look. Why do these teams scrutinize these rookies when they come out of college? Why does the general manager for the Miami, Dolphins asked Ded Bryant, was your mother a prostitute? This is the same organization.

HAYES: OK. So, there is two ways to go by responding to that. And, I want to get Emily's response to that question. But, here is my response to that is that first of all, you are making me feel like, "A. I got to think the psychological make-up that allows you the stand tough and strong under conditions of third and ten and in these sort of relentless, sadistic mental games are different, but may be they are not.

But, if they are not, then what you make me feel is that like football is just a game of sadism and violence and kind of a mall of horror that we all gaze upon and clap for. Like if you are telling me there is not that much difference than playing this game and being hounded this way in a locker room, I am like, "Oh, football is even more messed up than I thought."

OBEN: But, the fans want it, though. They want Hard Knocks. They want to go in the locker room. They want to see this stuff. And, when this happens, "It is oh! I can't believe these guys behave this." Well, it is football. It is not a fourth grade at recess.

HAYES: Right. But, it is also -- Mike. --

PESCA: But, It is not football. I mean so many teams have come out and said that sort of behavior would never happen in our locker room and I think what is troubling is that you are here saying rightly so, there is a fine line. There is a gray area. This is way over the line, but you ask the Dolphins. The Dolphins, all are sticking up for Incognito.

HAYES: Right.

PESCA: They are all saying, "Well, this is not the situation that you understand it." And, the rest of the league is kind of 50/50 on its Incognito was right. But the Dolphins all stick together. That shows me a sort of group mentality.

HAYES: Yes.

PESCA: Very troubling.

HAYES: That is my question for you, Emily, which is I think everyone now says, "Yeah, this was over the line."

OBEN: 100%.

HAYES: And, we have heard the voice mails that are just like, "I am threatening to kill you." Like you can't threaten to kill people or rape their loved ones, which is also happening.

BAZELON: Right. Right.

HAYES: So, why do not people intervene even when -- even when they know it is wrong and over the line?

BAZELON: You know, sometimes, it is easier to side with the dominating bully and it is harder to side with the person who in this case is being accused of breaking the code by going public. And, so I think this is a real test for the NFL.

I mean think about the message that this is sending to high school kids and their coaches about the kinds of team behavior we should be evaluating. If it is Richie Incognito who emerges from this as the one who has all the defenders in the sports world, then what does that say about kids who are being hazed and harassed on their team and who come forward and ask for help.

HAYES: If you are in that locker room, when you play that in your head, do you think you would have said something? You would have done something?

OBEN: 100% because I said from the rookie responsibility to where it led, you say, "Hey, Richie, lay off this kid. He is going to have to help us when he is a second round pick. Let's try something else."

HAYES: Have you ever done that, actually? Have you been in those situations?

OBEN: 100%. And, I have been in both sides of it. I have been in there when they are taping rookies, and a guy stripped down to his jock strap, and they are icey -- I mean all these stuff -- all right, guys, that is enough, guys. That is enough. And, that is why people said, "Oh, this would not happen in the Steelers' locker room. The Giants or Patriots or teams have sustained, leadership sustained. A long head coach. This would happen in a Miami, Dolphins where they are trying to reestablish their identity.

HAYES: Emily Bazelon from Slate Mike Pesco for NPR and former NFL player, Roman Oben. I really wish we had an hour to talk about this. May be we will have you all back, really. Thank you so much. That is "All In" for this evening. The "Rachel Maddow" Show starts right now. Good evening, Rachel.

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Attachment C

Plans to redistrict Pasadena City Council

After former House Majority Leader **Tom DeLay**'s fall from grace, we thought that Texas politicians would know better than pursue mid-decade redistricting. Not so in Pasadena, where Mayor **Johnny Isbell** is trying to change Pasadena's city council districts.

Isbell proposed last month to replace two of Pasadena's single-member districts with two at-large seats. The Bond/**Charter Review Committee** recommended against moving forward with the changes, at least for the upcoming election. But the proposal alone is distressing enough. Historically, replacing districts with at-large seats has been used to discriminatory ends, and such moves are often blocked by the **Department of Justice**. Only a few months ago, that would have been the case here. Not anymore. For decades, the Voting Rights Act has been a useful speed bump in Texas. Due to our history of discrimination, any alteration to voting laws or processes had to be approved by the Department of Justice. When the **Supreme Court** struck down the part of the VRA that based preclearance requirements on past discrimination, it busted open a hole in that wall, and Texas politicians have wasted no time to climb through.

This newfound lack of federal oversight allows local politicians to implement maps that threaten to discriminate against minority voters. The current individual districts in Pasadena allow large, compact and politically cohesive minority populations to elect the representatives of their choice. Replacing these districts with at-large seats could dilute minority voting power, submerging the voting-bloc in a sea of majority voters.

As our Founding Fathers wrote in the Federalist Papers, our republic cannot function if the full spectrum of our nation's diverse interests do not have representation in government. Decades of discrimination kept vast segments of society away from the table, and only now do we start to see representation rising to the ideals our nation was founded upon. That progress is brought to a halt when cities such as Pasadena make it more difficult for a growing Hispanic population to take part in the democratic process.

Even with the removal of direct barriers to voter registration, historic discrimination in education, housing, employment and health services hinders minority ability to participate effectively in the political process and elect representatives of their choice. Pasadena's city government makes this point painfully clear - Hispanics comprise a majority of the voting-age population, and a majority of a voting-age population in six of the eight city council districts, but have yet to turn that into electoral success.

Anyone who cares about functioning government should be troubled by such a disconnect between population and representation.

Attachment D

NewsRoom

8/27/13 Hous. Chron. B1
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Houston Chronicle

August 27, 2013

Section: B

Suit blasts Galveston judge plan as biased County commissioners are trying to cut number of justice of peace courts

Harvey Rice

GALVESTON - A Galveston County plan slashing the number of justice-of-the-peace districts from eight to four intentionally discriminates against minority voters and should be blocked, according to a federal lawsuit filed Monday.

The lawsuit comes exactly one week after Galveston County commissioners approved a redistricting plan for justices of the peace similar to one rejected last year by the U.S. Justice Department. The department opposed the plan because it reduced the number of districts with black and Hispanic majorities from two to one, as does the one adopted last week.

Galveston County was the first Houston-area government to take advantage of the June 25 U.S. Supreme Court decision to change an election law that otherwise might have been blocked by the Justice Department. The decision in Shelby County v. Holder effectively ended a requirement that Texas governments receive Justice Department approval before making any changes affecting voting. Since then Pasadena has asked voters to approve a redistricting plan that previously was blocked by the Justice Department, and the city of Galveston is considering doing so.

By cutting the number of justice of the peace districts in half, Galveston commissioners reduced the number of judges from nine to four. Although the county has eight districts, there are nine justices of the peace because two are elected from a single precinct, an unusual arrangement arrived at under a 1992 consent judgment in a discrimination lawsuit.

'They did it anyway'

Attorney Joe Nixon, whose firm was hired by the county to redraw the justice-of-the-peace districts, said the plan is in compliance with the 1965 Voting Rights Act. "It's hard to say there was race involved when of the five seats lost one was a minority and four were non-minorities," Nixon said. He said the proportion of minority districts is the same as in the plan the Justice Department approved for commissioner's districts.

Attorney Chad Dunn, who filed the lawsuit, said the new plan is both intentionally discriminatory and has a discriminatory effect. "The county was already told by the Department of Justice that this plan was discriminatory," Dunn said. "The county knew the plan was discriminatory, and they did it anyway."

Seeking injunction

Commissioners said the number of districts needed to be reduced to improve efficiency and save money. They argued that the change would save $1 million annually, noting that two of the existing justices of the peace accounted for only 2 percent of the county caseload.

The lawsuit by two black justices of the peace, two black constables, a Hispanic constable and a black Galveston County resident asks the court for an injunction halting the use of the new districts in November elections.

The lawsuit also asks the court to declare that the new plan dilutes the voting strength of minority voters in violation of the Voting Rights Act and it amounts to unconstitutional gerrymandering. It also asks the court to reinstate the requirement for Justice Department approval of changes to election policies.

'Like Pearl Harbor'

The president of the city of Galveston chapter of the National Association for the Advancement of Colored People, David Miller, said he was upset that the lone minority commissioner on the court, Stephen Holmes, who is black, was not consulted about the change and that it was made without public hearings. "That was like Pearl Harbor. That was a sneak attack," Miller said.

The failure to consult Holmes was a reason cited last year by the Justice Department for blocking a plan to redistrict commissioner's districts and is another reason for asking the court to halt the latest redistricting plan, Dunn said.

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---- Index References ----

News Subject: (Minority & Ethnic Groups (1MI43); Social Issues (1SO05); Government Litigation (1GO18); Judicial Cases & Rulings (1JU36); Legal (1LE33))

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Attachment E

dallasnews

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Voter ID woes could soar in higher-turnout elections, officials fear

By BRITTNEY MARTIN
Austin Bureau
bmartin@dallasnews.com
Published: 24 November 2013 10:36 PM
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AUSTIN — Delays at the polls this month due to glitches with voters' identifications could signal a bigger problem to come next year, when many more turn out for state and county elections.

Thousands of voters had to sign affidavits or cast provisional ballots on Nov. 5 — the first statewide election held under the state's new voter identification law — because their name on the voter rolls did not exactly match the name on their photo ID.

It took most only a short time, but election officials are concerned that a few minutes per voter to carefully check names and photos against voter registration cards, and then to have voters sign affidavits or fill out provisional paperwork, could snowball into longer waits and more frustration.

A review by *The Dallas Morning News* found that 1,365 provisional ballots were filed in the state's 10 largest counties. In most of them, the number of provisional ballots cast more than doubled from 2011, the last similar election, to 2013.

Officials had no exact count for how many voters had to sign affidavits, but estimates are high. Among those who had to sign affidavits were the leading candidates for governor next year, Republican Greg Abbott and Democrat Wendy Davis.

"If it made any kind of a line in an election with 6 percent [voter] turnout, you can definitely imagine with a 58 percent," said Dallas County elections administrator Toni Pippins-Poole.

In Dallas County, 13,903 people signed affidavits affirming their identity.

The statewide election included nine proposed constitutional amendments, along with various local city and school board offices and propositions. It was the first to take place under Texas' 2011 law requiring that voters present a government-issued photo ID when they vote.

Name-match issues might surface for women who recently married or divorced and changed their identification but not their voter registration. For others, a shortened version of a name might appear on one document, while the full name is on the other.

Signing the affidavit didn't interfere with their ballot counting in the election, and election workers were instructed to give the voter the benefit of the doubt on a name-match issue.

Alicia Pierce, a spokeswoman for the secretary of state's office, which oversees elections, said officials worked to make the affidavit process as simple as possible. To sign the affidavit, voters need to initial after their signature on the poll's sign-in sheet.

Voters are also given the option to update their voter registration information at the polls. Pierce said officials hope that shortcut, along with continued voter education campaigns, will cut down on the number of affidavits and provisional ballots needed next time.

Those without the proper ID or who refused to sign an affidavit could fill out a provisional ballot. Such ballots are not counted unless

the voter presented the proper identification to elections officials within six days.

Harris County, the state's largest, had 704 voters fill out provisional ballots. Of those, 105 were cast because the voter failed to show an acceptable photo ID.

Constitutional-amendment elections tend to draw a much lower turnout than elections for the governor, other statewide officials, countywide officials and members of Congress. Voter ID critics fear that means many voters who didn't cast ballots this year will have trouble in March, when the Republican and Democratic parties hold primaries, or next November's general election.

State Rep. Trey Martinez Fischer, D-San Antonio, said longer lines could deter working voters, voters with children and others from voting.

"Voter ID is a solution looking for a problem," said Martinez Fischer, who has worked to defeat the law. "There's not a voter identification problem in the state of Texas."

The law, which the Legislature enacted in 2011, was delayed by the U.S. Justice Department's objection but took effect earlier this year, when the Supreme Court struck down federal oversight of elections in Texas and other states.

Now, Democrats and civil rights groups, along with the Justice Department, are suing to try to overturn the law, arguing that it has a disproportionate effect on minorities. U.S. District Judge Nelva Gonzales Ramos will hold a trial in September in Corpus Christi.

Republicans say requiring ID is a necessary step to eliminating the possibility of fraud in elections.

A *Dallas Morning News* analysis in September found that just four cases of voter irregularity pursued by Abbott, the state attorney general, since 2004 could have been prevented by the photo ID requirement.

Follow Brittney Martin on Twitter at @beedotmartin.

Did you see something wrong in this story, or something missing? Let us know.

Mr. COHEN. Ms. Escobar for 5 minutes.

Ms. ESCOBAR. Chairman Cohen, thank you so much for holding this hearing, especially on this very important anniversary, and thanks to all of our panelists for being here. I am very grateful for your testimony.

Although I will say I am shocked to hear the opinion that Texas has done the right thing when it comes to its voter suppression efforts, because we all know that the consequences to voter suppression completely change the outcome of elections and change the public's ability to have true representation in public office.

Mr. Chairman, I would like to please enter into the record an article about my Governor, who is reportedly—emails show he is behind the effort to purge the voter rolls in Texas, an effort that many of us saw as a surreptitious way to change the outcome of elections, and to try to circumvent the changing demographics in our State.

Mr. COHEN. Without objection, it will be done.

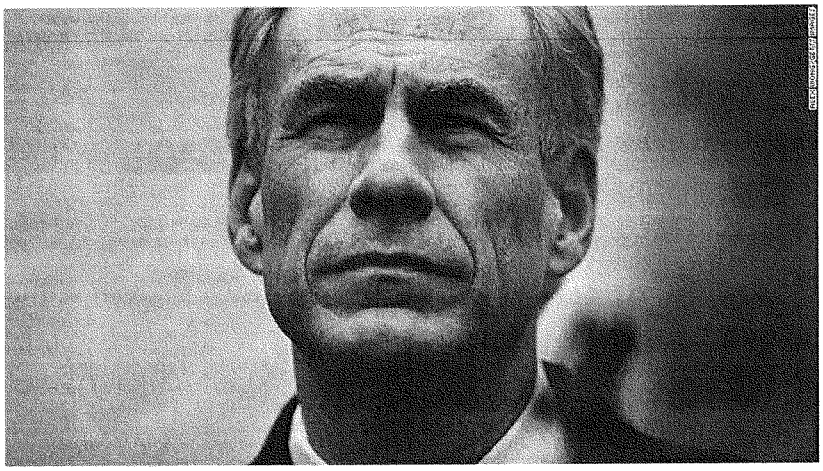
[The information follows:]

MS. ESCOBAR FOR THE OFFICIAL RECORD

Emails show Texas employees saying governor's office pushed for details on voter purge

By Kate Sullivan and Dave Alsup, CNN

Updated 5:13 PM ET, Fri June 7, 2019



(CNN) — Emails between Texas Department of Public Safety employees imply Texas Gov. Greg Abbott's office pushed for details and may have been the driving force behind a failed GOP-led voter purge effort.

The emails were released as a part of a lawsuit against Texas's now-former Secretary of State David Whitley and Texas Attorney General Ken Paxton over their effort to purge nearly 100,000 people suspected of not being US citizens from the state's voter rolls. The San Antonio Express News first reported the emails.

The state settled the lawsuit in the spring and agreed to end the initiative that a prominent Latino civil rights group said intimidated voters based on a false narrative of voter fraud.

Whitley touted that provision within the settlement, saying in a statement that it would allow his office "to develop a sustainable non-citizen list maintenance process."

In one email dated August 27, 2018, John Crawford, a Texas DPS information technology manager, wrote to another DPS employee that Governor Abbott's office was pushing for the effort to move quickly.

"We delivered this information earlier in the year, and we have an urgent request from the Governor's Office to do it again. Is this a canned process that can be executed easily?" Crawford wrote in the email. "Can we do it today?

John Wittman, Abbott's spokesperson, denied that the governor's office pushed for the effort.

"This is patently false. Neither the governor, nor the governor's office gave a directive to initiate this process. No one speaks for the governor's office, but the governor's office," Wittman told CNN in a statement.

"Not one of the emails came from anyone in the governor's office," Wittman added. "No one from the governor's office was cc'ed on the emails."

Wittman said the first time the governor met with Steve McCraw, the head of DPS, about the voter data error was March 2019.

Domingo Garcia, president of the national League of United Latin American Citizens has told CNN that the state's effort was an example of the "severe voter suppression efforts" around the country to improve electoral conditions for Republicans at the expense of minority voters.

"It's based on the fact that Republicans have -- at least in Texas -- have stopped trying to reach out and win Hispanic votes via their policies and ideals and now have resorted to an unfortunate, age-old tradition of voter suppression, going from the Jim Crow laws, poll taxes, whites only primaries, voter-ID and now, you know, purging of voters from the rolls," Garcia said.

Whitley, who led the effort, on behalf of Texas has since resigned as secretary of state after failing to attract sufficient support in the state legislature to stay in the role.

The Campaign Legal Center, which was also involved in the lawsuit, posted the emails online and parts of the emails have been redacted. The CLC subpoenaed documents from the Texas Department of Public Safety regarding their role in the citizenship matching process.

In response to Crawford's email, another DPS employee, Vani Madipadga, emailed back, "Is it SOS Non Citizen file ? We provided the data to them on 05/16/18 .. If it is the same data, it can be executed but Query might take more than an hour to run on Reporting DB."

Crawford responded, "Yes, that's it; they want a new one. ... They've requested changes, but not for this run, so we would run what we have."

CNN has reached out to Crawford and Madipadga for comment.

In a separate email, Amanda Arriaga -- the director of the driver license division at the Texas Department of Public Safety, emphasized to other state officials that Abbott wanted the information.

"The Governor is interested in getting this information as soon as possible," she wrote in an email to Gayatri Vasan, a division support manager in the driver's license division.

"Presuming we were able to change the priorities, please let me know how soon that could be."

CNN has reached out to Arriaga and Vasan for comment.

The lawsuit from LULAC with a coalition of civil rights groups came after Whitley and Paxton released statements claiming the now-former secretary of state's office had discovered about 95,000 potential non-US citizens registered to vote in the state. They said roughly 58,000 of those identified had voted in at least one Texas election.

Whitley's office pledged to investigate and refer individuals who were improperly registered to county registrars for further action, but a federal judge in Texas temporarily blocked the effort in February and said there was no evidence of widespread voter fraud.

CORRECTION: This story has been updated to correct the name of the Campaign Legal Center.

CNN's Devan Cole contributed to this report.

Ms. ESCOBAR. Thank you, Mr. Chairman.

Ms. Abrams, you and I share the fact that we both come from a State that—States, Texas and Georgia, that were previously covered under the preclearance formula. In your testimony, you illustrate the challenges Georgia faces in a post Shelby world, and I see so many parallels between our two States, given the example that I just cited.

Can you please expand on the voter roll purges in Georgia? What are some of the key lessons that you learned that you can share with us through your work with The New Georgia Project and Fair Fight Action? What can Texas learn from Georgia?

Ms. ABRAMS. I am going to decline to answer that question, but I will answer the larger question. I would say, first of all, during the tenure of Secretary of State Brian Kemp, 1.4 million voters were purged. In a single day in 2017, half a million voters were taken off the roll, a reduction of the Georgia rolls by 8 percent.

Now, to the credit of the State, we have a version of automatic registration, which has added about 681,000 voters to the rolls, simply by signing up for their driver's license. The challenge is that a number of those people who are availing themselves of that were unlawfully purged during the 1.4 million-person purge.

The challenge is that in Georgia, we face not only malfeasance, but incompetence. There are people being removed from the rolls who should not be removed. There is no condition for their removal, but we have been able to demonstrate that the communication from the Secretary of State's office has been inadequate to the task.

There has been a constant attempt to defer responsibility to the localities to say that it was the county's fault for not doing so, but the reality is the Secretary of State is the election superintendent. That is the person in charge. The buck stops with that person. And the challenge with the way voter purging happens is that no one is responsible, but voters are losing their rights.

In the State of Georgia, there has been an argument that because we had the highest turnout record in Georgia for voter turnout in 2018, there could not have been voter suppression. I would argue that that is the moral equivalent of saying that because more people get in the water, there can't be sharks.

The reality is that voter suppression is adapting to the changing demographics of our country, and the reality is that voter purging is one of the tools used. It may be an imperfect tool, because people will continue to seek their rights. They believe that they have the right to vote. I grew up with parents who instilled in me a respect for that right, and there are those who will aggressively and assiduously pursue it, but there are so many others, who when rejected by their State, when rejected by their government, they turn away, and they do not return.

And that is what is so pernicious about voter suppression, that we have people who believe now that they have no voice because of error, because of intentionality, and because of racial discrimination. And those are challenges that not only affect Georgia, but they affect the rest of the country.

One thing I will say is that I do believe that one of the opportunities we have here is to expand the coverage of Section 5. I do believe that there is a broader need for Section 5 to not simply be

afforded or to provide coverage to those States that have a history of bad action, because the reality is more States have joined the party. More States have decided that because they cannot win elections fairly if there is full participation, then the goal is to limit who can participate. And that is a fundamental flaw in the process, and it is dangerous to our democracy, and we have to recognize that voter suppression, while it may target voters of color, it will affect us all.

Ms. ESCOBAR. Thank you, Ms. Abrams.

Mr. Chairman, I yield back.

Mr. COHEN. Thank you so much for your courtesy.

Ms. Jackson Lee is recognized for 5 minutes.

Ms. JACKSON LEE. Let me thank the committee for holding this very important hearing, and for the record, I would like to put the following statement in.

[The information follows:]

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Washington, DC 20515
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HOUSTON, TX 77002
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ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
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(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
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Congress of the United States
House of Representatives
Washington, DC 20515

JUDICIARY
SUBCOMMITTEES:
CRIME, TERRORISM, AND HOMELAND SECURITY
RANKING MEMBER
IMMIGRATION, BORDER SECURITY, AND CLAIMS

HOMELAND SECURITY
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MEMBER
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE

CO-CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

9

U.S. HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES
Subject: Continuing Challenges to the Voting Rights Act Since Shelby County v. Holder
Hearing Statement
Tuesday, June 25, 2019
2:00 P.M.
2141 RAYBURN HOUSE OFFICE BUILDING

- Thank you Chairman for convening this hearing on the Congressional Authority to Protect Voting Rights After Shelby County v. Holder.
- I would also like to thank our witnesses today:
    - The Honorable Stacey Abrams, founder of Fair Fight Action and former Georgia gubernatorial candidate;
    - Kristen Clarke, President and Executive Director, National Lawyers' Committee for Civil Rights Under Law;
    - Leah Aden, Deputy Director of Litigation, NAACP Legal Defense and Educational Fund; and
    - The Honorable Kyle Hawkins, Solicitor General of the State of Texas.
- For the record, I would like to put the following statement in from just after the purging of approximately 98,000 individuals in the state of Texas
    - by Solicitor General Hawkins: "Republican officials were quick to claim that the Secretary of States actions were further evidence of a growing threat of wide-spread voter fraud.
    - On January 25, 2019, Texas Attorney General sent a Tweet proclaiming, "Voter Fraud Alert: the Secretary of State discovered approximately 95,000 individuals identified by

DPS as non-citizens having a matching voter registration record in Texas. Approximately 58,000 of whom voted in Texas elections. Any illegal vote deprives Americans of their voice."

- President Donald Trump tweeted, "58,000 non-citizens voted Tuesday in the state of Texas, with 95,000 non-citizens registered to vote. These numbers are just the tip of the iceberg. All over the country, especially in California, voter fraud is rampant. Must be stopped. Strong voter ID."

- Purging suppresses and oppresses the vote.
- It creates an aura of fear that is felt in my district.
- In Harris County, we had a system where voters were getting purged from the rolls, effectively requiring people to keep active their registrations.
- The Subcommittee has highlighted some of the areas in which we need to examine as a result of the demise of preclearance.
- The Texas Secretary of State's claim last week that his office had identified 95,000 possible noncitizens on the voter rolls and gave the list to the attorney general for possible prosecution — leading to a claim from President Trump about widespread voter fraud and outrage from Democrats and activist groups.

- The exaggeration when national leadership takes up the position that voter fraud is rampant in the country creates an aura of fear.
- The problem was the list the Secretary of State pushed was not accurate.
- At least 20,000 names turned out to be there by mistake, leading to chaos, confusion, and concern that people's eligibility vote was being questioned based on flawed data.
- The list was made through state records going back to 1996 that show which Texas residents were not citizens when they got a driver's license or other state ID.
- But a lot of people who may have had green cards or work visas at the time they got a Texas ID are on the secretary of state's office's list, and many have become citizens since then — nearly 50,000 people get US citizenship in Texas annually.
- Latinos made up a big portion of the 95,000-person list.
- They're also a large voter base in Texas that helped almost get Democrat Beto O'Rourke elected in the 2018 Senate race against Republican Ted Cruz.
- Now advocates fear state officials are trying to suppress the growing strength of Latino votes by criminalizing new citizens.
- I am heartened that my home county of Harris is taking control in Texas.

- Harris County elections officials say they will do their own research on the affected voters before sending out notices that would give them 30 days to present documents to prove their citizenship, as recommended by the Secretary of State's Office.
- "We are going to proceed very carefully," said Douglas Ray, a special assistant county attorney in Harris who specializes in election issues.
- Harris County elections officials say they will do their own research on the affected voters before sending out notices that would give them 30 days to correct any remedy and present documents to prove their citizenship, as recommended by the Secretary of State's Office.
- "We are going to proceed very carefully," said Douglas Ray, a special assistant county attorney in Harris who specializes in election issues. "We're going to make sure we don't improperly disenfranchise anyone."
- Just a cursory review has exposed thousands of errors.
- This is the harm that can be done without preclearance, so on a federal level, there is an impetus to act.
- We know there is a system to clean and maintain the rolls to keep them accurate.

- The approach that has been taken is so flawed and directed at communities of color.
- Minority voters are disproportionally affected by purging.
- The 5th Circuit has never been supportive of Civil Rights legislation through the ages.
- There is no reason for Section 5 not to be reinstituted.
- I was proud when we held a hearing earlier this year on HR 1, the For The People Act, legislation from Congressman Sarbanes of which I am proud to be an original cosponsor – we examined all the onerous ways our democracy has been burdened by the lack of preclearance.
- We are actively exploring all the ways in which we can strengthen our democracy and this hearing aides in the process.
- I look forward to hearing from our witnesses today during this hearing and I yield back to the Chairman.

Ms. JACKSON LEE. Just after the purging of approximately 98,000 individuals in the State of Texas, Solicitor General Hawkins, Republican officials were quick to claim that the Secretary of State's actions were further evidence of growing threat of widespread voter fraud. On January 25, 2019, the Texas Attorney General sent a tweet proclaiming voter fraud alert. The Secretary of State discovered approximately 95,000 individuals—this is all a quote—identified by DPS as noncitizens having a matching voter registration record in Texas, approximately 58,000 of whom had voted in Texas elections. Any illegal vote deprives Americans of their voice. President Donald Trump tweeted 58,000 noncitizens voted in Texas, with 95,000 non-citizens registered to vote. These numbers are just the tip of the iceberg. All over the country, especially in California voter fraud is rampant. Must be stopped. Strong voter ID.

Ms. Abrams, first of all, thank you for the work that you are doing in your new leadership, and certainly everyone watched the numbers of purging that occurred in Georgia. We are stuck on that, because I think you made a point is that purging suppresses and oppresses the vote, and it creates an aura of fear which happened in my Congressional district.

So would you expand on that, with the aura of fear of purging, and also the exaggeration or the tilt when national leadership takes up the position that voter fraud is rampant across the country?

Ms. ABRAMS. Certainly. Thank you for the question, Congresswoman. I would say, first, that there is a legitimate purpose to maintaining effective voter rolls. There is a legitimate purpose to laws that allow for the cleaning of rolls for people who have passed way, for people who are no longer eligible to vote, for people who moved from the State, and I do not believe there is any well-intentioned person who would say that cleaning and maintaining the rolls is improper.

But what we argue is that the approach that has been taken has been so egregious and so flawed and sometimes so directly intended to harm voters of color, that we have undermined the intention of actually maintaining access to the rolls.

In the State of Georgia, as I pointed out, 1.4 million people were purged between 2010 and 2018. Half a million were purged in a single day in the State of Georgia. That should raise alarms for anyone, because the reality is when you show up to vote, and you are told that you cannot cast a ballot because you have been removed from the rolls, even though you know that you should not have been, you are now called upon to become your own attorney, to argue with who is likely a volunteer that you have the right to vote. And if you happen to be in one of those hypersuppressive communities, that ability may be quashed.

Georgia relied on an historic number of provisional ballots in the 2018 election. That meant that people cast their votes, believing they were allowed to actually make a choice only to have those votes later thrown out, and we have found a disturbing number of people who were given provisional ballots not because they were not effectively registered but because of the malfeasance and incompetence of the Secretary of State's office.

Ms. JACKSON LEE. Thank you. Solicitor General Hawkins, would you not argue, or could you not support the fact that minority voters are disproportionately affected by purging, and as I listen to your argument about having prevailed in the appellate court, you are right. As a lawyer, I understand the chances you take, but it is well known that the Fifth Circuit has never been supportive of civil rights legislation through the ages, so it is nothing unusual that you would have prevailed.

My question, again, to you is, do you not see the purpose of looking to, or the purpose of purging outside of what gubernatorial candidate Abrams indicated of cleaning the rolls that you have seen being utilized to purge minority voters, particularly in Texas?

Mr. HAWKINS. Thank you for the question, Representative. First, I am not familiar with the lay of the landscape in Georgia, and I am not familiar with——

Ms. JACKSON LEE. I am only asking you about Texas and the anecdote—not the anecdote but the statement that I read about the joy of purging 95,000 individuals through the Secretary of State's office in Texas.

Mr. HAWKINS. Representative, 95,000 individuals were not purged.

Ms. JACKSON LEE. Only after a lawsuit was filed.

Mr. HAWKINS. The Secretary of State does not have the power to remove anybody from the voter rolls.

Ms. JACKSON LEE. They sent the information to our local counties, and I can tell you, it created hysteria.

Mr. HAWKINS. And they may remove individuals from the voter rolls in counties only after a number of safeguards, including judicial review, have been surpassed. I think it is important to note that Texas——

Ms. JACKSON LEE. The chilling effect was already there.

Mr. HAWKINS. I am sorry, Representative?

Ms. JACKSON LEE. The chilling effect was already present.

Can you answer about Section 5? Is there any reason for Section 5 not to be reimplemented?

Mr. HAWKINS. Yes. The Supreme Court's decision in Shelby County, which held that preclearance under the current landscape is unconstitutional.

Ms. Jackson Lee. If Congress is to reinstitute it, would there be any reason not to have it reinstituted? I understand Shelby.

Mr. HAWKINS. The Congress should pass legislation that is constitutional. In fact, Congresspersons have sworn an oath to the Constitution of the United States.

Ms. JACKSON LEE. We intend to do that.

Mr. COHEN. Our time is up. Our time is up.

Ms. JACKSON LEE. Thank you. We intend to do that. Thank you.

Mr. COHEN. Our time is up. Thank you.

Mr. Collins wants to come. Is he here? He is. Mr. Gohmert. You would like to have questions? We want to get—they want to ask you questions. You know, it is up to you. He is from Texas, he is blah, blah, blah, and Ms. Abrams, you are free if you want to split.

Mr. Nadler for a brief question, and then Mr. Gohmert.

Chairman NADLER. Thank you.

I was intrigued by something that Ms. Abrams said a few minutes ago when she said that, if I understood you correctly, that history of discrimination is not sufficient—I don't mean that—is not the only thing, is not the only thing that should justify preclearance. What else, in your opinion, should justify preclearance?

Ms. ABRAMS. What we have found, not only through the work I have done in Georgia, but through conversations with colleagues in other States is that what is currently happening is that as demographic changes occur, and there are increasing numbers of people of color who have the right to vote, we are seeing a concomitant increase in the hurdles that are being placed in front of them to diminish their opportunity to vote. That has been seen in Wisconsin, in Ohio, in North Carolina. Across the country, we have seen increases in the chilling effect on the access to the right to vote. And therefore, any restoration of Section 5 should, I believe, set a universal standard that disallows any processes that would diminish the ability for people of color to access the right to vote, based not only on historical precedent, but based on current operations and current activities.

Chairman NADLER. Thank you very much.

Mr. COHEN. Thank you. And we have cabs for you all, and we will ask everybody to stay seated when we finish so they can get out and get to their cabs, and no pictures, no autographs. They have to make their cabs.

Mr. Gohmert.

Mr. GOHMERT. Thank you. Mr. Hawkins, I know you are trying to catch a plane. Anything you need to respond to? I had some questions for you, and especially with regard to how Texas uses Section 2 of the Voting Rights Act. But anything based on what you have heard you want to add before you have to go?

Mr. HAWKINS. Thank you, Representative. I think it is important to underscore that Texas has a duty under State and Federal law to ensure that its voting rolls are accurate as does every other State. And, in fact, Texas has a compelling interest in ensuring that ineligible voters do not vote.

Now, why is that so? It is because any time somebody votes unlawfully, that suppresses the vote of a lawful voter. And that is why we are seeing not just Texas, but many other the States, including just this week California, auditing voter rolls to ensure that only registered voters are—that only eligible voters are registered to vote. That is the purpose of auditing voter rolls, to ensure that the right to vote is protected because if somebody who is ineligible to vote votes, that suppresses the vote of a lawful citizen.

Mr. GOHMERT. I appreciate your efforts so much, and I would like to indicate for the record, and I won't have any further questions, Mr. Hawkins. I am told that you are trying to get away.

But with regard to the need for this hearing and all, I think it is important to note the facts on the reauthorization of this. I was fairly new here in Congress, but it seemed very clear to me that since Section 4 had not been changed for about 40 years, it was still penalizing States for sins, wrongs, decades before by fathers and grandfathers, so to speak. And so, I know Chairman Sensen-

brenner was pushing hard. He didn't want changes. He was not open to my suggestions.

But we looked at a map of areas where there was a very definite problem, a disparity in the numbers based on racial voting, and there were some problems around the country that were not included in the States that had to get Section 5 clearance. And I had an amendment that would require any State that had a significant disparity in racial voting, they had to fall under Section 5.

And let's update that, Section 4. Let's get a new standard in there. And Chairman Sensenbrenner said, Absolutely not. We are not changing it. And as I recall, there was a district in Wisconsin that had a significant disparity problem that might have fallen under Section 5. And Mr. Conyers was much more open to the idea of having an amendment that would require any district, any State in the country with a racial disparity problem would have brought them under Section 5.

And I said most recently before the second time I talked to him, he was open to it. He said, you know, Louie, I have been talking to some of our experts, and they say Yeah, it is a risk. It might get struck down, so why don't we just go ahead and wait and see what happens? And I said I just talked to the previous dean of New York University Law School, and he said he sees a substantial chance that it will be struck down by the Supreme Court when it gets there. But the bill was done. They would not allow my amendment to be passed, and therefore, it would continue to punish only those who had engaged in wrongdoing decades before instead of bringing it current to make districts, States that were failing to have fairness racially have to answer under Section 5. And just as I predicted, just as others predicted, it got struck down, and we are still here without a modification that could have been done back in that reauthorization.

So anyway, I am hoping that we will work things out. I am proud of the way Texas has been using Section 2 litigation to get this straight or get problems straightened out even without changes to Section 4, and I appreciate the chance to air these matters, and I yield back. Thank you very much.

Mr. COHEN. Thank you, sir.

We have got two more people that want to ask questions. If either one of you want to leave, you are free to leave.

Mr. HAWKINS. Thank you, Mr. Chairman. I have to take off.

Mr. COHEN. You agreed to 15 minutes. You did it. Thank you so much for your testimony.

Ms. Abrams, we have got people willing to take you to the cab and get you out of here.

Ms. ABRAMS. I can stay.

Mr. COHEN. Great. Thank you, sir.

First, Ms. Dean, you are recognized for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman, and I thank all of the witnesses, those who had to leave and those for sharing your views and your expertise.

As we know, this is an important subcommittee hearing. This is an important set of issues. Suffrage is as fundamental a right as any in our Constitution, and the right to vote lies at the very heart of our democracy, that delicate democracy. Benjamin Franklin fa-

mously noted that the Framers left us with a Republic, but only if we could keep it, and of course, central to keeping it is public participation in elections. A government of the people, by the people, for the people should mean all the people.

And so I was interested—I apologize. I stepped out to go to another meeting, so if I am being redundant, I apologize. I hope I am not. I had terrific scouts here listening.

One of the things I was interested in, under Section 5, jurisdictions were required to provide racial impact data to the Attorney General as part of the preclearance review process, including information on the anticipated effect on racial minority groups and also, where necessary, information on demographics, maps, annexations, election returns, language usage. Can you tell me, is that kind of data still being collected post Shelby?

Ms. ABRAMS. I will defer to Ms. Aden.

Ms. DEAN. Ms. Aden.

Ms. ADEN. So you are absolutely correct that through the process, the burden was on jurisdictions to shine a light on what they were planning to change, and the burden was on them to show what was the impact. Was it going to lessen the ability of people of color, Native American, African American, Asian American, Latino to be able to participate? And as it stands, what H.R. 4 does and what we need is that notice again of the voting changes and the burden to show what the impact is to be placed on the jurisdictions seeking to implement that law.

Ms. DEAN. That is the other piece of it, and from anecdotal and your personal experience, the other piece is what you just said, shine a light on the proposed changes so the public was on notice. The public notice piece. And I assume that has now dropped away because we no longer have the Section 5 preclearance.

So it is not only shine a light before any changes, the education of voters, but then also collect the data after to see what the impact. So now as a result of Shelby, we are not doing either. Is that right?

Ms. ABRAMS. Correct. Under Fair Fight Action, we filed Federal litigation, and among our proofs, we were able to demonstrate that due to the purging of voters and the patterns of purging and the number of people who were forced to cast provisional ballots because of the ineffectiveness and the malfeasance of that process, there is essentially a racial map of African American communities that were subject to casting provisional ballots which have to be remedied. And if you are a working person, you might get Tuesday off. There is no allocation in State law to give you Wednesday and Thursday to go back and fix something that should never have been broken.

Ms. DEAN. Right.

Ms. ABRAMS. We also know that Georgia had an extraordinary number of poll closures. We had 214 polls close out of roughly 3,000. Those are largely African American communities. And while those poll closures may have been permissible because of some nuance of law, what we found was that there was a disproportionate effect on communities of color, largely African American, particularly poor. If you do not own transportation, and there is no public transportation, the closure of a polling place that is 2 miles from

your house now being moved to 10 miles from your house has not only a chilling effect on your right to vote, it absolutely negates your ability to cast that vote.

Ms. DEAN. I couldn't say it any more eloquently than that. I come from a previous experience in the Pennsylvania legislature, pre-Shelby. Before I had gotten there in 2011, I guess, or early 2012, Pennsylvania passed a voter ID law which was ultimately struck down as unconstitutional, but I was a brand new State representative trying to help people navigate the world of what am I going to do if I need some sort of specified identification. We know exactly what that was intended to do.

And I will close with this notion because I wasn't here. Sometimes I think witnesses have something they wish they could have been asked, and they didn't get the chance to say it, so may I ask you, Ms. Abrams, is there something more that you wanted to say, and the same to you, Ms. Aden.

Ms. ABRAMS. I do think, and I want to reiterate this false connection that is being drawn between voter turnout rates among communities of color, and voter suppression. These are not correlated. One can have intentional laws and practices to discriminate against voters and have a concomitant effort by communities that care about these issues to push back and to provide access. I am a part of a long legacy of people who have responded to oppression by making certain that we overreact, and that we overperform, but we cannot ignore the fact that that discrimination still exists. Discrimination doesn't cease to exist simply because there are those who are willing to fight back. That fighting back should demonstrate how important it is to eliminate the discrimination on its face.

Ms. DEAN. Thank you, Ms. Aden.

Ms. ADEN. And I just want to correct that. The reason why we focus on Texas is because we love Texas. In fact, we love the voters of Texas. We want people to participate. So I don't want today to be a show just about Texas or just about Georgia. As Ms. Abrams said, Congress can and must hold hearings and look at the landscape of voter suppression across the country. Look at what is happening to Native American voters in North Dakota, where they are required to have an address on their photo ID, even though many live on reservations and do not have that. Look at Kansas where one polling place was left open, and it was out of town, and there is no public transportation. Look at Wisconsin, which has been invoked. Look across the country. And it cannot be the case that we are happy with the way that elections are taking place in our country. It is unacceptable. And it is because we love the people who want to participate that is incumbent upon us to work to fix the problem.

Mr. COHEN. Thank you very much. Thank you, Ms. Dean. Now we recognize Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Ms. Abrams, and one of the things that is good about this, and I am glad you are here. In 2011, back in a different time in a different world for both of us, you voted in favor of a bill to reduce early voting period to 3 weeks and add a Saturday, correct?

Ms. ABRAMS. Correct.

Mr. COLLINS. House Bill 92. I will enter that into the record. It has been stated earlier by the chairman of this committee——

Mr. COHEN. Without objection.

[The information follows:]

MR. COLLINS FOR THE OFFICIAL RECORD

Georgia General Assembly

2011-2012 Regular Session
[HB 92]

House Vote #47 (PASSAGE)

Yea (Y): 148 Nay (N): 20 Not Voting (-): 4 Excused (E): 8

N : ABDUL-SALAAM, 74TH
Y : ABRAMS, 84TH
Y : ALLISON, 8TH
Y : AMERSON, 9TH
Y : ANDERSON, 117TH
Y : ASHE, 56TH
Y : ATWOOD, 179TH
Y : AUSTIN, 10TH
Y : BAKER, 78TH
Y : BATTLES, 15TH
Y : BEARDEN, 68TH
N : BEASLEY-TEAGUE, 65TH
Y : BELL, 58TH
Y : BENFIELD, 85TH
Y : BENTON, 31ST
Y : BLACK, 174TH
Y : BRADDOCK, 19TH
Y : BROCKWAY, 101ST
N : BROOKS, 63RD
N : BRUCE, 64TH
Y : BRYANT, 160TH
Y : BUCKNER, 130TH
Y : BURNS, 157TH
E : BYRD, 20TH
Y : CARTER, 175TH
Y : CASAS, 103RD
E : CHANNELL, 116TH
Y : CHEOKAS, 134TH
Y : CLARK, 104TH
Y : CLARK, 98TH
Y : COLEMAN, 97TH
Y : COLLINS, 27TH
Y : COOKE, 18TH
Y : COOMER, 14TH
Y : COOPER, 41ST
Y : CRAWFORD, 16TH
Y : DAVIS, 109TH
Y : DAWKINS-HAIGLER, 93RD
Y : DEMPSEY, 13TH
N : DICKERSON, 95TH
Y : DICKSON, 6TH
Y : DOBBS, 53RD
Y : DOLLAR, 45TH
Y : DRENNER, 86TH
Y : DUDGEON, 24TH
E : DUKES, 150TH
Y : DUTTON, 166TH
Y : EHRHART, 36TH
Y : ENGLAND, 108TH
Y : EPPS, 128TH
Y : EPPS, 140TH
N : EVANS, 40TH
Y : FLOYD, 99TH
Y : FLUDD, 66TH
N : FRANKLIN, 43RD
Y : FRAZIER, 123RD
Y : FULLERTON, 151ST
Y : GARDNER, 57TH
Y : GEISINGER, 48TH
Y : GOLICK, 34TH
Y : GORDON, 162ND
Y : GREENE, 149TH
Y : HAMILTON, 23RD
Y : HANNER, 148TH
Y : HARBIN, 118TH
Y : HARDEN, 147TH
Y : HARDEN, 28TH
Y : HARRELL, 106TH
Y : HATCHETT, 143RD
Y : HATFIELD, 177TH
Y : HEARD, 114TH
N : HECKSTALL, 62ND
Y : HEMBREE, 67TH
Y : HENSON, 87TH
E : HILL, 21ST
Y : HOLCOMB, 82ND
Y : HOLMES, 125TH
Y : HOLT, 112TH
Y : HORNE, 71ST
Y : HOUSTON, 170TH
Y : HOWARD, 121ST
Y : HUCKABY, 113TH
Y : HUDSON, 124TH
N : HUGLEY, 133RD
Y : JACKSON, 142ND
Y : JACOBS, 80TH
Y : JAMES, 135TH
Y : JASPERSE, 12TH
Y : JERGUSON, 22ND
E : JOHNSON, 37TH
N : JONES, 44TH
E : JONES, 46TH
Y : JORDAN, 77TH
Y : KAISER, 59TH
N : KENDRICK, 94TH
Y : KIDD, 141ST
Y : KNIGHT, 126TH
Y : LANE, 167TH
Y : LINDSEY, 54TH
Y : LONG, 61ST
N : LUCAS, 139TH
Y : MADDOX, 127TH
Y : MADDOX, 172ND
Y : MANNING, 32ND
E : MARIN, 96TH
Y : MARTIN, 47TH
Y : MAXWELL, 17TH
N : MAYO, 91ST
Y : MCBRAYER, 153RD
Y : MCCALL, 30TH
Y : MCKILLIP, 115TH
Y : MEADOWS, 5TH
Y : MILLS, 25TH
Y : MITCHELL, 88TH
N : MORGAN, 39TH
Y : MORRIS, 155TH
Y : MOSBY, 90TH
Y : MURPHY, 120TH
Y : NEAL, 1ST
Y : NEAL, 75TH
Y : NIX, 69TH
Y : O'NEAL, 146TH
Y : OLIVER, 83RD
Y : PAK, 102ND
Y : PARENT, 81ST
Y : PARRISH, 156TH
Y : PARSONS, 42ND
Y : PEAKE, 137TH
Y : POWELL, 171ST
Y : POWELL, 29TH
Y : PRUETT, 144TH
Y : PURCELL, 159TH
- : RALSTON, 7TH
Y : RAMSEY, 72ND
E : RANDALL, 138TH
Y : REECE, 11TH
Y : RICE, 51ST
Y : RILEY, 50TH
Y : ROBERTS, 154TH
Y : ROGERS, 26TH
Y : RYNDERS, 152ND
Y : SCOTT, 2ND
N : SCOTT, 76TH
Y : SETZLER, 35TH
Y : SHAW, 176TH
Y : SHELDON, 105TH
Y : SIMS, 119TH
Y : SIMS, 169TH
N : SMITH, 122ND
Y : SMITH, 129TH
Y : SMITH, 131ST
Y : SMITH, 168TH
Y : SMITH, 70TH
Y : SMYRE, 132ND
Y : SPENCER, 180TH
Y : STEPHENS, 161ST
Y : STEPHENS, 164TH
N : STEPHENSON, 92ND
Y : TALTON, 145TH
Y : TANKERSLEY, 158TH
Y : TAYLOR, 173RD
N : TAYLOR, 55TH
Y : TAYLOR, 79TH
Y : TEASLEY, 38TH
Y : THOMAS, 100TH
N : TINUBU, 60TH
- : VACANT
- : VACANT
Y : WALKER, 107TH
Y : WATSON, 163RD
Y : WELCH, 110TH
- : WELDON, 3RD
N : WILKERSON, 33RD
Y : WILKINSON, 52ND
Y : WILLARD, 49TH
Y : WILLIAMS, 165TH
Y : WILLIAMS, 4TH
Y : WILLIAMS, 89TH
Y : WILLIAMSON, 111TH
Y : YATES, 73RD

Georgia General Assembly

2011-2012 Regular Session - HB 92
Elections; in-person absentee balloting; provide limitations

Sponsored By

(1) Hamilton, Mark 23rd
(2) Meadows, John 5th
(3) England, Terry 108th
(4) Mosby, Howard 90th
(5) Heard, Keith 114th
(6) Sheldon, Donna 105th

Sponsored In Senate By

Butterworth, Jim 50th

Committees

HC: Governmental Affairs
SC: State and Local Governmental Operations

First Reader Summary

A BILL to be entitled an Act to amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to provide limitations on when in-person absentee balloting may be conducted; to provide for a period of advance voting; to provide for procedures; to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

Status History

Jul/01/2011 - Effective Date
May/13/2011 - Act 241
May/13/2011 - House Date Signed by Governor
Apr/21/2011 - House Sent to Governor
Apr/11/2011 - Senate Passed/Adopted
Apr/11/2011 - Senate Third Read
Apr/11/2011 - Senate Engrossed
Mar/23/2011 - Senate Read Second Time
Mar/22/2011 - Senate Committee Favorably Reported
Feb/23/2011 - Senate Read and Referred
Feb/22/2011 - House Passed/Adopted By Substitute
Feb/22/2011 - House Third Readers
Feb/16/2011 - House Committee Favorably Reported By Substitute
Feb/01/2011 - House Second Readers
Jan/31/2011 - House First Readers
Jan/27/2011 - House Hopper

Footnotes

2/22/2011 Modified Structured Rule; 2/22/2011 Passed House by Rules Committee Substitute; 4/11/2011 Engrossed upon 3rd reading in Senate

Votes

Apr/11/2011 - Senate Vote #254	Yea(34)	Nay(20)	NV(2)	Exc(0)
Apr/11/2011 - Senate Vote #250	Yea(33)	Nay(19)	NV(3)	Exc(1)
Feb/22/2011 - House Vote #47	Yea(148)	Nay(20)	NV(4)	Exc(8)

Versions

HB 92/AP*
LC 28 5559S/rcs
LC 28 5479S/hs
LC 28 5416/a

House Bill 92 (AS PASSED HOUSE AND SENATE)

By: Representatives Hamilton of the 23rd, Meadows of the 5th, England of the 108th, Mosby of the 90th, Heard of the 114th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to provide limitations on when in-person absentee balloting may be conducted; to provide for a period of advance voting; to provide for procedures; to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, is amended by revising paragraph (2) of subsection (b) of Code Section 21-2-381, relating to making application for an absentee ballot, as follows:

"(2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and ~~shall either~~ then:

(A) Shall mail the ballot as provided in this Code section;

(B) If the application is made in person, shall ~~or~~ issue the ballot to the elector to be voted within the confines of the registrar's or absentee ballot clerk's office if issued during the advance voting period established pursuant to subsection (d) of Code Section 21-2-385; or

(C) May deliver the ballot in person to the elector if such elector is confined to a hospital."

SECTION 2.

Said chapter is further amended by revising subsections (a) and (b) of Code

general election, prepare, obtain, and deliver an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election. Envelopes and other supplies as required by this article may be ordered by the superintendent, the board of registrars, or the absentee ballot clerk for use in the primary or election.

(2) The board of registrars or absentee ballot clerk shall, within two days after the receipt of such ballots and supplies, mail or issue official absentee ballots to all eligible applicants. As additional applicants are determined to be eligible, the board or clerk shall mail or issue official absentee ballots to such additional applicants immediately upon determining their eligibility; provided, however, that no absentee ballot shall be mailed by the registrars or absentee ballot clerk on the day prior to a primary or election and provided, further, that no absentee ballot shall be issued on the day prior to a primary or election. The board of registrars shall, at least 45 days prior to any general primary, or general election other than a municipal general primary or general election, as soon as possible prior to a runoff, and at least 21 days prior to any municipal general primary or general election, mail or electronically transmit official absentee ballots to all electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.

(3) The date a ballot is voted in the ~~registrars'~~ registrar's or absentee ballot clerk's office or the date a ballot is mailed or issued to an elector and the date it is returned shall be entered on the application record therefor.

(4) The delivery of an absentee ballot to a person confined in a hospital may be made by the registrar or clerk on the day of a primary or election or during a five-day period immediately preceding the day of such primary or election.

(5) In the event an absentee ballot which has been mailed by the board of registrars or absentee ballot clerk is not received by the applicant, the applicant may notify the board of registrars or absentee ballot clerk and sign an affidavit stating that the absentee ballot has not been received. The board of registrars or absentee ballot clerk shall then issue a second absentee ballot to the applicant and cancel the original ballot issued. The affidavit shall be attached to the original application. A second application for an absentee ballot shall not be required.

(b) ~~In~~ Except for ballots voted within the confines of the registrar's or absentee ballot

'Official Absentee Ballot' and nothing else. On the back of the larger of the two envelopes to be enclosed within the mailing envelope shall be printed the form of oath of the elector and the oath for persons assisting electors, as provided for in Code Section 21-2-409, and the penalties provided for in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; and on the face of such envelope shall be printed the name and address of the board of registrars or absentee ballot clerk. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, and the uniform instructions for the manner of preparing and returning the ballot, in form and substance as provided by the Secretary of State and nothing else. The uniform instructions shall include information specific to the voting system used for absentee voting concerning the effect of overvoting or voting for more candidates than one is authorized to vote for a particular office and information concerning how the elector may correct errors in voting the ballot before it is cast including information on how to obtain a replacement ballot if the elector is unable to change the ballot or correct the error."

SECTION 3.

Said chapter is further amended by revising subsection (c) of Code Section 21-2-385, relating to procedure for voting by absentee ballot, and adding a new subsection to read as follows:

"(c) When an elector applies in person for an absentee ballot, after the absentee ballots have been printed, the absentee ballot may be issued to the elector at the time of the application therefor within the confines of the registrar's or absentee ballot clerk's office if such application is made during the advance voting period as provided in subsection (d) of this Code section or may be mailed to the elector, depending upon the elector's request. If the ballot is issued to the elector at the time of application, the elector shall then and there within the confines of the registrar's or absentee ballot clerk's office vote and return the absentee ballot as provided in subsections (a) and (b) of this Code section. ~~The~~ In the case of persons voting in accordance with subsection (d) of this Code section, the board of registrars or absentee ballot clerk shall furnish accommodations to the elector to ensure the privacy of the elector while voting his or her absentee ballot.

(d)(1) There shall be a period of advance voting that shall commence on the fourth Monday immediately prior to each primary or election and as soon as possible prior to a runoff and shall end on the Friday immediately prior to each primary, election, or

and municipalities may extend the hours for voting beyond regular business hours and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option.

(2) The registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted. In addition, the registrars or absentee ballot clerk shall notify the Secretary of State in the manner prescribed by the Secretary of State of the times, dates, and locations at which advance voting will be conducted."

SECTION 4.

Said chapter is further amended by revising Code Section 21-2-385.1, relating to preferential treatment for older and disabled voters, as follows:

"21-2-385.1.

~~Each~~ During the period of advance voting established pursuant to subsection (d) of Code Section 21-2-385, each elector who is 75 years of age or older or who is disabled and requires assistance in casting an absentee ballot in person at the registrar's office, absentee ballot clerk's office, or other locations as provided for in Code Section 21-2-382, shall, upon request to a designated office employee or other individual, be authorized to vote immediately at the next available voting compartment or booth without having to wait in line if such location utilizes direct recording electronic voting systems or be authorized to go to the head of any line necessary to cast a written absentee ballot. Notice of the provisions of this Code section shall be prominently displayed in the registrar's office or absentee ballot clerk's office."

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.

Mr. COLLINS. Thank you [continuing]. By the chairman of this committee that restricting early voting has actually had a disproportionate impact on minority voters. I know that was very much a concern for you at the time, and you and Representative Mark Hamilton had those conversations, and it was showed that there was either no difference in participation, or actually, there was at least a benefit to minority voters at that time. Would you agree with that statement?

Ms. ABRAMS. I would agree, but I believe it is important to clarify. Georgia at the time had an outsized number of early voting days, 45 early voting days. The national standard, the gold standard was 21 days. Therefore, what Georgia did by reducing from 45 to 21 days was to come into conformity with the most appreciated and the most accepted role for early voting.

Mr. COLLINS. Exactly.

Ms. ABRAMS. However, since that time, there were multiple opportunities, multiple attempts made in the Georgia general assembly to actually restrict from 21 to 7 days, and I vigorously opposed every one of those bills and fought them back.

Mr. COLLINS. Reclaiming my time. I was not there. We were there on this one, and I think the interesting issue was is the point that I am making is that when you do carefully calculate, it was to the norm. There was not a discriminal threat, and the statements of broad impact can't be used all the time because it leads to bad decisions when you blanketly say something affects in a disproportionate way.

You just admitted, I just saw, and we had the bill pass. But in that 3-week period which was part of what was actually said by our chairman, it did not do that. A 7-day, we could probably agree on, but in that part, it did not. So you can't blanketly say bringing back early voting does that.

Another issue that has that has come to mind, and I have a question. I am glad you said it and a previous witness. You said there are reasons to keep a voter roll accurate. The question, though, as you come into this process, you stated something earlier about exact match that I am not sure we actually—I want to make sure that we are clear on. And this is a couple yes-nos. 1.4 million were purged. You say that. It is in your written testimony. Do you believe all of those were purged for wrong reasons? Yes or no?

Ms. ABRAMS. Of course not.

Mr. COLLINS. Okay. Let's look at that. The question you also said among the exact match and the 53,000 voter registrations we will use as you put in your thing was held hostage. The question has—and you said it is because of government bureaucrats or government workers who mistakenly put information in, and that is the only reason you have given that these exact match doesn't work. Is it not true that, however, the person who is actually inputting information has to have accurate information to put in so that it is accurate? Would that be a fair statement?

Ms. ABRAMS. I do not believe that fairly characterizes the——

Mr. COLLINS. So you do not believe that a statement, something that is given—if I put a—filled out a form and it was half filled out, or I did not put my last name, or I did not put my date of birth, or I did not put an exact—I did not put an address, is that

a form that can be actually used by a local voter registrar to actually fill out a form that would do an exact match? Yes or no?

Ms. ABRAMS. Sir, it is impossible to provide a yes-or-no answer to that question, because the exact match is not simply the question of what was put on the form. The challenge with exact match is not the entry on the form. It is the database that is then used to verify the access to this information. And so absent the second part of the process, it is an impossibility to give a truthful answer to the question presented.

Mr. COLLINS. But the truth—and you are still as good as I remember you. The issue is here, though, is not this. If it is not right for the exact match, to match what they need to match for verification process, if I turned it in, still did not match it up, it was my input on the form or the person collecting or the group collecting this that did not turn in a form that a person in the voter registration office could actually use to do exact match, not what they were matching to. But if I did not give them proper match, then that is the problem. There has at least got to be the understanding it is not just a government data input problem, and we are not throwing all voter registration people under the bus with this. I think that is the problem that I have in your answer, because it implies a governmental problem, which also goes back to a bigger issue that I have here, and that is the implication that Brian Kemp, the Governor of the State of Georgia, is the person behind all of the problems here.

And this has become a bigger question for the State that you and I love. When you had a former presidential or a presidential—a current presidential candidate come to Georgia and make a statement in your defense and basically said that Stacey Abrams will be Governor of Georgia if Georgia wasn't racist. I don't think that is what you want Georgia to be looked at, and I don't think that is what I wanted, and I have actually talked to this individual. The question is making sure we have accurate voter rolls, even by your group's administration, making sure that our accurate voter rolls are there, and that people have a possibility of doing that.

The question, though—one last question that I have in here, and we could go on, but I know you have got a flight, and I will see you again, hopefully under different circumstances, but one question bugged me from the whole time I watched it. There was a clip, and you said it even afterwards. When we are talking about our voter rolls being there for every person, every citizen, do you believe that non-citizens should vote in the State of Georgia?

Ms. ABRAMS. No, and I have never said that non-citizens should be allowed to vote.

Mr. COLLINS. What did you say, by the way?

Ms. ABRAMS. What I said was that the blue wave which was not a reference to the right to vote, but a reference to the resistance of this administration's policies that have disenfranchised, dehumanized, and harmed the ability for people of the United States of America to fully exercise their rights and freedoms, that the change that would come, which is euphemistically referred to as the blue wave would be achieved by people who are both documented and undocumented. That did not refer to, and in fact, it has been proven through Politifact analysis I never once called for

anyone who is not legally eligible to vote to be able to do so. And I would refer you to our long tenure together, where I worked with Democrats and Republicans to always ensure the integrity of the right to vote. It has been my practice as an adult since my time in college.

And with due respect, the reality is that we as a Nation stand as an emblem of what democracy can mean, and that is diminished when there are irregularities, when there are malfeasance and misfeasance activities that undermine the right to vote. And that is what I have called attention to, and that is the work that I am doing.

Mr. COLLINS. And that is exactly what the problem is, is when we have the far—even from groups taping——

Mr. COHEN. Our time is up. Thank you, Mr. Collins.

I appreciate the panelists coming and your testimony. We will have 5 days for members to come up with questions, and they can submit them in writing, and we would ask you to answer them.

And with that, the hearing is adjourned.

[Whereupon, at 4:53 p.m., the subcommittee was adjourned.]

APPENDIX

ADL®
FIGHTING HATE FOR GOOD

June 26, 2019

The Honorable Steve Cohen
Chairman
House Judiciary Committee
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties

The Honorable Mike Johnson
Ranking Member
House Judiciary Committee
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties

Dear Chairman Cohen and Ranking Member Johnson:

On behalf of ADL (the Anti-Defamation League), we write to urge the House Judiciary Committee to take prompt action to protect Americans' fundamental right to vote by approving H.R. 4, the Voting Rights Advancement Act of 2019 (VRAA). We ask that this statement be included as part of the official hearing record for the subcommittee's June 25, 2019 hearing on "Continuing Challenges to the Voting Rights Act Since Shelby County."

Since the enactment of the Voting Rights Act (VRA) in 1965, a central part of ADL's mission – "to stop the defamation of the Jewish people, and to secure justice and fair treatment to all"—has been devoted to helping to ensure that all Americans have a voice in our democracy. Answering Dr. King's call for "religious leaders from all over the nation to join us…in our peaceful, nonviolent march for freedom," ADL lay leaders and staff joined more than 3,000 Americans in "peaceful demonstration against blind violence, in 'gigantic witness' to the constitutionally guaranteed right of *all* citizens to register and vote in 1965."[1]

ADL continues to work today to ensure that all eligible Americans can exercise their fundamental right to vote through advocacy in the courts, legislatures, and communities.[2] We are proud to have stood with leaders such as Dr. King and Rep. John Lewis in 1965 to fight for every citizen's right to vote and we remain equally committed to this goal today. Recognizing the this landmark law as one of the most important and most effective pieces of civil rights legislation ever enacted, ADL has strongly supported the VRA and its extensions since its passage more than 50 years ago, including by filing a brief in *Shelby County v. Holder*.[3]

In the years and decades following the enactment of the Voting Rights Act of 1965, the law quickly demonstrated its essential value in ensuring rights and opportunities. Between 1964 and 1968 – the presidential elections immediately before and after passage of the VRA respectively – African American

[1] "A Look Back: ADL's Role in Selma and the Voting Rights Act," *ADL* 2015. https://www.adl.org/news/article/a-look-back-adls-role-in-selma-and-the-voting-rights-act
[2] "Safeguarding the Right to Vote" *ADL* https://www.adl.org/resources/tools-and-strategies/safeguarding-the-right-to-vote

voter turnout in the South jumped by seven percentage points.[4] The year after passage of the VRA, Edward Brooke became the first African American in history elected to the United States Senate by popular vote, and the first African American to serve in the Senate since Reconstruction.[5] By 1970, the number of African Americans elected to public office had increased fivefold.[6] Today there are more than 10,000 African American elected officials at all levels of government.[7]

To be sure, Section 2 of the VRA, which prohibits discrimination based on race, color, or membership in a language minority group in voting practices and procedures nationwide, has helped to secure many of these advances. Yet it is undeniable that Section 5 of the VRA, which requires certain states and political subdivisions with a history of discriminatory voting practices to provide notice and "pre-clear" any voting law changes with the federal government, played an essential and invaluable role in the VRA's success. Between 1982 and 2006, pursuant to Section 5, the Department of Justice (DOJ) blocked 700 proposed discriminatory voting laws, the majority of which were based on "calculated decisions to keep minority voters from fully participating in the political process."[8] Proposed laws blocked by Section 5 included discriminatory redistricting plans, polling place relocations, biased annexations and de-annexations, and changing offices from elected to appointed positions, similar to many of the tactics used to disenfranchise minority voters before 1965.[9] In addition, states and political subdivisions either altered or withdrew from consideration approximately 800 proposed voting changes between 1982 and 2006, indicating that Section 5's impact was much broader than the 700 blocked laws.[10]

Despite decades of success and extensive documentation of the law's effectiveness in preventing discriminatory restrictions on the right to vote, on June 25, 2013 the U.S Supreme Court, in a sharply divided 5-4 ruling in *Shelby County v. Holder*, struck down Section 4(b) of the VRA. In doing so, the Court substituted its views for Congress's own very extensive hearings and findings conducted in 2006 when Congress almost unanimously voted to reauthorize the VRA for another 25 years. The ruling invalidated the formula used to determine which states and political subdivisions would be subject to preclearance under Section 5 but did not evaluate the merits of the preclearance provision itself. The majority only held that "the formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance."[11]

While *Shelby County* has done irreparable damage to voting rights in the United States, Congress is not powerless to mitigate this damage and restore the original force of the VRA. In fact, the Court specifically noted that "Congress may draft another formula based on current conditions"[12] and reinstate the preclearance provision in Section 5. The Voting Rights Advancement Act of 2019 introduces a new, rolling preclearance formula based on current need that would restore the preemptory force of the VRA. The recent onslaught of restrictive voting laws enacted across the country is evidence that litigation pursuant to Section 2 is entirely inadequate to prevent unconstitutional voting practices and

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[4] U.S. Bureau of the Census, *Current Population Reports*, Series P-20, No. 192, "Voting and Registration in the Election of 1968," 1 (1969).
[5] United States Senate, *Ethnic Diversity in the Senate*, https://www.senate.gov/senators/EthnicDiversityintheSenate.htm
[6] 4 See H.R. Rep. No. 109-478, at 18, 130 (2006), reprinted in 2006 U.S.C.C.A.N. 618.
[7] Juliet Eilperin, "What's Changed for African Americans Since 1963, by the Numbers." *The Washington Post*, August 2013. https://www.washingtonpost.com/news/the-fix/wp/2013/08/22/whats-changed-for-african-americans-since-1963-by-the-numbers/?utm_term=.c931638accfe
[8] Shelby County, 133 S. Ct. at 2639 (Ginsburg, J. dissenting) (citing H.R. Rep. 109-478 at 21).
[9] H.R. Rep. No. 109-478, at 36.
[10] Shelby County, 133 S. Ct. at 2639 (Ginsburg, J. dissenting).
[11] *Id* at 2631.
[12] *Id.*

discrimination.[13] Since 2010, over 25 states have enacted restrictive voting laws. Half the country now faces stricter voting regulations than they did in 2010.[14]

Perhaps the most illustrative case for the ongoing necessity of a preclearance process is the battle over a Texas voter ID law. In 2011, Texas passed S.B 14, the strictest voter ID law ever enacted in the United States. Because Texas was required under Section 4 of the VRA to seek preclearance for its voting laws, the law was initially blocked from going into effect. The three-judge panel that reviewed the law found that "based on the record of evidence before us, it is virtually certain that these burdens will disproportionately affect racial minorities. Simply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote."[15]

Within hours of the Court's decision in *Shelby County*, Texas Attorney General Greg Abbott announced that S.B 14 would go into effect immediately.[16] Following the Attorney General's announcement, multiple civil rights groups and Texas voters filed suit under Section 2 of the VRA. In 2014, a district court held that "SB 14 was enacted with a racially discriminatory purpose, has a racially discriminatory effect, is a poll tax, and unconstitutionally burdens the right to vote."[17] On appeal, a court of appeals stayed the district court's decision and allowed the law to take effect.

For more than two years and over the span of two election cycles, SB 14 prevented eligible voters from casting a ballot while litigation was ongoing. By the time the law was finally invalidated in 2016 by a 9-2 vote of the entire Court of Appeals for the D.C Circuit (sitting *en banc*), no fewer than seven federal judges had concluded the law was discriminatory. Yet because Section 5 of the VRA was not in effect, this patently unconstitutional law was permitted to disenfranchise untold numbers of minority voters, over two election cycles. The consequences of disenfranchisement are not fully quantifiable but are certainly lasting. Elections cannot be undone, and no judicial relief can restore the confidence in our democracy that was unfairly taken from thousands of disenfranchised voters.

Texas is not the only state to adopt strict voter ID laws. The National Conference of State Legislatures identifies 10 states with "strict" voter ID laws and finds that 11% of all Americans lack the necessary

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[13] In one of the first constitutional challenges to the VRA, the Court upheld §5 as a necessary means to prevent discriminatory voting laws from taking effect. In *South Carolina v. Katzenbach* (383 U.S 301, 328 (1966)), the court recognized that in 1965 "Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." In this case, the Court found that "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 manhours spent combing through registration records in preparation for trial. Litigation [is] exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings." Meanwhile, unconstitutionally discriminatory laws are permitted to take effect while litigation progresses, jeopardizing the legitimacy of elections and the ability of marginalized communities to have their voice heard.

[14] "New Voting Restrictions in America" *Brennan Center for Justice (2019)* https://www.brennancenter.org/new-voting-restrictions-america

[15] Tex. v. Holder, 888 F. Supp. 2d 113, 141 (D.D.C. 2012)

[16] Zachary Roth, That Was Quick: Texas Moves Ahead with Discriminatory Voting Laws, MSNBC (Jun. 25, 2013), http://www.msnbc.com/msnbc/was-quick-texas-moves-ahead-discri.

[17] Veasey v. Abbott, 830 F. 3d 216, 225 (D.D.C 2016) citing Veasey v. Perry, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014)

government ID that these laws require.[18] Voter ID laws have been found on multiple occasions to disproportionately affect marginalized communities, low-income and elderly Americans, and students.

Nor is Voter ID the only tool states are using to disenfranchise voters for political gain. In Georgia, then Secretary of State Brian Kemp enforced new election code policies for the 2018 election (in which he was a candidate for Governor) which invalidated a voter's registration if there was any discrepancy in their registration paperwork. Of the 53,000 voters whose registration status was arbitrarily questioned, roughly 70% were African American.[19] In Ohio, a "use it or lose it" law caused hundreds of thousands of voters to be purged from the 2018 voter rolls because they did not vote in the last presidential election.[20] Gerrymandering, voter intimidation and harassment, cuts to early voting opportunities, polling place manipulation and closure, and felony disenfranchisement efforts are just some of the other voter suppression tactics that have become prevalent since *Shelby County* and were used to disenfranchise voters in the 2018 election.

Indeed, we have seen the reversal of half a century of voting rights advancements since *Shelby County*. While Section 5 of the VRA surely could not have prevented all of these evils, there is no question that this country's democratic institutions would be stronger and our electoral processes more representative if the VRA were in full effect. Following this incredible damage done to the most fundamental of our rights as Americans, Congress now finds itself in the position to act.

The Voting Rights Advancement Act (VRAA) of 2019 is an important first step in restoring voter trust in America's elections and preventing states from enacting additional discriminatory measures to suppress the vote. Just over a decade ago, as Congress was debating the most recent reauthorization of the VRA, committees held 21 hearings and compiled over 20,000 pages of records as evidence of the success of Section 5, the prevalence of ongoing voting discrimination, and the constitutionality of the law.[21] As a result, the reauthorization passed with overwhelming bipartisan support: 390 to 33 in the House of Representatives and 98-0 in the Senate.[22] Congress now has both the power and the imperative to pass the Voting Rights Advancement Act and restore the critical voting protections that quite recently received overwhelming bipartisan approval.

In the face of federal inaction, many states have taken the lead on expanding and securing the right to vote for all people. In 2018, Maryland, New Jersey, and Washington adopted automatic voter registration, a policy which would significantly increase access to the ballot. Since 2016, six states have limited or reversed their felon disenfranchisement laws and 16 states have enacted reforms such as same-day registration, online voter-registration, and expanded early voting opportunities that make it easier to register and vote.[23] Despite the absence of Congressional leadership, there is substantial momentum behind expanding ballot access and preserving America's voting rights.

S. 1945, the VRAA, creates a modern, flexible, rolling formula to determine which states and political subdivisions will have to pre-clear their laws with the federal government. The formula will not require preclearance in all the political subdivisions that have moved to restrict voting rights in the past six years, including some of the examples above, but, over time, the rolling formula will sweep in many of the most

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[18] "Voter Suppression During the 2018 Midterm Elections" *Center for American Progress* (Citing http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx)

[19] https://www.atlantamagazine.com/news-culture-articles/53000-pending-voters-georgia-still-vote-what-to-know/

[20] CAP 2018 Voter Suppression Overview, 4

[21] 6 Kristen Clarke, The Congressional Record Underlying the 2006 Voting Rights Act: How Much Discrimination Can the Constitution Tolerate? 43 Harvard C.R.-C.L.L. Rev., 386, 402 (2008).

[22] Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, H.R. 9, 109th Cong., (2006) (enacted).

[23] "The State of Voting 2018" *Brennan Center for Justice* https://www.brennancenter.org/publication/state-voting-2018

problematic jurisdictions. It will restore critical safeguards, preventing enactment of discriminatory voting laws by once more "shift[ing] the advantage of inertia and time from the perpetrators of the evil to the victims."[24]

The Fifteenth Amendment to the U.S. Constitution proclaims that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[25] Section 2 of the Amendment expressly declares that "Congress shall have the power to enforce this article by appropriate legislation."[26] As the Supreme Court has recognized, "by adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in Section 1,"[27] and "Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting."[28] Passage of the Voting Rights Advancement Act is not only rational. It is critical to enforcing the constitutional prohibition on racial discrimination in voting and protecting the fundamental right to vote for all Americans.

We strongly welcome these hearings on the devastating legacy of *Shelby County* and appreciate the opportunity to present ADL's views. We urge the Committee to promptly approve the Voting Rights Advancement Act of 2019.

Sincerely,

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Melissa Garlick
Civil Rights National Counsel

[24] *S.C. v. Katzenbach*, 383 U.S. 301, 328 (1966)
[25] U.S. CONST. amend. XIV, §1
[26] Id. at §2.
[27] *Katzenbach*, 383 U.S. at 325-26
[28] Id. at 324.