EVIDENCE OF CURRENT AND ONGOING VOTING DISCRIMINATION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

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HOUSE OF REPRESENTATIVES

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EVIDENCE OF CURRENT AND ONGOING VOTING DISCRIMINATION

TUESDAY, SEPTEMBER 10, 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 10:04 a.m., in Room 2141, Rayburn Office Building, Hon. Steve Cohen [chairman of the subcommittee] presiding.

Present: Representatives Cohen, Nadler, Raskin, Scanlon, Dean, Garcia, Johnson of Louisiana, Gohmert, Jordan, Cline, and Armstrong.

Staff present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Julian Gerson, Staff Assistant; James Park, Chief Counsel; Keenan Keller, Senior Counsel; and Will Emmons, Professional Staff Member.

Mr. COHEN. We don't have a gavel. The Committee on the Constitution, Civil Rights, and Civil Liberties is called to order. Without objection, the chair is authorized to declare a recess of this subcommittee at any time.

Welcome, everyone, to today's hearing, a field hearing on "Evidence"—well, it is not a field hearing—on "Evidence of Current and Ongoing Voting Discrimination." I now recognize myself for an opening statement.

Today's hearing on "Evidence of Current and Ongoing Voting Discrimination" is part of a series of hearings that the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties will hold over the course of this year to assess the current need for a reinvigoration of the preclearance requirement of Section 5 of the Voting Rights Act of '65 to consider other ways to strengthen that landmark civil rights statute.

I am not sure why we say "reinvigoration." That seems to be one of the words we toss around. It is not really a reinvigoration. It is a degradation of—Section 4 was cut out, so we need to have a Section 4 to activate Section 5. Section 5 has been made dormant by the Supreme Court saying Section 4 wasn't adequate. So we need to find a new test to awaken the dormant power of Section 5.

The Voting Rights Act of '65 was widely considered the most effective civil rights statute ever enacted by Congress. The act was enormously successful in expanding Federal authority to protect the fundamental right to vote, and one of its central enforcement provisions was its Section 5 preclearance provision. The provision required certain jurisdictions with a history of voting discrimination against racial and language minority groups, predominantly those that tended to be in the Deep South, to obtain approval of any changes to their voting laws or procedures from the Department of Justice or the U.S. District Court for the District of Columbia before those changes could take effect.

The purpose of the preclearance requirement was to ensure that jurisdictions that were most likely discriminating against minority voters, as shown by a finding of Congress, would bear the burden of proving that any changes to the voting laws were not discriminatory before such changes could take effect and, therefore, not discriminate in fact against people that they shouldn't be taking that action against.

It provided a mechanism to assure that the new voting rules and practices of jurisdictions with a history of discrimination were fair to all voters, so we had this when we passed the Voting Rights Act in '65. There was a list of jurisdictions. It was renewed. There was a list of jurisdictions. And then in 2013, in *Shelby v. Holder*, our Supreme Court said what we did in the past with Mr. Sensenbrenner, who was chairman of the committee, and what the House did by a vote of like 390-something to 33, in the Senate by 98 to nothing, was not adequate; that a finding by the Congress of legislative—for legislative action was not sufficient, that the court, which generally kind of says it bears deference to Congress, was going to jump in and put its opinion above Congress.

So what the preclearance requirements did is it prevented potentially discriminatory voting practices from taking before they harm minority voters, which was the purpose of these laws, so would have found the courts. And in this way preclearance proved to be a significant means of protection of the rights of minority voters.

This is why Congress had repeatedly reauthorized the preclearance provision, overwhelmingly bipartisan, most recently in 2006, and Mr. Sensenbrenner was the chairman of this committee at the time and did a great job. It was 390 to 33 in the House, and the Senate was 98 to nothing.

Unfortunately, the Supreme Court effectively gutted Section 5 in 2013. *Shelby County v. Holder* struck down the coverage formula of Section 4 that determined which jurisdictions would be subject to the preclearance requirement. As a result, the preclearance provision remains dormant unless and until Congress adopts this new coverage formula. So we have to have hearings to show the court that we have taken information and our findings are based on fact.

We have heard in the four hearings we have held so far this year on voting rights, most recently in Memphis, Tennessee, and we will further learn in today's hearing, since the Shelby decision we have seen formerly covered jurisdictions implement numerous discriminatory voting measures. North Carolina, for example, passed a sweeping voting suppression law that a Federal appeals court ultimately held to be unconstitutional, finding that it intentionally tar-

geted African Americans with almost surgical precision. And, of course, by doing it after they put it into effect, they had their desired effect, which was to limit African American voting. If they were under the preclearance requirement, the courts could have stopped them from doing it before they did, as Mel Brooks would say, that "voodoo that they do so well."

We will also hear about recent measures to make it difficult or impossible for minority voters to exercise their right to vote. These measures include polling place closures and relocations, the purging of voter rolls that disproportionately target racial and ethnic minority voters, discriminatory photo ID laws, and restrictions on ex-felon voting, all of which are designed to make it harder for African Americans and other racial and ethnic minorities to vote.

Last week in Memphis, we learned about Tennessee's third-party registration law that would impose draconian penalties on groups like the League of Women Voters who work to register new voters for minor errors and omissions in registration forms. It made it a criminal effort for people to do so.

Back in May, we learned about a similar law in Texas and about many other examples of voting discrimination in that State. And we have seen States engage in racial gerrymandering designed to dilute the strength of minority voters.

In the absence of an effective preclearance formula regime, there is almost a certainty that these discriminatory measures will undermine the voting rights of racial and language minority voters and erode our democracy.

While Section 2 of the Voting Rights Act, which prohibits discrimination in voting, remains in effect, it is by itself less effective, significantly more cumbersome, and often prohibitively expensive to enforce the Voting Rights Act. Most importantly, plaintiffs cannot invoke Section 2 until after alleged harm has taken place. Requiring discrimination victims to rely solely on such a remedy effectively neuters the act. The onus, therefore, is on Congress to create a new coverage formula to reinvigorate the act's most important enforcement mechanism: its preclearance requirement.

I thank our witnesses and our members for being here today. I look forward to a fruitful discussion. And I would now like to recognize the ranking member, Mr. Johnson, for his opening statement.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chairman, and I appreciate you all for being here. As the minority party on this committee, I think there is a couple of things that we just want to say at the outset as we begin the hearing.

First of all, let's be clear about this. 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, and it is prohibited by Federal statute, as it should be. But, too often, complaints of discrimination in voting have nothing to do with discriminatory treatment. Instead, rules entirely neutral on their face are sometimes claimed to be discriminatory simply because they have a disparate impact on one group or another.

Disparate impact claims are a form of identity politics, and they contradict, for example, Dr. Martin Luther King Jr.'s admonition to focus on consciences rather than racial groups. Dr. King said famously in his "I Have a Dream" speech: "When the architects of

our Republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the inalienable rights to life, liberty, and the pursuit of happiness."

Dr. King said it well. That promissory note promised life, liberty, and the pursuit of happiness, not equality of outcomes. Insofar as proponents of changes in the law base them on enforcement of equal outcomes instead of equal opportunity, we just believe genuinely that they pervert the language of our founding documents and they fail to understand the import of Dr. King's words.

Disparate impacts are not proof of discrimination. Indeed, they are statistically inevitable. As Thomas Sowell has explained, if several criteria need to be met for any given outcome—and this can apply to voting requirements as well—then small variations in any group's odds of meeting any of those criteria will produce different outcomes for the group generally.

The problem with disparate impact theory in the voting rights context is that disparate impact is often used to falsely impute racism or discrimination. But there are thousands of reasonable reasons a neutral voting rule might have a disparate impact, reasons that have nothing whatsoever to do with discrimination.

Take the example of the Department of Justice's letter declining to preclear South Carolina's voter ID law under the Voting Rights Act of 2011—in 2011. The Department claimed in the letter that, "Minority registered voters were nearly 20 percent more likely to be effectively disenfranchised" by the law because they lacked a driver's license. But the difference between white and African American holders of a driver's license was only 1.6 percent. The Justice Department used the 20-percent figure because, while the State's data showed that 8.4 percent of white registered voters lacked any form of DMV-issued ID as compared to 10 percent of nonwhite registered voters, the number 10 is 20 percent larger than the number 8.4. It is true mathematically that 10 is 20 percent larger than 8.4—actually, it is 19 percent larger, but the Justice Department rounded up—but it clearly distorts the reported difference in driver's license rates, and it was used to falsely declare the South Carolina law as objectionable.

What other factors might then explain differences in outcomes among demographic groups? Well, let's give another example. Data shows that younger people across racial groups tend to be the least likely to have driver's licenses. Consequently, if African Americans have proportionately more young people in their demographic group, there will be a disproportionate number of individuals in that ethnic group without driver's licenses, however slight, as is indeed the case. As the facts follow, this is due to demographics and not discrimination.

The disparate impact approach to civil rights and the assumption that different outcomes are the result of prejudice is fundamentally unsound for the same reason social scientists are trained that correlation does not imply causation. In other words, there can be all sorts of correlations between one event and another, and that doesn't answer the question as to why that correlation exists.

My point again is not that voting discrimination has disappeared forever. We know it hasn't. My point is only that disparate impacts can't be meaningfully used to prove voting discrimination.

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 in full effect. Just a couple years ago, for example, U.S. District Court 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 Hispanic influence. The city, which the court ruled "has a long history of discrimination against minorities," 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 retains jurisdiction to review before enforcement any change to the election map or plan that was in effect in Pasadena on December 1, 2013.

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

Look, I support Section 3 and its application to proven instances of discriminatory treatment in voting, and I look forward to hearing from all of our witnesses here today.

I yield back.

Mr. COHEN. Thank you, Mr. Johnson.

I now recognize the chairman of the full Judiciary Committee, the gentleman from much of New York—Manhattan, the East Side——

Chairman NADLER. West Side.

Mr. COHEN. West Side. West Side, East Side, all about the town—Mr. Nadler for his opening statement.

Chairman NADLER. Thank you, Mr. Chairman, and let me express my appreciation to you for hosting us at the field hearing on voting rights in Memphis last week.

Since the Supreme Court's disastrous 2013 decision in *Shelby County v. Holder*, which effectively gutted the most critical enforcement provision of the Voting Rights Act of 1965, the preclearance requirement, we have seen a troubling trend. States and localities—and, in particular, those that were formerly subject to the preclearance requirement—have enacted or engaged in various voter suppression tactics, such as burdensome proof of citizenship laws, polling place closures, purges of voter rolls, significant scalebacks to early voting periods, restrictions on absentee ballots, and laws that make it difficult to restore the voting rights of formerly incarcerated individuals. These kinds of voting restrictions have a disproportionate negative impact on racial and language minority voters, and contrary to what we just heard, disparate impact is very, very much a very useful evidentiary tool.

In the most recent elections in November 2018, voters across the country experienced various barriers to voting because of State and local laws and circumstances that made it harder, even impossible to vote. For example, we heard last week during our field hearing in Memphis that in Georgia, under that State's exact match law,

53,000 voter registrants, 70 percent of whom are African American, by pure happenstance, were placed in pending status and at risk of not being counted by the Secretary of State, who was also the Republican nominee for Governor in that same election, because of minor misspellings on their registration forms.

A Federal court ultimately put a stop to this practice because of the "differential treatment inflicted on a group of individuals who are predominantly minorities" but had acted just 4 days before the election and only after a prolonged period of confusion.

Section 5 of the Voting Rights Act, or VRA, contains the preclearance requirement which requires certain jurisdictions with a history of discrimination to submit any proposed changes to their voting laws and 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 VRA, many States and localities passed voter suppression laws, secure in 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 Whac-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 its effective preclearance requirement was apparent almost immediately after the law went into effect. For instance, registration of African American voters and the number of African Americans holding elective office both rose dramatically in the few years after enactment of Section 5.

These successes could not have happened without vigorous enforcement of the Voting Rights Act, and particularly of its preclearance provision. The Shelby County decision, however, struck down as unconstitutional the VRA's coverage formula, which determined which jurisdictions would be subject to the preclearance requirement, effectively suspending the operation of the preclearance requirement itself. And in its absence, the game of Whac-A-Mole has returned without a vengeance.

Not surprisingly, within 24 hours of the Shelby County decision, Texas Attorney General and North Carolina's General Assembly announced they would reinstitute draconian voter ID laws. Federal courts ultimately held both laws to be intentionally racially discriminatory—not disparate impact; intentionally racially discriminatory. But during the years between their enactment and the courts' final decisions, States and localities held many elections while the discriminatory laws remained in place and many people were denied their rightful right to vote.

In short, before the racial discrimination could be stopped, the damage had already been done. 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 we found that many covered jurisdictions were still facilitating ongoing discrimination. For instance, these States and the subdivisions continue to engage in racially selective practices such as relocating polling places for African American 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 run for elective office in their cities.

While it is true that those seeking to enforce the VRA 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 a vote has been denied, it cannot be recast. The damage to our democracy is permanent. That is why I hope that members on both sides of the aisle and in both chambers of Congress will come together and pass legislation to restore the VRA to its full vitality.

Today's hearing will provide an additional opportunity to renew our understanding of the importance of the Voting Rights Act, and, in particular, of its preclearance provisions, and to support our efforts to craft a legislative solution.

I look forward to hearing from our distinguished witnesses, to hear about their findings of ongoing voting discrimination by States and localities.

I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Collins, the ranking member, has a statement. It will be introduced for the record. He is not present.

Mr. JOHNSON of Louisiana. If he shows up, he wants to deliver it.

[The statement of Mr. Collins follows:]

Statement of Ranking Member Doug Collins
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Hearing on
"Evidence of Current and Ongoing Voting Discrimination"
September 10, 2019

Mr. Chairman, the right to vote is of paramount importance in a democracy. Its protection from discriminatory barriers has been grounded in federal law since the Civil War, and, more recently, through the Voting Rights Act of 1965.

Many members today will mention the *Shelby County* Supreme Court decision, and, each time it's mentioned, it's important to remember the Court only struck down one outdated provision of the Voting Rights Act — an outdated formula based on decades-old data that doesn't hold true anymore because it describes which jurisdictions had to receive approval from the Department of Justice before their voting rules went into effect. Nonetheless, several other key provisions of the Voting Rights Act remain in place today, including Sections 2 and 3.

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

Section 3 of the Voting Rights Act also remains in place. Section 3 authorizes federal courts to impose preclearance requirements on states and political subdivisions that previously enacted voting procedures to treat people differently based on race — a violation of the Fourteenth and Fifteenth Amendments. If the federal court finds a state or political subdivision treated people differently based on race, the court has discretion to retain supervisory jurisdiction and impose preclearance requirements on the state or political subdivision as the court sees fit until a future date at the court's discretion. This means the state or political subdivision would have to submit all future voting rule changes for

approval to either the court itself or the Department of Justice before the changes could go into effect. As set out in 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 the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General."

Again, Section 3's procedures remain available today to those challenging voting rules as discriminatory. Just a couple of years ago, U.S. District Judge Lee Rosenthal issued an opinion in a redistricting case that required the Justice Department to monitor the City of Pasadena, Texas, because it had intentionally changed its city council districts to decrease Hispanic influence. Pasadena, which the court ruled has a "long history of discrimination against minorities," was required to have its future voting rules changes precleared by the Justice Department for the next six years, during which time the federal judge "retains jurisdiction . . . to review before enforcement any change to the

election map or plan that was in effect in Pasadena on December 1, 2013." A change to the city's election plan can be enforced without review by the judge only if it has been submitted to the Attorney General and the Justice Department has not objected within 60 days.

Voting rights are protected in this country including in my own state of Georgia, where Hispanic and African-American voter turnout has soared over the last several election cycles, increasing by double digits. I look forward to making sure the ballot box is open to all eligible voters, and I look forward to hearing from all our witnesses today.

[Word count: 586]

Mr. COHEN. We welcome our witnesses and thank them for participating in today's hearing. Your written statements will be entered into the record in their entirety. I ask each of you to summarize your statement for 5 minutes, to stay within the time. There is a timing light on your table. When the light switches from green to yellow, it means you have got 1 minute left, just like a traffic light. When it turns red, trouble. Five minutes expired.

I remind every witness that your statements, written or oral, made to the subcommittee are subject to penalties of perjury under 18 U.S.C. 1001, which may result or could result in the imposition of a fine or imprisonment up to 5 years, or both—a fine as well. But that will not likely happen.

Our first witness is Ms. Vanita Gupta. Ms. Gupta is the president and chief executive officer of the Leadership Conference on Civil and Human Rights. Previously, she served as Principal Deputy Assistant Attorney General and as Acting Assistant Attorney General and the head of the Civil Rights Division at the U.S. Department of Justice during the Obama administration. Ms. Gupta received her law degree from New York University School of Law, which is in Mr. Nadler's district, and received her undergraduate degree magna cum laude from Yale University, which, with a Sharpie, could be in Mr. Nadler's district, too. [Laughter.]

Mr. COHEN. Ms. Gupta, you are recognized for 5 minutes.

STATEMENTS OF VANITA GUPTA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS; DERRICK JOHNSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP); DALE HO, DIRECTOR, VOTING RIGHTS PROJECT, AMERICAN CIVIL LIBERTIES UNION; J. CHRISTIAN ADAMS, PRESIDENT AND GENERAL COUNSEL, PUBLIC INTEREST LEGAL FOUNDATION; MYRNA PÉREZ, DIRECTOR, VOTING RIGHTS AND ELECTIONS PROGRAM, BRENNAN CENTER FOR JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW; AND NATALIE A. LANDRETH, SENIOR STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

STATEMENT OF VANITA GUPTA

Ms. GUPTA. Chairman Nadler, Chairman Cohen, Ranking Member Johnson, and members of the subcommittee, thank you for the opportunity to testify today. And thank you, Chairman Cohen, for your leadership and calling this hearing to restore the Voting Rights Act.

The VRA is considered one of the most successful pieces of civil rights legislation in our history. Not long ago, just in 2006, this very body reauthorized the VRA with sweeping bipartisan support. But in 2013, five Justices of the Supreme Court gutted the VRA's most powerful provision: the Section 5 preclearance system.

Section 5 enabled the Federal Government to block proposed discriminatory voting restrictions in places with the most pervasive histories of discrimination. It also ensured that changes to voting rules were public, transparent, and evaluated to protect voters against discrimination based on race and language.

When I served in the Justice Department, we relied on Section 2 of the VRA to help mitigate the damage done by the Shelby County decision. We challenged discriminatory laws passed in North Carolina and Texas in the immediate aftermath of the decision, and we were successful. Courts found intentional discrimination and have found intentional discrimination in at least nine Federal court cases since the Shelby County decision.

But Section 2 litigation can take years. While litigation is pending, elections are actually taking place, and millions of voters can be effectively disenfranchised with no remedy when they are voting pursuant to laws that are later found to have been enacted through intentional discrimination. So the reality is Section 2 just simply is no substitute for the need to restore the Section 5 preclearance provision.

Restoring preclearance is all the more important under an administration that refuses to challenge discriminatory voting measures. Not a single case has been opened, including barriers to voter registration, restrictive voter ID requirements, and polling place closures, which I want to focus on today.

Polling place closures and consolidation can be a pernicious tactic for disenfranchising voters, particularly voters of color, older voters, rural voters, and voters with disabilities, and since the Shelby decision jurisdictions are closing polling places at an alarming speed. This morning, the Leadership Conference Education Fund released "Democracy Diverted," a ground-breaking report that analyzes polling places in 757 counties that had once been covered by Section 5. We found that 1,688 polling places were closed between 2012 and 2018.

The report also analyzes polling place reductions in the years between the 2014 and 2018 midterm elections. We found 1,173 fewer polling places in 2018 despite a significant increase in voter turnout. Overall, Texas alone closed 750 polling places; Arizona closed 320; Georgia, 214; Louisiana, Mississippi, North Carolina, and Alabama trail behind them.

This crisis also extends beyond States formerly covered by Section 5. Our campaign, All Voting Is Local, identified similar trends in Ohio. Between 2016 and 2018, Cuyahoga County, which is home to Cleveland, eliminated 41 polling locations, the bulk of which happened in majority black wards.

Now, of course, there may be valid reasons for polling place closures, but it is important to recognize that these closures are taking place amidst a larger constellation of efforts to prevent people of color from voting. And without preclearance, States are under no obligation to evaluate the discriminatory impacts and potential harms of polling place closures.

As our report found, closures often mean long lines at polling places, transportation hurdles, and mass confusion about where eligible voters may cast their ballots. For many people, these burdens may make it harder and sometimes impossible to vote. Some jurisdictions cite voter modernization, including vote by mail participation, as a justification for poll closures. And yet the move to mail-in ballots is far from racially neutral. In Arizona, All Voting Is Local found that 96 percent of non-Native Americans live on a U.S.

Postal Service carrier route while only 26 percent of Native Americans live on a U.S. Postal Service carrier route.

Before the *Shelby* decision, scrutiny of voting changes under Section 5 ensured that polling place reductions did not discriminate against voters of color, and this critical protection no longer exists, and the consequences on voter access are devastating. This is why the Leadership Conference recommended that the subcommittee and urges the subcommittee pass H.R. 4 to restore the Voting Rights Act based on current conditions today.

While there are justifiable reasons for closing polling places, the sheer scale of closures we identified since *Shelby* coupled with other stark efforts to deny voting rights to people of color demand our response, and our coalition is committed to protecting and expanding the franchise, and we look forward to working with you until the day these reforms are signed into law.

Thank you.

[The statement of Ms. Gupta follows:]

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The Leadership Conference

STATEMENT OF VANITA GUPTA, PRESIDENT AND CEO, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "EVIDENCE OF CURRENT AND ONGOING VOTING DISCRIMINATION"

SEPTEMBER 10, 2019

Chairman Cohen, Ranking Member Johnson, and members of the Subcommittee: my name is Vanita Gupta and I am the president and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations working to build an America as good as its ideals. We were founded in 1950 and have coordinated national advocacy efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 ("VRA") and subsequent reauthorizations. I previously served as head of the Justice Department's Civil Rights Division from 2014 until January 2017, where I oversaw the enforcement of the civil provisions of the federal laws that protect the right to vote, including the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, the Help America Vote Act, and the Civil Rights Acts.

The ability to participate in civic life – to have a voice in choosing the elected officials whose decisions impact our lives, families, and communities – is at the core of what it means to be a citizen. It is long past time to build a 21st century democracy that is representative of, and responsive to, our growing, diverse nation; a democracy that welcomes and protects every person's voice and vote; and a democracy that demands fairness and transparency in the administration of its elections. Our democracy works best when everyone, no matter who they are, what language they speak, or their race, ethnicity, or disability status, can fully participate.

It was not long ago – just in 2006 – that this body reauthorized the VRA with sweeping bipartisan support. The House of Representatives voted to reauthorize the VRA by a 390-33 vote and the Senate passed it *unanimously*. Given the importance of the VRA, Congress undertook that reauthorization with great care and deliberation – holding 21 hearings, hearing from more than 90 witnesses, and compiling a massive record of more than 15,000 pages of evidence of continuing racial discrimination in voting.

In 2013, in *Shelby County v. Holder*,[1] five justices of the Supreme Court gutted the most powerful provision of the VRA – the Section 5 preclearance system.[2] That system had enabled the U.S. Department

[1] *Shelby County v. Holder*, 570 U.S. 529 (2013).

[2] Under Section 5 of the VRA, jurisdictions with a demonstrated record of racial discrimination in voting were required to submit all proposed voting changes to the U.S. Department of Justice or the U.S. District Court in Washington, D.C., for "preclearance" in advance of implementation. The jurisdictions were required to prove that the proposed voting change would not deny or adversely affect the right to vote on the basis of race, color, or an eligible voter's membership in a language minority group. Preclearance was a crucial element of the VRA because it

of Justice and federal courts to block proposed discriminatory voting restrictions in states and localities with the most pervasive histories of discrimination before these restrictions could disenfranchise voters. It ensured that, when jurisdictions changed the rules or operations of voting, that the changes were public, transparent, and studied to ensure they would not discriminate against voters because of their race or language. In *Shelby*, Chief Justice Roberts, on behalf of the five-person majority, stated that Congress must assess current conditions in order to lawfully require states to preclear voting changes.

When I was at the Justice Department, we tried our best to mitigate the damage done by the *Shelby* decision. We challenged discriminatory laws passed in North Carolina and Texas in the immediate aftermath of *Shelby*, and we were successful. In striking down the North Carolina law in 2016, the U.S. Court of Appeals for the Fourth Circuit described the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow" with provisions that "target African Americans with almost surgical precision."[3] There have also been findings of intentional discrimination in at least nine voting rights decisions since *Shelby*.[4] Notwithstanding these positive developments, there are many discriminatory measures going unchallenged by the current administration. And that means voters are being disenfranchised.

Many of the tactics that state and local policymakers have enacted with alarming speed since the *Shelby* decision include barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements, and last-minute polling place closures and consolidations. In almost every instance these changes have no effective remedy because once an election is held, there is no way to hold it again. That is why Congress must restore safeguards like preclearance: so the myriad tactics used to make it harder for people to participate in their elections can be vetted to ensure that they don't discriminate based on race.

Rise in Polling Place Closures Since *Shelby County*

Polling place closures are a common and pernicious tactic for disenfranchising voters. Polling place closures can result in long lines, transportation hurdles, and mass confusion about where eligible voters may cast their ballot. For many people, particularly voters of color, older voters, rural voters, and voters with disabilities, these burdens make it harder to vote.

Prior to the *Shelby* decision, there was a process to ensure that jurisdictions known to engage in voting discrimination were not using budget cuts or voter modernization as cover to disenfranchise people of color. Now that that process has been removed, it is much harder to know what goes into decision making around polling place closures. To be clear, there are processes that can be put in place to make sure polling place reductions do not discriminate against voters of color, including formal letters to impacted voters, approval of proposed changes from diverse cross-sections of the community, and thoughtful

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ensured that no new voting law or practice, such as closing or moving a polling place, would be implemented in a place with a history of racial discrimination in voting unless that law was first determined not to discriminate against voters of color. However, in Shelby, the U.S. Supreme Court invalidated the formula that determined which states and jurisdictions are covered by Section 5 of the VRA and thus are required to undergo preclearance. Without that determination, the preclearance provision essentially became inoperable.

[3] *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

[4] https://docs.house.gov/meetings/JU/JU00/20190129/108824/HHRG-116-JU00-Wstate-JfillS-20190129.pdf.

studies of impact on voters from all backgrounds. Before the 2013 *Shelby* decision, voting changes in covered jurisdictions were scrutinized under Section 5 of the VRA to ensure they would not be discriminatory[5] – but *Shelby* eliminated this critical protection for voters. The bottom line is that the closure of polling places, especially without clear public notice to all impacted voters and formal input and recommendations from diverse community stakeholders, creates barriers to the ballot box that are incredibly difficult for people to overcome.

The 2016 election was the first presidential election conducted without the full safeguards of the VRA and, in advance of it, jurisdictions closed polling places on a massive scale. The Leadership Conference Education Fund released a report titled *The Great Poll Closure*[6] before the 2016 election that documented a portion of those polling place reductions in many of the jurisdictions that were once protected by Section 5 of the VRA. Polling place closure data and information that was once publicly available under Section 5 was difficult – and in some instances, impossible – to obtain in many jurisdictions. It required several months of research and analysis of data from the U.S. Election Assistance Commission (EAC) and public records requests from state and local election officials.

Today, The Leadership Conference Education Fund is releasing a new report –*Democracy Diverted: Polling Place Closures and the Right to Vote*[7]. Our first report, *The Great Poll Closure*, drew on a sample of fewer than half of the approximately 860 counties or county-equivalents that were once covered by Section 5. Our new report, *Democracy Diverted*, covers an expanded data set of 757 counties. *The Great Poll Closure* relied on voluntary reports of aggregate numbers of polling places that state election officials gave to the EAC. This report, however, relies largely on independent counts of polling places from public records requests and publicly available polling place lists.

In *Democracy Diverted*, we found 1,688 polling place closures between 2012 and 2018, almost double the 868 closures found in our 2016 report. Additionally, *Democracy Diverted* analyzes the reduction of polling places in the formerly covered Section 5 jurisdictions in the years between the 2014 and 2018 midterm elections. We found 1,173 fewer polling places in 2018 – despite a significant increase in voter turnout. To better understand the potentially discriminatory impact of these closures, additional analysis beyond what is included in this report must be completed at the precinct level. This analysis – precisely the kind that the Justice Department conducted under preclearance – takes time and resources. Our hope is that journalists, advocates, and voters will use this county-level polling place data to scrutinize the impact of poll closures in their communities, to understand their impact on voters of color, and to create a fairer and more just electoral system for all.

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[5] States and localities required to submit their voting changes for federal approval were: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and counties in California, Florida, Michigan, New York, North Carolina, and South Dakota. Counties and townships in a few other states were removed from coverage through the "bailout" provision in Section 4(a) of the VRA.

[6] The Leadership Conference Education Fund, "The Great Closure Report," *Civilrights.org*, November 2016. http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf.

[7] The Leadership Conference Education Fund, "Democracy Diverted: Polling Place Closures and the Right to Vote," *democracydiverted.org*, September 2019.

Mega Closers of Polling Places

The *Shelby* decision paved the way for systematic statewide efforts to reduce the number of polling places in Texas (–750), Arizona (–320), and Georgia (–214). Quieter efforts to reduce the number of polling places without clear notice or justification spread throughout Louisiana (–126), Mississippi (–96), Alabama (–72), North Carolina (–29), and Alaska (–6).

Our analysis also found that South Carolina (–18) is unique among southern states in that it has state laws regarding stakeholder approval and for polling place changes. Despite barriers to voting in other contexts, South Carolina has closed relatively few polling places since *Shelby*.

Though not inherently discriminatory, these polling place closures occurred in states and localities with past histories of racial discrimination in voting. And some took place amid a larger constellation of efforts to prevent voters of color from electing the candidates of their choice, such as enactment of stricter voter identification laws, restrictions on voter registration, and voter purges.

Arizona

With a reduction of 171 polling places, Maricopa County is by far the largest closer of polling places in our study. It closed more polling places than the second and third highest-ranked counties combined. In advance of the 2016 presidential preference election, Maricopa drastically reduced polling places, resulting in long lines that drew national attention and lawsuits from civil rights groups. A settlement with civil rights groups led the county to reopen polling places for the 2016 general election – albeit with fewer than it had in the pre-*Shelby* 2012 presidential election. Two years later, instead of responding to the clear demand for more polling places, the county cut well over 100 more voting locations. Between Arizonans' increased use of mail-in ballots and Maricopa County's experimentation with vote centers, it is difficult to determine the full impact of polling place closures on various communities without additional analysis. Yet it is incumbent upon the county to ensure that closures do not have a racially discriminatory impact.

The drive to reduce polling places was not confined to Maricopa. In fact, four of the top 10 closers in our sample were counties in Arizona: Maricopa (–171), which is 31 percent Latino; Mohave (–34), which is 16 percent Latino; Cochise (–32), which is 35 percent Latino; and Pima (–31), which is 37 percent Latino.[8] In the 2016 edition of *The Great Poll Closure*, Pima was the biggest closer in the nation (though it has since reopened 31 polling places). The scale of closures throughout the state is equally concerning in Cochise (–65 percent), Graham (–50 percent), Mohave (–49 percent), and Gila (–48 percent) Counties, all of which closed about half or more of their polling places.[9]

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[8] See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table.

[9] See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table.

Some counties in Arizona, however, are clearly trying to ensure that voters of color can access the ballot box. Navajo County, which is 46 percent Native American, maintained a steady number of polling places despite its conversion to vote centers. In Coconino County, which is 26 percent Native American and 14 percent Latino, many polling places on a Navajo reservation were not compliant with the Americans with Disabilities Act. Yet the county has opted to keep these polling places open and make low-cost modifications to ensure voter accessibility – rather than close them outright.[10]

Texas

Almost half of all shuttered polling places in our sample took place in Texas, where voters have lost at least 750 polling places since *Shelby*. Most of these closures (–590) took place after the 2014 midterm election. After top-ranked Maricopa County in Arizona, the next six largest polling place closers by number were Texas counties: Dallas (–74), which is 41 percent Latino and 22 percent African American; Travis (–67), which is 34 percent Latino; Harris (–52), which is 42 percent Latino and 19 percent African American; Brazoria (–37), which is 30 percent Latino and 13 percent African American; and Nueces (–37), which is 63 percent Latino.[11] Furthermore, 14 Texas counties closed at least 50 percent of their polling places after *Shelby County*.

These drastic reductions occurred against a backdrop of multiple court battles over state laws that discriminate against Black and Latino voters. These laws relate to electoral processes ranging from voter identification requirements, racial gerrymandering to prevent voters of color from electing their preferred candidates, purging voters from registration lists, and access to language assistance when voting. Hours after the *Shelby* decision, the Texas attorney general announced the state would implement a strict voter ID law that had been blocked from taking effect from 2011–2013 under Section 5's preclearance system. In 2017, a federal judge ruled that the law was enacted with intent to discriminate against Black and Latino voters.

In Texas, conversions to vote centers contributed to the majority of polling place closures. By design, conversions reduce the number of polling places and therefore the cost of holding elections, encourage counties to use only the most physically accessible sites for voting, and improve flexibility for voters.[12] As the Texas secretary of state outlined in early 2019, the conversion program allows counties to reduce polling places by 35 percent in the first year and 50 percent in a subsequent year.[13] While the state encourages counties to engage with voters of color in a public forum or on a committee when determining

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[10] See Kira Lerner, The ADA Is Being Used to Disenfranchise Minority Voters, THINKPROGRESS (Aug. 24, 2018, 1:46PM), https://thinkprogress.org/ada-voter-suppression-cd7031080bfd/

[11] See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B03002&prodType=table.

[12] See TEX. SEC'Y OF STATE, DIR. OF ELECTIONS, ELECTION ADVISORY NO. 2019-01, 2019 OPPORTUNITIES TO USE COUNTYWIDE POLLING PLACES (Jan. 2, 2019), https://www.sos.state.tx.us/elections/laws/advisory2019-01.shtml.

[13] See TEX. SEC'Y OF STATE, DIR. OF ELECTIONS, ELECTION ADVISORY NO. 2019-01, 2019 OPPORTUNITIES TO USE COUNTYWIDE POLLING PLACES (Jan. 2, 2019), https://www.sos.state.tx.us/elections/laws/advisory2019-01.shtml.

the placement and number of polling places, it does not require such involvement. Nor does it require a study of the impact of proposed changes on voters of color or provide a means to ensure they are not racially discriminatory. In the absence of Section 5, the onus is on voters and community organizations to hold counties accountable for racial discrimination when closing polling places.

But counties converting to vote centers aren't alone. Counties like Somervell (–80 percent), Loving (–75 percent), Stonewall (–75 percent), and Fisher (–60 percent) – all of which have large Latino populations – cut voting locations even though they did not transition to vote centers. In fact, voters in counties that still hold precinct-style elections have 250 fewer voting locations than they did in 2012.

Georgia

Counties drastically reduced polling places across Georgia after *Shelby*. According to the *Atlanta Journal-Constitution*, voters across the state now have 214 fewer places to cast ballots; in some rural counties, voters are left with only one polling place. More than half (–113) of these sites have closed since the 2014 midterm election. One of the most troubling facets of Georgia's great poll reduction is its scale: Eighteen counties closed more than half of their polling places, and several closed almost 90 percent.

These sharp declines all occurred when Brian Kemp, current Governor of Georgia, was overseeing elections while serving as secretary of state (between the years of 2010 and 2018). It is worth noting that in 2018, then-Secretary Kemp was managing the Georgia statewide elections while also running for governor. During his tenure, he erected barriers that made it harder for people of color to vote. From 2010 to 2018, he purged more than 1.4 million voters from the state's voter registration rolls, many simply because they did not vote in previous elections.[14]

In the wake of the *Shelby* decision, Kemp's office began to encourage polling place reductions leading up to the 2016 presidential election. In a February 2015 memo to local election officials, Kemp asked, "When should you begin the plan of consolidation or making changes to precincts or polling places?" The answer? "Now. Plan to spend 2015 making all the changes so that you, your county and your voters are ready for the 2016 elections."[15]

The six-page document offers guidance on how to change and consolidate polling places. It does not recommend – or even acknowledge the obligation to consider – the impact of polling place changes on low-income communities and communities of color. The only reference to voting rights is the following sentence, which appears twice in the document: "As a result of the *Shelby vs. Holder* (*sic*) Supreme Court decision, you are no longer required to submit [precinct or polling place] changes to the Department of Justice for preclearance."[16]

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[14] Alan Judd, Georgia's Strict Laws Lead to Large Purge of Voters, AJC (Oct. 27, 2018), https://www.ajc.com/news/state--regional-govt--politics/voter-purge-begs-question-what-the-matter-withgeorgia/YAFvuk3Bu95kJIMaDiDFqJ/

[15] Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 2 (Feb. 2015)

[16] Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 3 (Feb. 2015)

Georgia's 2018 gubernatorial election received national attention because Stacey Abrams, a civil rights advocate and former minority leader of the Georgia House of Representatives, became the first African American woman to be nominated by a major party to run for the state's top office. She ran against Kemp, who was overseeing the election at the time and actively working to disenfranchise people of color. Before Election Day, 53,000 voter registration applications were put on hold, 75 percent of which belonged to voters of color.[17]

The systematic effort to reduce polling places continued in advance of the 2018 election. Mike Malone, an elections consultant recommended by Kemp, led an effort to close polling places in 10 counties with large Black populations.[18] Malone told local boards of elections that Kemp had recommended polling place consolidation and sought to close seven of nine polling places in Randolph County, which is 60 percent African American. The plan was ultimately abandoned after an outcry from local and national advocates drew national attention.[19] In addition to five-hour lines, voters in communities of color faced countless obstacles on Election Day, including delayed polling place openings and broken voting machines.[20] In the end, Kemp narrowly won. But advocates have since filed a lawsuit alleging that the election deprived Georgians, especially Georgians of color, of their right to vote.

Recommendations

In order to ensure a fully functioning democracy, we offer the following recommendations to the subcommittee:

- Pass H.R. 4, the Voting Rights Advancement Act, to restore the key preclearance provision of the VRA that blocked discriminatory voting practices before their implementation.
- Require jurisdictions to provide greater transparency, public notice, and disclosure of voting changes well in advance of the election. These voting changes should also be posted online.
- Require jurisdictions that receive federal funds to conduct voter impact studies, including a racial impact analysis on poll closures and consolidations. These studies should be made in consultation with impacted communities.

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[17] https://apnews.com/fb011f39af3b40518b572c8cce6e906c

[18] See Matt Vasilogambros, Polling Places Remain a Target Ahead of November Elections, PEW CHARITABLE TRUSTS (Sep. 4, 2018), https://www.pewtrusts.org/en/research-andanalysis/blogs/stateline/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections

[19] See RELEASE: NEW AUDIO — Kemp Associate Mike Malone Reveals Brian Kemp Recommended "Consolidation" of Randolph County Polling Places, GA. DEMOCRATS (Aug. 20, 2018), https://www.georgiademocrat.org/2018/08/randolph-county-polling/.

[20] Ontaria Woods, We waited almost 5 hours to vote in my Georgia precinct. How convenient for Kemp., WASHINGTON POST, (Nov. 6, 2018) https://www.washingtonpost.com/outlook/2018/11/07/we-waitedalmost-hours-vote-my-georgia-precinct-how-convenient-kemp/.

Conclusion

Since *Shelby*, the national conversation about barriers to voting in the absence of Section 5 has focused on statewide issues like restrictive voter identification laws, racially discriminatory redistricting plans, and efforts to curtail policies that make voting more accessible, like early voting and same-day registration.

Identifying and describing polling place closures paints a fuller picture about how racial discrimination happens without appropriate oversight. We can fill in more details of this picture about how local decisions greatly impact the ability of communities of color to cast ballots for their candidates of choice.

Next to the ballot itself, the most identifiable element of our democracy's voting process is the polling place. It should – and it must – be available to all. When it is not, the barriers to participation can be high. Moving or closing a polling place – particularly without notice or input from communities – disrupts our democracy. It can mean the choice between picking up a child from school or voting. Taking needed overtime or voting. Or taking a bus across town or voting. In a truly inclusive democracy, no one is forced to make these difficult choices.

While there are justifiable reasons for closing polling places, the sheer scale of closures we've identified since *Shelby,* coupled with other, more starkly racially discriminatory actions to deny voting rights to people of color, demand a response. The federal government must scrutinize these closures – especially in states and localities formerly covered by Section 5.

Without a functional democracy in which everyone is included, heard, and represented, we cannot make real progress on other civil and human rights issues like education, justice reform, and economic security – to name just a few. When our democracy is in peril, so, too, are our civil and human rights.

Thank you for your leadership on this critical issue.

Mr. COHEN. Thank you very much, Ms. Gupta.

Mr. Derrick Johnson is our next witness. He is the president and chief executive officer of the NAACP, a position he has held since October 2017. He had previously served as vice chairman of the NAACP National Board of Directors and as president of the NAACP Mississippi State Conference. Mr. Johnson received his J.D. from the South Texas College of Law and his undergraduate degree from Tougaloo College in Jackson, Mississippi.

Mr. Johnson, you come from my part of the world. Welcome.

STATEMENT OF DERRICK JOHNSON

Mr. JOHNSON. Good morning, Chairman Cohen, Chairman Nadler, Ranking Member Johnson, and members of the subcommittee. Thank you for inviting me to testify. For background, I have spent more than two decades in Mississippi, which has been front and center in the fight for voting rights.

Allow me to get to the point: Our democracy is in crisis. There is a frontal assault on the right of people of color to fully participate. We are 6 years, 2 months, 16 days until the Shelby County ruling. This was the worst attack on participatory democracy in modern history. The ink was not even dry before the floodgates of voter suppression opened.

Chief Justice John Roberts was dead wrong when he said in *Shelby County* that our county—our country has changed. Just take a look around. It most certainly has not. Voter suppression has become rampant. Instead of asking where is it occurring, we should ask, where is it not? And Congress has a constitutional duty to act. My testimony lays out the problems we face around the country.

I would like to make five points here.

First, the assault on democracy is conducted by States and local jurisdictions. Much attention is focused on statewide efforts to suppress the vote, but it can happen in every community.

Secondly, today's disenfranchisement takes many forms. It is adaptive and it is pervasive.

These are just a few stringent voter ID requirements like North Carolina's which we successfully challenged and which a court found targeted African Americans with surgical precision: purges of voter rolls like we are seeing in Ohio right now; massive closures of polling places in communities of color; shortened voting periods and elimination of Sunday voting and "Souls to the Polls"; measures making it criminal for groups to register voters, like the ones we recently had to challenge in Tennessee.

Thirdly, there is no defense. Voter suppression is often done in the name of combating voter fraud. But let's be clear. This is not a real problem. Reports of voter fraud is about as common as reports of alien abduction. Even Trump had to disband his voting commission because fraud does not exist.

Fourthly, while voting discrimination was well documented in States subject to preclearance under the Voting Rights Act, it has spread like a cancer to other States never subject to coverage. The tragic fact is that no community is immune. Everyone everywhere must remain vigilant.

Finally, we cannot address this alone. My testimony entered into the record discusses the vast efforts of our legal department in conjunction with our State conferences and other legal organizations on the ground to combat voter suppression. But here is the situation: *Shelby County* eliminated the preclearance requirement, and Trump's Justice Department is missing in action on any voting rights enforcements. Our branches and members are asked to what used to be the job of the Federal Government: protect the right to vote.

To be clear, we are fighting back wherever and whenever we can. But this is not sustainable. Congress must step up to combat this Nation's epidemic. Congress must pass Voting Rights Advancement Act. Make no mistake: Congress has simple evidence to restore the Voting Rights Act to its full strength. Given the daily experiences of our community with voter suppression in the lead-up to and on election day, no one can deny the strong record that supports immediate passage. Congress must also pass For the People Act. Voting must be simplified. Access to ballots must be expanded. This bill would make it easier to cast a vote and make sure that that vote is counted.

Finally, Congress must pass Securing America's Federal Election Act. The SAFE Act would help our elections secure and free from foreign intervention, interference that disproportionately targeted African Americans. Robert Mueller warned this committee about Russian interference in our election. He said, "They are doing it as we sit here." We must defend our democracy, period.

This year, the NAACP celebrated our 110th anniversary. We have never wavered from demanding an inclusive, secure democracy. It is now time for Congress to make protecting the franchise the highest priority.

In Mississippi, what I experienced over the last 20 years is what I am watching across this country. If we do not stand up to protect democracy and make it work today, who will? And how can we ever have a true representative Government?

Thank you for allowing me to testify. I welcome any questions.

[The statement of Mr. Johnson follows:]

Good morning, Chairman Cohen, Chairman Nadler, ranking Member Johnson, and esteemed members of this subcommittee. Thank you for inviting me to testify before you on this very important topic which is crucial to the very core of our democracy.

My name is Derrick Johnson and for the past two years I have had the honor of serving as President and CEO of the National Association for the Advancement of Colored People, otherwise known as the NAACP. Since 1909, the NAACP has served as our nation's largest, oldest, and most widely-recognized grassroots-based civil rights organization. Prior to my current position, I served as the Vice Chair of the NAACP's Board of Directors, and for more than 13 years I was the President of the Mississippi State Conference of NAACP Branches.

The NAACP currently has over 500,000 card-carrying members in more than 2200 membership units in every state in the nation, as well as on American military installations in Asia and Europe. Our mission statement declares that our goal is "...to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination." As part of our original mandate, we have worked to strengthen our nation's democracy by protecting the rights of all eligible Americans to cast a free and unfettered vote and to be certain their vote is counted.

Throughout our history, the NAACP has advocated and worked against such racist and heinous obstacles as America's Jim Crow laws and the Black Codes, among others. As such, we were instrumental in the development and enactment of the 1964 *Civil Rights Act*, the 1965 *Voting Rights Act*, and its reauthorizations, the 1992 *National Voter Registration Act*, (NRVA or Motor Voter Law), and the 2002 *Help America Vote Act* as well as several other key pieces of Federal legislation aimed at enhancing, ensuring, and protecting Americans' right to vote.

Tragically, our country, which once promoted itself as the beacon of democracy throughout the world, has seen a reversal in the century-old struggle for achieving the goal of "one person, one vote." This reversal has been strategic and multi-faceted and has disproportionately targeted groups of Americans who have historically been disenfranchised by malevolent laws and mean-spirited individuals. Specifically, those who have been targeted for disenfranchisement are disproportionately racial and ethnic minorities, low-income Americans, the elderly, students and women.

Whether through stringent photo identification requirements, questionable purges of the voting rolls, the closure of polling stations in communities predominantly comprised of Americans of color, shortened early voting periods, or initiatives making it harder for third parties to register qualified voters, some states are abridging the voting rights of millions of

Americans. Many of these tactics purport to be combating voter fraud, however numerous studies have shown that this is not really a problem[1]. In fact, several well-respected researchers have found that reports of voter fraud are roughly as common as reports of alien abduction[2].

While many of these disenfranchising moves are being pursued in states which had been subjected in part or in whole to Section 5, otherwise known as the "Pre-clearance section" of the 1965 *Voting Rights Act*, they have spread like a malignant cancer to several states which did not have even a single county covered. The Center for American Progress issued a report in which they found that there were several "voter suppression measures and other Election Day problems that potentially kept millions of eligible Americans from participating in the 2018 midterm elections.[3]"

Just a few of the voter suppression tactics we have seen flourish in the last few years include disenfranchising, stringent photo ID requirements, purges of voter registration rolls, the closure or other problems in the operation of polling stations in communities predominantly comprised of Americans of color and the resulting long lines to vote, and a number of tactics aimed at making it harder for eligible Americans to cast a free and unfettered ballot.

It has not been lost on the NAACP that many of these tactics disproportionately target the communities we serve and represent.

Photo Identification Requirements

As of April 1, 2019, 35 states enforced (or were scheduled to begin enforcing) voter identification requirements. A total of 17 states require potential voters to present photo identification; the remainder accept other, often multiple, forms of identification.

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[1] Levitt, Justin, "The Truth About Voter Fraud," November 9, 2007, the Brennan Center. Available at https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf
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Bump, Phillip, "Trump Wants to Focus on the 'Real Threat' to Elections: Not Russia, butt Imaginary Voter Fraud" August 14, 2019, The Washington Post Available at https://www.washingtonpost.com/politics/2019/08/14/trump-wants-focus-real-threat-elections-not-russia-imaginary-voter-fraud/

[2] Farrell, Henry "Trump's Commission Should Investigate Alien Abduction, Not Voter Fraud. There's as much Survey Evidence for Both" May 11, 2017, The Washington Post. Available at https://www.washingtonpost.com/news/monkey-cage/wp/2013/11/14/about-as-many-people-say-theyve-been-abducted-by-space-aliens-as-say-theyve-committed-voter-fraud/

[3] Root, Danielle and Barclay, Aadam "Voter Suppression During the 2018 Midterm Elections" November 20, 2018 Available at https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/

While some states, beginning with South Carolina in 1950 enacted voter ID laws before *Shelby v. Holder*, the laws tended to accept any form of ID, photo or not, and the states which were covered all or in part by Section 5 of the 1965 *Voting Rights Act* did not successfully enact strict, disenfranchising photo ID laws. It should be noted that within 24 hours of the *Shelby v. Holder* decision 4 states which had been covered entirely or in large part by Section 5, specifically Texas, North Carolina, Mississippi, and Alabama, all announced that they were going to begin to implement the same strict photo identification laws which the U.S. Department of Justice had determined were discriminatory.

What these laws do is create a barrier to keep the up to 21 million Americans, or 11% of the entire voting-eligible population, who do not have one of the stringent government-issued photo IDs, out of the ballot booth. A study by the Government Accountability Office found that voter ID laws can reduce participation in elections by between 2 percent and 3 percent. Sadly, a disproportionate number of these people who do not have eligible government-issued IDs are racial and ethnic minorities, the elderly, women, students, or low-income Americans. A full 25% of African Americans who would otherwise be eligible to vote do not have a qualified photo ID[4].

Perhaps the most egregiously discriminatory photo ID law took effect in Texas. Under the new Texas law, voters are allowed to use a concealed handgun license as proof of identity, but precludes voters from using a student photo ID, even if the student ID was issued by a state university. As the Texas Department of Public Safety recently noted, African Americans are significantly underrepresented among the state's handgun license holders. Of the more than 100,000 concealed handgun licenses issued in Texas last year, only 7.69% were issued to African Americans, even though African Americans constitute 12.1% of the state's voting age population. In contrast, African Americans are more likely to attend a public university in Texas than whites. According to the 2009 American Community Survey, 8.0% of voting-age African Americans in Texas attended a public university compared with only 5.8% of voting age whites[5].

Photo ID proposals re-create new obstacles in voting akin to a modern day "poll-tax" by forcing Americans to pay for government approved ID before they can vote. Many of our most vulnerable citizens do not have or cannot easily obtain the paperwork needed to obtain a photo ID, such as passports, birth certificates or naturalization papers. Furthermore, obtaining a photo ID may require taking as much as a day off of work or traveling far distances, both of which may prove to be almost insurmountable. The requirement that all voters present a

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[4] The Advancement Project: *What's Wrong with This Picture? New Photo ID Proposals Part of a National Push to Turn Back the Clock on Voting Rights*. Page ii

[5] The Brennan Center for Justice: *Voting Law Changes in 2012*. Weiser, Wendy and Norden, Lawrence. 10/3/2011. Page 24

government issued photo ID before being able to cast a regular ballot will disproportionately disenfranchise African Americans and other racial and ethnic minority Americans, as well as the elderly, individuals with disabilities, Americans living in rural areas, students, women, Native American voters, the homeless, and low-income people who are less likely to have or carry a photo ID.

The national office of the NAACP, often in conjunction with affected NAACP State Conferences of Branches, has used our legal powers to argue against many of these disenfranchising, disproportionate photo ID requirements in court.

- In the Alabama State Conference of NAACP Branch's ongoing challenge to Alabama's requirement that voters present photo identification before casting their ballots, the State Conference has appealed from the trial court's ruling on summary judgment that HB19 (the state's photo ID law) does not discriminate on the basis of race. The Alabama State Conference of NAACP Branch's brief principally asserts that there are triable issues of material fact as to whether HB19 violates Section 2 of the *Voting Rights Act* because of its disparate impact on African Americans.

Voter purges

"Voter purges" are the term used to describe the process in which election officials attempt to remove ineligible names from voter registration lists. When done correctly, purges ensure the voter rolls are accurate and up-to-date. When done incorrectly, either due to incompetence or as a result of nefarious motives, purges disenfranchise legitimate voters.

Specifically, problems arise when states remove voters who are still legally eligible to vote. States rely on faulty data that purport to show that a voter has moved to another state. Oftentimes, these data get people mixed up. In big states like California and Texas, multiple individuals can have the same name and date of birth, making it hard to be sure that the right voter is being purged when perfect data are unavailable. Troublingly, racial and ethnic minority voters are more likely to share names than white voters, potentially exposing them to a greater risk of being purged. Voters often do not realize they have been purged until they try to cast a ballot on Election Day — after it's already too late. If those voters live in a state without election day registration, they are often prevented from participating in that election[6].

[6] Morris, Kevin "Voter Purge Rates Remain High, Analysis Finds" August 1, 2019, the Brennan Center for Justice. Available at https://www.brennancenter.org/blog/voter-purge-rates-remain-high-analysis-finds

According to a report by the Brennan Center, after analyzing 2019 data provided to their researchers by the non-partisan U.S. Election Assistance Commission (US EAC),

- At least 17 million voters were purged nationwide between 2016 and 2018, similar to the number purged between 2014 and 2016, but considerably higher than those purged between 2006 and 2008;
- The median purge rate over the 2016–2018 period in jurisdictions previously subject to preclearance was 40 percent higher than the purge rate in jurisdictions that were not covered by Section 5 of the *Voting Rights Act* (prior to the *Shelby County* decision, jurisdictions covered under Section 5 of the *Voting Rights Act* collectively had purge rates right in line with the rest of the country); and,
- If purge rates in the counties that were covered by Section 5 were the same as the rates in non-Section 5 counties, as many as 1.1 million fewer individuals would have been removed from voter rolls between 2016 and 2018[7].

A handful of states are using someone's decision not to vote as the trigger for removing them from the rolls. At least nine states (Alaska, Georgia, Montana, Ohio, Pennsylvania, South Dakota, Oklahoma, Oregon and West Virginia) have purged an estimated hundreds of thousands of people from the rolls for infrequent voting since the 2014 general election[8]. States with these policies are removing voters at some of the highest rates in the nation, no matter the reason.

No state has been more aggressive with this approach than Georgia, where in late July 2017 more than half a million people — 8 percent of Georgia's registered voters — were cut from the voter rolls in a single day. For an estimated 107,000 of those people, their removal from the voter rolls was triggered not because they moved or died or went to prison, but rather because they had decided not to vote in prior elections[9].

In Ohio, 50,000 people were removed from the rolls in 2015 and 2016 for not voting[10]. More than 10 percent of voter registrants in the "heavily African-American neighborhoods near downtown" Cincinnati were purged for failing to vote since 2012, compared with only 4 percent of registered voters living in the surrounding suburb of Indian Hill, which is mostly white Americans.

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[7] Ibid
[8] Caputo, Angela, et.al. "They Didn't Vote.....Now They Can't" October 19, 2018, APM Reports. Available at https://www.apmreports.org/story/2018/10/19/georgia-voter-purge
[9] op. cit. Caputo, et.al.
[10] Ibid

Sadly, the U.S. Supreme Court validated Ohio's process for purging voters from voter rolls simply for not having voted in two previous elections and failing to return a mailer. With its ruling, the Supreme Court gave Ohio and other state governments s a stamp of approval to manipulate voter rolls and keep eligible Americans, particularly people of color, from participating in elections.

Given that so many races have been won or lost by only a few hundred votes, these numbers have the potential to change the outcome of elections. Moreover, if you happened to be one of those 157,000 Americans and you wanted to cast a ballot, only to find that your name had been removed (or purged) from the rolls, many would argue that your Constitutionally guaranteed right to vote had been violated.

The national office of the NAACP, often in conjunction with affected NAACP State Conferences of Branches, has used our legal powers to argue against many of these disenfranchising tactics in court.

- On August 26, 2019, the U.S. Court of Appeals for the Seventh Circuit affirmed a district court's grant of a preliminary injunction against Indiana's use of Kris Kobach's (the extremist former Kansas Secretary of State) "Cross-Check System" to purge voters from the rolls without first seeking to contact the purged voter via mail notification as required under the NVRA. The lawsuit was brought by Common Cause, the Indiana League of Women Voters and the Indiana State Conference of the NAACP.
- The Georgia State Conference of NAACP Branches sent a notice letter to the Laurens County (Georgia) Board of Elections seeking full restoration to the voting rolls of persons who were unlawfully purged from the rolls in violation of the NVRA, and, if necessary, to file suit against the Laurens County Board of Elections. The Laurens County Board of Elections unlawfully removed hundreds of eligible voters from the voting rolls in violation of the NVRA in 2017 and 2018. The unlawful purging process appears to have ended in 2018, but the Board of Elections has yet to fully restore to the rolls all of the voters who were unlawfully purged. The Georgia State Conference of NAACP Branches, represented by the Lawyers Committee for Civil Rights Under Law, sent a notice letter to the Laurens County officials, which is a prerequisite to filing suit under the NVRA.

Polling location closures which contributed to long lines and waiting periods to vote

Prior to the US Supreme Court decision in *Shelby County v. Holder*, jurisdictions with a history of discrimination were required to give substantial notice to voters about any planned polling place closures. And they were required to consult with the minority community to ensure that any proposed voting change was not discriminatory. Post-*Shelby*, however, a study by the

Leadership Conference Education Fund found that some of the same jurisdictions which had been under Section 5 due to their history of discrimination are making voting more confusing and less accessible by engaging in massive reductions in the number of polling places, often with little or no public warning[11].

In fact, the Leadership Conference study demonstrated that since *Shelby*, hundreds of polling places have been closed in counties once covered by Section 5. Voters in these counties had at least 868 fewer places to cast ballots in the 2016 presidential election than they did in past elections, a 16 percent reduction. Out of the 381 counties in their study, all of which pre-*Shelby* had been covered by Section 5, 165 of them—43 percent—have reduced voting locations[12].

The Leadership Conference's report concluded by finding that "Without oversight, transparency, and accountability, counties formerly covered by Section 5 closed hundreds of polling places in advance of the first presidential election in 50 years without a fully operable *Voting Rights Act*.[13]" In addition to confusion, poll closures cause long lines, frustration, and delayed opportunities to vote. When you are paid by the hour, as too many Americans of color are, if your choice is between waiting in a 3-hour long line to cast a vote or feed your family for the evening, the choices become more clear.

The national office of the NAACP, often in conjunction with affected NAACP State Conferences of Branches, has used our legal powers to argue against many of these disenfranchising tactics in court.

- On Election Day, the NAACP national Legal Department attorneys worked with the Georgia State Conference of NAACP Branches and the Lawyers Committee for Civil Rights Under Law to win emergency orders extending polling place hours in several precincts in and around Atlanta that had been plagued by long lines and broken equipment.
- After the Randolph County, GA, elections commission announced plans to close seven of the nine polling locations in this predominantly African-American county, the Georgia State Conference of NAACP Branches, represented by the Lawyers Committee for Civil Rights Under Law, submitted a letter strongly opposing the proposed closures and threatening litigation. The proposed closures generated overwhelming community

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[11] The Leadership Conference Education Fund. "The Great Poll Closure" November 2016 Available at http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf
[12] Ibid
[13] Ibid

opposition. In response, the elections commission quickly scrapped the plan to close the polling locations.

The repeal or lack of a pursuit of various proven tactics making it easier to register to vote and to cast a ballot

Like the closing of polling stations, many tactics which made it easier to vote, and were utilized heavily by African Americans and other Americans of color, are being steadily repealed or scaled back by states, or in too many cases are not being investigated by local election officials. Given our historically low voter turnout among eligible Americans -- in 2016, 61.4 percent of the citizen voting-age population reported voting, and in the most recent mid-term election in 2018 only 53.4% of Americans of voting age reported voting[14] – we as a nation should be working to expand and protect voters' access to the polls. We should universally be trying tactics such as early voting, Sunday voting, automatic voter registration, same day voter registration, on-line voter registration, and mail-in ballots. We should be encouraging youth voters by requiring colleges and universities to offer and encourage voter registration to all students, we should be assuring the integrity of the voting process by overseas residents especially those serving our country in the armed services, and we should be cracking down hard on voter deception, intimidation and interference by foreign nations. Lastly, we should be working to ensure the provisional ballot process is smooth, easy, accurate, and that valid provisional ballots are guaranteed to be counted.

Instead, we have been witnessing states and localities that have been hostile to many of these procedures. Perhaps the best example is North Carolina, in which 40 out of 100 counties were covered by Section 5 of the 1965 Voting Rights Act pre-*Shelby*. In 2016 a federal court struck down a 2013 law which was enacted only months after the Supreme Court's *Shelby* decision. In addition to mandating a strict photo ID requirement before voting, the law eliminated same-day voter registration, put an end to seven days of early voting and prohibited out-of-precinct voting. In striking down the 2013 act, the judges found that the primary purpose of the law wasn't, as supporters claimed, to stop voter fraud, but rather to disenfranchise minority voters. In their decision, the judges found that the provisions "target African Americans with almost surgical precision."

North Carolina is hardly alone. A number of states have reversed efforts to make it easier for citizens to vote. Many of these are the same states that have waged a full attack on immigrant

[14] Misra, Jordan U.S. Census Bureau: Current Population Survey Voting and Registration Supplements Elections 1978 – 2018, April 23, 2019. Available at: https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html

communities, the labor community and communities of color through targeted campaigns. Examples of these disenfranchising laws include:

- In New Hampshire - strict voter registration laws that require those registering within 30 days of an election to prove they live in the ward or town where they are trying to vote were in place on Election Day 2018. This requirement disproportionately disadvantaged college students, who number more than 90,000 in a state with a voting-age population of slightly more than one million.
- In Georgia, 53,000 voter registrants—70 percent of whom were African American — were placed in "pending" status by the secretary of state because of minor misspellings or missing hyphens on their registration forms. A federal judge intervened to stop this practice on November 2, 2018—four days before the election—citing the "differential treatment inflicted on a group of individuals who are predominantly minorities." However, those with pending registration statuses were still forced to prove eligibility, including U.S. citizenship, before voting on Election Day, which can be difficult for Americans lacking access to birth certificates, passports, or nationalization documents.
- In Michigan the secretary of state's alleged failure to update tens of thousands of voter registration addresses in the state's voter registration database caused problems. Progress Michigan filed a Freedom of Information Act (FOIA) request on October 19, 2018, to learn more about how the error occurred. The secretary of state's office, for its part, vowed to remedy the mistake, although it is unclear at this time whether this was accomplished.
- In 2018, a lack of online voter registration proved a problem for the people of Texas. The absence of this commonsense pro-voter reform has long been a problem for voters in the state. In 2016, the Texas Civil Rights Project filed suit challenging the state's failure to provide opportunities to register to vote when renewing drivers' licenses, claiming it violated the National Voting Registration Act (NVRA). In May 2018, a federal judge agreed and ordered Texas to implement an online voter registration system in time for the 2018 midterm elections; however, the state's appeal to the 5th U.S. Circuit Court of Appeals prevented this from happening.
- On October 9, 2018, the U.S. Supreme Court upheld a North Dakota law requiring voters to have an ID with a current street address, thereby potentially preventing tens of thousands from voting—including an estimated 5,000 Native Americans. Many Native Americans living on reservations lack residential addresses and instead receive their mail at P.O. boxes. And under this new law, even tribal ID cards are inadequate if they do not list a street address.

The NAACP has used our legal powers to argue against many of these disenfranchising tactics in court.

- In the run-up to Election Day, the Georgia State Conference, together with the Lawyers Committee for Civil Rights Under Law and other advocacy groups, won a lawsuit challenging the state's decision not to process 53,000 voter registration applications, the majority of them from African Americans. A federal court in Atlanta ordered the state to allow persons whose registration status was deemed "pending" to vote.
- In the Alabama State Conference of NAACP Branch's federal lawsuit challenging Alabama's at-large system for electing all members of state appellate courts, the court denied the State of Alabama's 12(b) (6) motion to dismiss. The court held that plaintiffs have standing to sue, that plaintiffs satisfied their pleading burden by suggesting sub-districting as a potential remedy, and that the case cannot be dismissed under the Supreme Court's totality of the circumstances test.
- As a result of legal suits brought by the Missouri State Conference of NAACP Branches, the U.S. Court of Appeals for the Eighth Circuit affirmed the trial judge's ruling that the at-large voting system for electing members of the Ferguson-Florissant school board violated Section 2 of the *Voting Rights Act* by denying African-American residents a fair opportunity to elect candidates of their choice. On February 4, 2019, the U.S. Supreme Court denied the school district's petition for certiorari. Accordingly, the district lines had to be re-drawn in advance of the April 3, 2019 School Board Election.
- The Louisiana State Conference of NAACP Branches recently joined a federal lawsuit challenging the map for electing justices to the Louisiana Supreme Court. Justices to the Court are elected from seven single-member districts. While the VAP in Louisiana is approximately 30 percent, only one of the seven districts for electing justices to the Court is majority African American, and predictably, sadly, only one of the seven justices on the Court is African American. Given the racial polarization of voting in Louisiana and the ease with which a second majority African-American district could be drawn, the NAACP State Conference believes the current map violates Section 2 of the VRA by denying African-American voters a reasonable opportunity to elect justices of their choice. The case is pending.
- The Florida State Conference of NAACP Branches, along with other plaintiffs, filed suit in Florida challenging the weakening of Florida Amendment 4, which restored voting rights to certain categories of formerly incarcerated persons. The legislation conditions restoration of voting rights on payment of outstanding fines and other bases not expressly stated in Amendment 4. The State Conference challenges the legislation on equal protection and due process grounds. The case is pending.

The NAACP has also been fighting a trend in several states which have made it harder for non-partisan groups to register eligible voters.

- The Mississippi State Conference of NAACP branches, with approval from the National NAACP office, filed a lawsuit under the NVRA arguing that Mississippians who do not register to vote in time for a general election may nevertheless vote in a *runoff* if they register to vote 30 days in advance of the runoff and meet other requirements. The State of Mississippi argued, contrary to the express language of the NVRA, that only those registered to vote in the general election were eligible to vote in a subsequent runoff.
- The Tennessee State Conference of NAACP Branches filed suit earlier this year mounting a facial challenge to the constitutionality of Tennessee SB971/HB1079, a statute that impose substantial restrictions on third-party voter registration activities as well as criminal and civil monetary penalties, all in a manner that threatens to chill efforts to register voters throughout the State of Tennessee. Among other objectionable features, the statute:

    - imposes civil penalties on the submission of 100 or more "incomplete" registration applications within a calendar year, with separate penalties assessable in different counties;
    - fails to define adequately which groups and individuals would be subject to the law's restrictions; and
    - imposes criminal penalties for "any public communications regarding voter registration status" that is not accompanied by a disclaimer that the communication is not authorized by the state.

    The State Conference and other plaintiffs are seeking a preliminary injunction against enforcement of the new law.

Next steps

As the world leader in democracy, the United States should constantly seek new ways to expand participation in our governing process, as well as means to protect groups that have historically been disenfranchised and how to assure the American people that their government is free of and safe from foreign influence.

First we call on the U.S. Senate to pass and President Trump to sign into law H.R. 1 / S. 949, the *For the People Act*. H.R. 1 is a comprehensive bill with provisions to protect, support, and make it easier for eligible American citizens to cast a free and unfettered vote, prevent fraud, and to be sure their vote was counted. While there have been a number of NAACP-supported bills

introduced this year which would deliver crucial, individual "fixes," H.R. 1 represents a coordinated, comprehensive effort to protect and promote the voting rights of all Americans. This vital legislation includes many of the tools the NAACP has identified throughout our nation as improving voter registration and turn-out and successful voter participation: it includes provisions to promote automatic voter registration; same-day voter registration; early voting; voting by mail; the re-enfranchisement of ex-felony offenders; and an improvement in provisional ballots; while at the same time prohibiting voter caging, voter deception and voter intimidation. The *For the People Act* also promotes secure voter registration via the internet and gives much-needed resources and additional authority to the Election Assistance Commission (EAC), a federal agency created in 2002 and is charged with determining and promoting the best, most secure practices to safeguard our democracy.

Protecting groups, such as racial and ethnic minorities, which have historically been disenfranchised, is also vitally important. In order to pursue this goal, the NAACP supports and calls for the quick enactment of H.R. 4 / S. 561, the *Voting Rights Advancement Act*. This seminal legislation would repair and strengthen the 1965 Voting Rights Act in light of the damage caused by the U.S. Supreme Court decision in *Shelby v. Holder*. In short, this crucial legislation would: modernize the preclearance formula to cover states with an historical pattern and practice of discrimination; ensure that last-minute voting changes won't adversely affect voters; protect voters from the types of voting changes most likely to discriminate against people of color and language minorities; enhance the ability to apply a preclearance review when needed; expand the effective Federal Observer Program; and improve voting rights protections for Native Americans and Alaska Natives. Furthermore, this legislation includes all of the priorities necessary for a strong VRA restoration as established by the NAACP National Board of Directors.

The US Supreme Court made it clear that Congress can fix the problems with Section 4(b) of the *1965 Voting Rights Act* and pass a law to replace the criteria for which states or jurisdictions must comply with Section 5 "preclearance." H.R. 4 / S. 561 does what the Supreme Court insisted on and improves the decades-old formula to better suit today's needs of discrimination at the polls.

Lastly, the NAACP calls on the Senate to pass and President Trump to sign into law H.R. 2722 / S. 2053, the "*Securing America's Federal Elections*" or "SAFE" Act. As drafted, the SAFE Act provides resources to ensure that our elections are secure, accurate, and free from foreign intervention for the foreseeable future. Like most Americans, we have been outraged at media reports highlighting antiquated or porous voting systems and attempts to undermine our democracy. We need H.R. 2722 / S. 2053 to ensure that State and local election officials are

able to replace aging voting machines with voter-verified paper ballot voting systems. To ensure the sustainability of these improvements, states are then provided with no less than $1 per voter who participated in the most recent election to maintain election security.

Together, these bills, H.R. 1, H.R. 4, H.R. 2722 and their Senate counterparts would expand participation in our governing process, protect groups that have historically been disenfranchised and assure the American people that their government is free of and safe from foreign influence.

Conclusion

The NAACP stands firm with the principles of an inclusive democracy through:

- Prioritizing a pro-voter platform within our fight forward to reclaim the democratic values of this nation to be inclusive, as well as an opportunity to build an independent political movement that aligns with our shared values;
- Advocating to expand and protect voting rights at the federal and state level, including the full restoration and improvement of the 1965 *Voting Rights Act*;
- ensuring the modernization of voting through a number of proven tactics;
- making it easier for all Americans to vote;
- Fighting to protect the voting rights of working people and all people of color as well as all Americans when they come under attack, especially against attempts to suppress votes in the lead-up to elections, including through support for community-focused voter education and voter protection efforts;
- Changing structural rules to ensure that every vote and every American voice counts equally; and,
- Reshaping the political debate to demand full democracy at every level of government.

Voter suppression has played a huge role in silencing the political voices of the African American community and all people of color historically and during the 2018 midterm election season. We must now look forward and prepare for the 2019 and 2020 election cycles and the 2020 Census, and the imminent threats that are facing the Census and our democracy. The NAACP is determined to shape a culture of voting and reach people who don't vote regularly, especially those who believe their votes don't matter.

America's hard-working families and communities deserve better. As a movement that is 110 years old we demand that a pro-voter agenda be adopted immediately, starting with the restoration and expansion of the 1965 *Voting Rights Act* and passage of legislation that expands opportunities for citizens to vote. We join with hundreds of other civic and civil rights

organizations across the political spectrum in calling for real integrity in our democracy, and urge our leaders to expand and protect the right to vote of all of the American people.

Mr. COHEN. Thank you, Mr. Johnson, and just parenthetically, I will mention that in Memphis, the location that houses the Election Commission downtown was dedicated yesterday as the James Meredith Building, in honor of his integrating Ole Miss and fighting for voting rights.

Mr. Dale Ho is director of the Voting Rights Project at the American Civil Liberties Union. In that role, he supervises the ACLU's voting rights litigation and advocacy work nationwide. He currently has active cases in dozens of States around the country. He has testified on election law issues before this Congress and State legislatures. He is also an adjunct clinical professor of law at the New York University School of Law, received his J.D. from Yale Law School and his undergraduate degree from Princeton.

Mr. Ho, you are recognized for 5 minutes. Thank you.

STATEMENT OF DALE HO

Mr. HO. Chairman Cohen, Chairman Nadler, Ranking Member Johnson, and members of the subcommittee, thank you very much for the opportunity to testify today. My name is Dale Ho, and I am the director of the ACLU Voting Rights Project.

Justice Ruth Bader Ginsburg famously warned that the Supreme Court's decision striking down a part of the Voting Rights Act in Shelby County v. Holder was like "throwing away your umbrella in a rainstorm." And sure enough, after the decision, a downpour came, with a wave of discriminatory voting laws.

The ACLU has been on the front lines. We have opened more than 60 new voting rights investigations and cases since the decision. Some of our recent and ongoing cases include: Department of Commerce v. State of New York, a case that I argued before the Supreme Court earlier this year, successfully challenging the administration's attempt to add a citizenship question to the 2020 census; NAACP v. McCrory, where, along with the NAACP and others, we successfully challenged the sweeping North Carolina bill that sought to eliminate means of participation used by more than 1 million voters in the 2012 Presidential election; and Gruver v. Barton, where, working with the Brennan Center and others, we are challenging a Florida law that denies the right to vote to returning citizens with past felony convictions based solely on their inability to pay outstanding costs, fines, fees, and restitution.

My testimony today will focus on current conditions with respect to racial discrimination in voting and, in particular, on recent litigation under Section 2 of the Voting Rights Act. As detailed in my written statement, I think four points stand out.

First, recent litigation under Section 2 of the VRA demonstrates the need for the Voting Rights Advancement Act. While the current administration has not filed a single case under the VRA, private litigants have won more than two dozen Section 2 cases since Shelby County was decided. That volume of successful Section 2 litigation illustrates the continuing problem of racial discrimination in voting today.

Second, despite those successes, we currently lack the tools necessary to stop discriminatory changes to voting laws before they taint an election. Discriminatory laws that we have ultimately succeeded in blocking have remained in effect for months or even

years while litigation has proceeded, time in which elections have been held and Government officials were elected.

The North Carolina case that you have heard so much about today is illustrative. The law that we challenged eliminated 1 week of early voting in which 900,000 people had voted in 2012; same-day registration, which nearly 100,000 voters had used in 2012; and pre-registration, which 50,000 voters had used before that election. The law also banned the use of many forms of Government-issued photo ID for voting purposes, including student ID cards, municipal employee ID cards, and public assistance IDs. As Chairman Cohen and Mr. Johnson noted, the Fourth Circuit found that this law targeted African American voters "with almost surgical precision" and found it unconstitutional.

But that case took $5.9 million, including expert fees and attorney time, and 34 months to litigate. In the interim, the 2014 general election took place, and 190 Federal and State government officials were elected under what was later determined to be an unconstitutional regime. That law has been struck down, but that election cannot be rerun. There is no way now to compensate the voters of North Carolina or our democracy itself for that gross injustice.

And that is just one example. My written testimony details ten Section 2 cases that the ACLU has litigated since Shelby County in which we ultimately obtained favorable outcomes for our clients, but only after a dozen elections were held and 350 Federal, State, and local officials were elected under discriminatory laws.

The VRAA would address this problem in two ways: with a new preclearance provision based on a rolling formula, accounting for recent voting rights violations; and a clarified standard for preliminary injunctions in Section 2 cases. Both would help prevent discriminatory laws from taking effect before an election.

Third, overall the bulk of Section 2 litigation happens at the local level where changes to voting laws are more difficult to monitor and highlights the need for the VRA's transparency and notice requirements.

Fourth, and finally, a handful of States—of formerly covered States under the Section 5 preclearance regime account for more than half of successful Section 2 cases since Shelby County was decided, which indicates that voting discrimination remains concentrated in certain areas and that particularly strong protections are justified in those places.

Congress has a duty to take strong action to fulfill the promise of the Reconstruction Amendments, that all Americans should be free to participate in our democracy on equal terms, free from racial discrimination.

Thank you. I look forward to answering any questions you have today.

[The statement of Mr. Ho follows:]

Introduction

With approximately 3 million members, activists, and supporters, the ACLU is a nationwide organization that advances its mission of defending the principles of liberty and equality embodied in our Constitution and civil rights laws. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the Constitution and laws of the United States. The ACLU's Voting Rights Project, established in 1965, has filed more than 300 lawsuits to enforce the provisions of our country's voting laws and Constitution, including the Voting Rights Act of 1965 (VRA) and the National Voter Registration Act of 1993 (NVRA).

In my capacity as Director of the ACLU's Voting Rights Project, I supervise the ACLU's voting rights litigation, which focuses on ensuring that all Americans have access to the franchise, and that everyone is represented equally in our political processes. In addition to my work at the ACLU, I serve as an adjunct professor at NYU School of Law, and am widely published on voting rights issues, including in the *Yale Law Journal Forum* and the *Harvard Civil Rights-Civil Liberties Law Review*.

More than a century ago, the Supreme Court famously described the right to vote as the one right that is preservative of all others.[1] We are not truly free without self-government, which requires a vibrant participatory democracy, in which everyone is fairly and equally represented.

My written statement will address current conditions with respect to racial discrimination in voting since the Supreme Court's decision in *Shelby County v. Holder*.[2] In her dissent in that case, Justice Ruth Bader Ginsburg warned that the Court's decision to release states and counties with the worst histories and recent records of voting discrimination from federal "preclearance"—that is, the obligation to obtain approval from the Department of Justice or a federal court before implementing any changes to voting laws and practices—was "like throwing away your umbrella in a rainstorm."[3] And sure enough, after the decision, the downpour came. *Shelby County* unleashed a wave of voter suppression and other discriminatory voting laws unlike anything the country had seen in a generation.[4] Today, racial discrimination in voting remains a persistent and widespread problem.

But Congress has the power under the Fourteenth and Fifteenth Amendments to adopt strong enforcement legislation to prevent racial discrimination in the voting process at the federal, state, and local levels. Indeed, when Congress acts to address racial discrimination in voting—protecting both the fundamental right to vote and the right to be free from racial discrimination—two rights at the center of the Reconstruction Amendments, which Congress is

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[1] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

[2] 570 U.S. 529 (2013).

[3] 570 U.S. at 590 (Ginsberg, J., dissenting).

[4] *See* Dale E. Ho, *Building an Umbrella in A Rainstorm: The New Vote Denial Litigation Since Shelby County*, 127 Yale L.J. Forum 799 (2018).

expressly authorized to enforce—Congress acts at the height of its power.[5] In light of current conditions, this body has not only the authority but the duty to ensure that all Americans are free to exercise the franchise in elections without the taint of racial discrimination.

I will begin with a brief overview of the ACLU's voting rights work, highlighting a few of our most significant cases. I will then describe our recent experience challenging discriminatory voting laws under Section 2 of the Voting Rights Act. While we have brought a number of successful VRA cases since *Shelby County*, these cases have typically taken years rather than months to litigate—and despite our best efforts, numerous elections have been conducted in which *hundreds* of federal, state, and local government officials have been elected under regimes that were later determined to be discriminatory. And once these elections were conducted, there was no way to adequately compensate the victims of discrimination.

Our experience thus highlights the need for stronger voting rights protections contained in the Voting Rights Advancement Act (VRAA)[6]—including a new preclearance process based on current conditions, and a clarified standard for obtaining and sustaining preliminary relief in voting discrimination cases—to block discriminatory voting changes *before* they are implemented, so that they do not irrevocably taint our democracy.

I will then address Section 2 litigation since *Shelby County* more broadly. Briefly, **the frequency of Section 2 litigation at the local level underscores the need for the enhanced notice and transparency requirements of the VRAA**—as changes to voting practices are often more difficult to detect and monitor at the local level. Moreover, **successful Section 2 litigation appears to be concentrated in a handful of states formerly subject to preclearance coverage under Section 5 of the VRA. That indicates that some states continue to have worse conditions with respect to voting discrimination, and justifies the application of particularly strong voting rights protections in those places.**

I. Overview of ACLU Voting Rights Litigation Since *Shelby County*

It is no exaggeration to say that the right to vote is under siege. As the United States Civil Rights Commission recently explained in a report examining "the current and recent state of voter access and voting discrimination for communities of color," the right to vote "has

[5] *See Tennessee v. Lane*, 541 U.S. 509, 561-63 (2004) (Scalia, J., dissenting) ("Giving [Congress's enforcement powers] more expansive scope with regard to measures directed against racial discrimination by the States accords to practices that are distinctively violative of the principal purpose of the [Reconstruction Amendments] a priority of attention that [the Supreme] Court envisioned from the beginning, and that has repeatedly been reflected in [the Court's] opinions.").

[6] Voting Rights Advancement Act of 2019 ("VRAA"), H.R.4. https://www.congress.gov/bill/116th-congress/house-bill/1799/text.

proven fragile and in need of both Constitutional and robust statutory protections. Racial discrimination in voting has been a particularly pernicious and enduring American problem."[7]

Election-related litigation has exploded in recent years. As UC Irvine Law Professor Rick Hasen has noted,

> In the period since 2000, the amount of election-related litigation has more than doubled compared to the period before 2000, from an average of 94 cases per year in the period just before 2000 to an average of 258 cases per year in the post-2000 period. Even compared to the 2012 presidential election cycle, litigation is up significantly; it was twenty-three percent higher in the 2015-16 presidential election season than in the 2011-12 presidential election season, and at the highest level since at least 2000 (and likely ever).[8]

The ACLU has had a very active voting rights docket over the last 6 years. Since *Shelby County* was decided, the ACLU has opened more than 60 new voting rights matters—including cases filed and investigations—and we currently have more than 30 active matters.[9] Between the 2012 and 2016 presidential elections alone, the ACLU and its affiliates won 15 voting rights victories protecting more than 5.6 million voters, in 12 states that collectively are home to 161 members of the House of Representatives and wield 185 votes in the Electoral College.[10]

Some of our most significant cases in recent years include the following:

Department of Commerce v. State of New York[11] **(Census Citizenship Question).** In a case that I argued before the Supreme Court earlier this year, the ACLU represented a coalition of immigrants' rights organizations[12] that successfully challenged the Administration's attempt to add a citizenship question to the 2020 Census. Had the Administration succeeded, the results would have been devastating for the voting rights of communities of color, principles of fair representation, and for our democracy itself.

At the time of trial in 2018, the Administration's own "best" "conservative" estimate was that adding a citizenship question would deter approximately 6.5 million from responding to the

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[7] U.S. Civil Rights Commission, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report, Sept. 12, 2018, *available at* https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

[8] Richard L. Hasen, *The 2016 U.S. Voting Wars: From Bad to Worse*, 26 Wm. & Mary Bill Rts. J. 629, 630 (2018).

[9] These numbers are based on a recent review of the ACLU's internal case management system.

[10] *See* Dale Ho, *Let People Vote: Our Fight for Your Right to Vote in This Election*, Nov. 3, 2016, *available at* https://www.aclu.org/blog/voting-rights/fighting-voter-suppression/let-people-vote-our-fight-your-right-vote-election.

[11] 139 S.Ct. 2551 (2019).

[12] Our clients in the Census litigation included the New York Immigration Coalition, Make the Road New York, the Arab American Anti-Discrimination Committee, and Casa.

Census.[13] That number has only grown; the Administration currently estimates "that including a citizenship question likely would have deterred at least 9 million people, especially among Latinx communities, from taking part in the head count."[14] Because the Census count is used to apportion Congressional seats among states and to draw district lines within them, the massive undercount that would have been caused by the citizenship question would have had dramatic consequences for our democracy. Nine million people represents a population larger than that of New Jersey, our 11th-largest state—if you put them all together in one state, that state would have 12 seats in the House of Representatives and 14 votes in the Electoral College.[15] The court in our case found that if the question were added to the Census, states including Arizona, California, Florida, Illinois, New York, and Texas would all be at risk of losing a seat in Congress.[16] The addition of a citizenship question would also have caused a misallocation of more than $900 billion in federal funds annually.[17]

The Administration claimed that it sought to add a citizenship question to the Census in order to help enforce the Voting Rights Act—despite the fact that this Administration has not sought to enforce the VRA a single time over the last 2 and a half years. The Supreme Court saw through this sham, and, in an opinion by Chief Justice Roberts, found that "the evidence tells a story that does not match the [Voting Rights Act] explanation" given by the Administration, which it rejected as "contrived."[18] The Court then blocked the addition of the citizenship question to the 2020 Census.

In describing the Administration's rationale for adding a citizenship question to the Census as a "contrived" "distraction,"[19] Chief Justice Roberts' opinion for the Court politely said what everyone knows: that the Administration lied when it said that it wanted to add the question to the Census so that it could better enforce the Voting Rights Act.

In fact, after oral argument in the Supreme Court, we discovered the most explicit evidence to date that the Administration's purpose was the opposite of what it claimed: not to protect minority voting rights but to dilute the political representation of communities of color. A portion of an early draft Department of Justice letter requesting the citizenship question

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[13] *New York v. United States Dep't of Commerce*, 351 F. Supp. 3d 502, 579-80, 584 (2019 S.D.N.Y.). grown, to approximately 9 million people. *See*

[14] Hansi Lo Wang, "Push For A Full 2020 Count Ramps Up After Census Citizenship Question Fight," NPR.org, July 31, 2019, *available at* https://www.npr.org/2019/07/31/746508182/push-for-a-full-2020-count-ramps-up-after-census-citizenship-question-fight.

[15] List of states and territories of the United States by population, Wikipedia, *available at* https://en.wikipedia.org/wiki/List_of_states_and_territories_of_the_United_States_by_population#cite_note-5 (citing U.S. Census, *Bureau Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018*, Dec. 19, 2018, *available at* https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html).

[16] *New York*, 351 F. Supp. 3d at 594.

[17] *See id.* at 596-99.

[18] 139 S.Ct. at 2575-76.

[19] *Id.*

ostensibly for VRA enforcement purposes was authored not by DOJ personnel, but by a private gerrymandering consultant who had previously concluded that that adding a citizenship question to the Census was necessary to enable a redistricting strategy that would be, in his words, disadvantageous to Hispanics, and "advantageous to Republicans and Non-Hispanic Whites."[20]

There can be no serious doubt that the plan to add a citizenship question had nothing to do with the VRA, but rather was part of an ongoing scheme to attack the political power of Latinx communities. In that sense, it is emblematic of the attacks on the voting rights of communities of color that we are facing today.

***North Carolina NAACP v. McCrory*[21] (Statewide Voter Suppression Bill).** In 2013, along with the Southern Coalition for Social Justice, we filed a lawsuit representing the League of Women Voters of North Carolina and individual North Carolina voters, in consolidated litigation challenging a sweeping voter suppression bill in North Carolina. Among other things, the bill imposed a strict voter identification requirement, slashed a week of early voting, eliminated same-day registration, eliminated pre-registration, and required the invalidation of ballots cast out-of-precinct.

These changes had a tremendous impact on voter access in the state. In the 2012 presidential election alone approximately 900,000 voters had voted during the eliminated week of early voting; nearly 100,000 voters had registered using SDR; approximately 50,000 had pre-registered; and 7,500 had cast ballots out of precinct.[22] Not only did the 2013 law eliminate these widely-used forms of participation, it also *banned* the use of many commonly-held forms of government-issued photo ID for voting purposes, including North Carolina student IDs, public assistance IDs, and even municipal employee ID cards. The evidence at trial indicated that hundreds of thousands of registered voters in North Carolina did not have one of the forms of ID required for voting purposes. In all, every form of registration or voting curtailed or eliminated by the bill had been disproportionately used by African-American voters; the only form of voting exempted from the ID requirement—absentee voting—was disproportionately used by white voters.[23]

In a unanimous opinion, the U.S. Court of Appeals for the Fourth Circuit found that the law had been enacted with racially discriminatory intent. Rather than describe that ruling, I will largely quote from it:

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[20] *New York v. Dep't of Commerce*, No. 18-cv-2921, ECF No. 595 (S.D.N.Y. May 31, 2019).

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

[22] *See* Br. for Appellants, *N.C. NAACP v. North Carolina*, 2016 WL 3355830, at *26 (4th Cir. June 14, 2016).

[23] *NAACP v. McCrory*, 831 F.3d at 217, 230.

> "[I]n the immediate aftermath of unprecedented African American voter participation in a state with a troubled racial history and racially polarized voting,"[24] North Carolina adopted its most "comprehensive set of restrictions" on the franchise since 1965, when Congress passed the Voting Rights Act.[25] The new law imposed a strict voter identification requirement permitting only certain forms of ID "which African Americans disproportionately lacked, and eliminated or reduced registration and voting access tools that African Americans disproportionately used."[26] The legislature adopted the law in a secretive and truncated legislative process, with a bill that "came into being literally within days of North Carolina's release from the preclearance requirements of the Voting Rights Act,"[27] and only after the legislature had requested and received "data on the use, by race," of various voting practices—revealing that "all" of these new restrictions "disproportionately affected African Americans."[28]

The Fourth Circuit struck down the challenged provisions of North Carolina's law as unconstitutional, finding that, in enacting these provisions, the North Carolina legislature "target[ed] African Americans with almost surgical precision."[29]

Indeed, recently-discovered documents reveal that, while working for the state of North Carolina, the same gerrymandering consultant who helped devise the plan for the citizenship question, also developed "dozens of intensely detailed studies of North Carolina college students, broken down by race and cross-referenced against the state driver's-license files to determine whether these students likely possessed the proper I.D. to vote."[30]

***Gruver v. Barton*[31] (Florida Poll Tax on Returning Citizens).** We are currently challenging a Florida law that denies the right to vote to returning citizens with past felony convictions based solely on their inability to pay outstanding costs, fines, fees, and restitution (referred to as legal financial obligations, or "LFOs"). Until recently, Florida was one of only three states to disenfranchise people for life for a conviction of any single felony offense. As a result, "[m]ore than one-tenth of Florida's voting population—nearly 1.7 million as of 2016—[could] not vote," and "one in five of Florida's African American voting-age population [could] not vote."[32] In a major victory for democracy, during the 2018 election, Floridians

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[24] *Id.* at 226.

[25] *Id.* at 223.

[26] *Id.* at 217.

[27] *Id.* at 223.

[28] *Id.* at 214.

[29] *NAACP v. McCrory*, 831 F.3d at 214.

[30] David Daley, "The Secret Files of the Master of Modern Republican Gerrymandering," *The New Yorker*, Sept. 6, 2019, *available at* https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering.

[31] Case 1:19-cv-00121-MW-GRJ (N.D. Fla.)

[32] *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018).

overwhelming approved an amendment to their state constitution automatically restoring the right to vote to returning citizens upon completion of sentence.

But the Florida legislature responded by passing a law that denies voter eligibility to any returning citizens with outstanding LFOs associated with their felony convictions. Our preliminary analysis indicates that, as a result, more than 80% of returning citizens in Florida—people who have fully completed their terms of incarceration, probation, and parole—will be disenfranchised, and that they are disproportionately African Americans.[33] Along with the NAACP Legal Defense Fund and the Brennan Center for Justice, we represent voters who have completed their sentences but would now be unable to vote in Florida, as well various organizations including the NAACP of Florida and the League of Women Voters. A preliminary injunction hearing is scheduled for October.

II. Current Conditions with Respect to Racial Discrimination in Voting: Section 2 Litigation Since *Shelby County*

While there are many different threats to voting rights today—ranging from barriers to registration and voting, to gerrymandering—the Voting Rights Act is targeted at one particular kind of problem: racial discrimination in voting. I will therefore concentrate my testimony on evidence of current conditions with respect to voting discrimination and, in particular, on recent litigation alleging racial discrimination under Section 2 of the VRA.

The high volume of recent litigation under Section 2 of the VRA illustrates the continuing problem of racial discrimination in voting today, and the need for the Voting Rights Advancement Act. In particular, a review of recent Section 2 litigation demonstrates the need for the VRAA's provisions setting forth enhanced notice and transparency requirements, establishing renewed federal oversight of changes to voting laws through a new preclearance formula, and clarifying the standard for preliminary relief in Section 2 litigation.

As an initial matter, I note that the incidence of Section 2 litigation is highly probative of ongoing unconstitutional discrimination—a record of which is generally understood as a prerequisite for congressional action to enforce the guarantees of the Fourteenth Amendment.[34] Although a finding of liability under Section 2 of the VRA does not require a court to find intentional discrimination in violation of the Constitution, the legal test for liability under Section 2's discriminatory results prong is in fact quite similar to the test for intentional racial discrimination in voting outlined by the Supreme Court.[35] Thus, recent Section 2 litigation is at

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[33] *Gruver v. Barton*, No. 4:19-cv-00300-RH-MJF, ECF No. 98-1 at 14; ECF No. 98-3 at 33-34 (N.D. Fla. August 2, 2019).

[34] *See City of Boerne v. Flores*, 521 U.S. 507, 530-32 (1997).

[35] The Supreme Court set forth factors for finding unconstitutional intentional racial discrimination in voting based on circumstantial evidence in *Rogers v. Lodge*, 458 U.S. 613, at 619-20 n.8, 624 (1982) ((citations omitted) (citing *Zimmer v. McKeithen*, 485 F.2d 1297, 1305 (5th Cir. 1973)). The factors are similar in many respects to the factors for liability under the discriminatory results prong of Section 2, which the Supreme Court enumerated in *Thornburg v. Gingles*, 478 U.S. 30, 36–37 (1986) (quoting S.

least probative of the extent of ongoing unconstitutional conduct that would merit congressional action to bolster statutory protections against voting discrimination.

A. Recent ACLU Litigation under Section 2 of the VRA

Before turning to Section 2 litigation more generally, I will focus on the ACLU's Section 2 litigation since *Shelby County*, with which I am most familiar.

Our recent Section 2 litigation experience reveals that, although the ACLU has been very successful in blocking discriminatory voting changes (with an overall success rate in Section 2 litigation of more than 80%), **we currently lack the tools needed to stop discriminatory changes to voting laws *before* they taint an election. Discriminatory laws that we have ultimately succeeded in blocking have remained in place for months or even years while litigation has proceeded—time in which elections have been held, and hundreds of government officials have been elected under discriminatory regimes. Stronger protections for voting rights are therefore necessary to prevent voting discrimination.**

Since *Shelby County* was decided, the ACLU and our affiliates have litigated twelve Section 2 cases to judgment, settlement or other resolution. By way of comparison, during the same period, the U.S. Department of Justice—with its vast resources and considerably larger staff—has litigated only four Section 2 cases to completion, and has not filed a single Section 2 case since the beginning of the current Administration.[36] Ten of the ACLU's twelve Section 2

Rep. No. 97-417, at 28–29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206–07)). As I have explained elsewhere, under both tests, courts must look to factors including the history of discrimination in the jurisdiction; the presence of devices that enhance the opportunity for discrimination (e.g., majority vote requirements); whether a candidate slating has excluded candidates of color; a lack of responsiveness by elected officials to the needs to communities of color; and whether the challenged voting practice is supported only by a tenuous rationale. *See* Dale Ho, *Minority Vote Dilution in the Age of Obama*, 47 U. Rich. L. Rev. 1041, 1060-62 (2013); Dale E. Ho, Voting Rights Litigation After Shelby County: Mechanics and Standards in Section 2 Vote Denial Claims, 17 *N.Y.U. J. Legis. & Pub. Pol'y* 675, 700 (2014). *See also* Christopher S. Elmendorf, *Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections and Common Law Statutes*, 160 U. Penn. L. Rev. 377, 417, 424-27 (2012) (arguing that the Senate Factors may establish a "significant likelihood" of improper race-based decisionmaking); Luke P. McLoughlin, *Section 2 of the Voting Rights Act and City of Boerne: The Continuity, Proximity, and Trajectory of Vote-Dilution Standards*, 31 Vt. L. Rev. 39, 76 (2006) (arguing that "intent remains an aspect of Section 2" liability).

[36] *See* U.S. Department of Justice, *Voting Section Litigation*, *available at* https://www.justice.gov/crt/voting-section-litigation.

cases have produced favorable outcomes[37] for our clients, a success rate of 83.3%.[38] The following table summarizes the ACLU's Section 2 litigation since Shelby County:

ACLU Section 2 Cases Litigated to Judgment/Settlement/Resolution since *Shelby County*								
Case Name	**Citation**	**Practice Challenged**	**Date Filed**	**Date Resolved**	**Months**	**Success?**	**Elections Held Before Success**	**Offices Elected Before Success**
Bethea v. Deal	2016 WL 6123241 (S.D. Ga.)	Failure to extend voter registration deadline after hurricane	10/18/2016	10/19/2016	0	N	N/A	N/A
Frank v. Walker	768 F.3d 744 (7th Cir. 2014)	Voter ID	12/13/2011	10/6/2014	34	N[39]	N/A	N/A
Florida Democratic Party v. Scott	2016 WL 6080225 (N.D. Fla.)	Failure to extend voter registration deadline after hurricane	10/10/2016	10/12/2016	0	Y	0	0
Jackson v. Bd. of Trustees of Wolf Point	2014 WL 1791229 (D. Mont.)	City malapportioned districts	8/13/2013	4/14/2014	8	Y	0	0

[37] For purposes of this testimony, I largely borrow Professor Ellen Katz's definition of a "successful" Section 2 case. See Ellen Katz, *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J. L. Reform 643, 653-54 n.35 (2006) ("Suits coded as a successful plaintiff outcome include both those lawsuits where a court determined, or the parties stipulated, that Section 2 was violated, and a category of lawsuits where the only published opinion indirectly documented plaintiff success," including decisions where a court "granted a preliminary injunction, considered a remedy or settlement, or decided whether to grant attorneys' fees after a prior unpublished determination of a Section 2 violation."). Professor Katz's study was cited by Congress during the 2006 Voting Rights Act reauthorization and in Justice Ginsberg's dissent in *Shelby County*. See *Shelby County*, 133 S.Ct. at 2642 (Ginsberg, J., dissenting) (citing *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary*, 109th Cong., 1st Sess., pp. 964–1124 (2005)).

[38] By way of comparison, our recent review of Section 2 cases available on Westlaw that were decided since *Shelby County* indicates an overall success rate of less than 40%.

[39] I include *Frank v. Walker* as an "unsuccessful" Section 2 case, because even though litigation on plaintiffs' as-applied constitutional claims is ongoing, the Seventh Circuit has rejected our Section 2 claims. *See Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

LULAC v. Cox	No. 2:18-cv-02572 (D. Kan.)	County polling place closure	10/26/2018	1/30/2019	3	Y[40]	1	1
Missouri NAACP v. FFSD	894 F.3d 924 (8th Cir. 2018)	School Board At-Large Elections	10/18/2014	7/3/2018	44	Y	4	9
Montes v. City of Yakima	2015 WL 11120966 (E.D. Wash.)	City At-Large Elections	8/22/2012	6/19/2015	34	Y	1	3
MOVE Texas Civic Fund v. Whitley	No. 5:19-cv-00171-FB (W.D. Tex.)	Statewide voter purge	2/4/2019	4/26/2019	3	Y	0	0
NC NAACP v. McCrory	831 F.3d 204 (4th Cir. 2016)	Voter ID; Early Voting; Same-day registration; Out-of-Precinct Ballots; Pre-Registration	9/30/2013	7/29/2016	34	Y	1	192
Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136 (D. Utah 2017)	All-mail voting system, elimination of polling places	2/26/2016	2/21/2018	24	Y	1	1
OH NAACP v. Husted	2014 WL 10384647 (6th Cir.)	Early Voting	5/1/2014	4/17/2015	12	Y	1	139
Wright v. Sumter Cty.	301 F. Supp. 3d 1297 (M.D. Ga. 2018)	County Redistricting	3/7/2014	3/18/2018	48	Y	3	10

A few points stand out from a review of our recent Section 2 litigation.

First, Section 2 cases take a substantial amount of time to litigate, leaving discriminatory voting practices in place for months or years before they are ultimately blocked or rescinded. The average length of time that the ACLU's Section 2 cases have taken

[40] I include *LULAC v. Cox*—in which the ACLU of Kansas represented plaintiffs challenging the location of Dodge City, Kansas's single polling location outside of the Dodge City limits—as a "successful" case, because the plaintiffs voluntarily dismissed their suit only after the defendants agreed to open additional polling locations, effectively granting the relief sought by the plaintiffs. While not a settlement, the case achieved plaintiffs' desired outcome.

to litigate from filing to resolution is 20.3 months, or more than a year and a half.[41] Even though we sought preliminary relief or otherwise litigated most of our Section 2 cases on expedited schedules, it has often taken years to block discriminatory voting laws through Section 2 litigation.

That may reflect the simple fact that voting rights litigation tends to be quite complex (and expensive). As my predecessor as Director of the ACLU Voting Rights Project, Laughlin McDonald, explained in testimony before the Senate more than a decade ago:

> [Section 2 cases] are among the most difficult cases tried in federal court. According to a study published by the Federal Judicial Center, voting rights cases impose almost four times the judicial workload of the average case. Indeed, voting cases are more work intensive than all but five of the sixty-three types of cases that come before the federal district courts.[42]

Second, because elections take place during the time that Section 2 litigation is pending, government officials are often elected under elections regimes that are later found to be discriminatory—and there is no way to adequately compensate the victims of voting discrimination after-the-fact. In the ten ACLU Section 2 cases that resulted in favorable outcomes for our clients, more than a dozen elections were held between the time of the filing our case and the ultimate resolution of that case. In the interim, more than 350 federal, state, and local government officials were elected under regimes that were later found by a court to be racially discriminatory, or which were later abandoned by the jurisdiction.[43]

Our experience litigating a vote dilution challenge to the at-large method of elections for the Ferguson-Florissant School Board in Missouri is illustrative. The Ferguson-Florissant school

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[41] I note that this number includes two rather unusual Section 2 cases filed in 2016 related to voter registration deadlines affected by Hurricane Matthew, which were completed in a matter of days (*FDP v. Scott* and *Bethea v. Deal*). If those two cases are excluded, the average length of the ACLU's Section 2 cases is 24.4 months—more than 2 years from filing to resolution.

[42] *An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 141 (2006) (statement of Laughlin McDonald, Director, ACLU Voting Rights Project). This testimony was cited in the D.C. Circuit's ruling in *Shelby County*. *See Shelby County v. Holder*, 679 F.3d 848, 872 (D.C. Cir. 2012), *rev'd on other grounds*, 570 U.S. 529 (2013). *See also Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 96 (2006) (statement of Rob McDuff, Att'y, Jackson, Mississippi).

[43] The sources for these calculations can be found in a spreadsheet attached as Appendix A. I note that this is a conservative estimate for a number of reasons. In calculating the number of elections held under a discriminatory regime (and the number of offices elected during those elections), we limited our calculation to federal and state elections, and excluded local elections (except where the elections practice challenged was a local elections practice). For example, for a challenge to a statewide law, we included the number of statewide elections that took place under the discriminatory regime, but excluded local elections from our calculation; we also excluded local government officials elected—either in a statewide election or in a local-only election.

district was created pursuant to a 1975 desegregation order.[44] In 2014, the student body of the district was approximately 80% African-American, but African Americans were only a minority of the district's voting-age population. Due to racially polarized voting, as recently as 2014, there was not a single African-American director on the seven-member school board. Our lawsuit was ultimately successful, with the Eighth Circuit affirming in a unanimous opinion that the Board's at-large method of elections violated Section 2 of the Voting Rights Act.[45] But the case took almost four years to litigate—and the 2015, 2016, 2017, and 2018 elections were held while proceedings were ongoing. In that time, nine members of the school board were elected.[46]

The sprawling North Carolina voter suppression law that I described earlier is also illustrative of the limitations of Section 2 litigation. As a reminder, the law cut back or eliminated means of registration and voting that, collectively, around one million North Carolina voters had used in the 2012 presidential election. This case took 34 months to litigate—almost three years—from filing the complaint to a ruling by the U.S. Court of Appeals for the Fourth Circuit. In the interim, the 2014 general election took place, with 192 federal and state officers elected—including 9 statewide offices, 13 congressional seats, and 170 seats for state legislature.[47]

To be clear, almost 200 federal and state officials in North Carolina were elected under a discriminatory regime that the Fourth Circuit found "target[ed] African Americans with almost surgical precision."[48] While the law has since been struck down, there is no way to now compensate the African-American voters of North Carolina—or our democracy itself—for that gross injustice.

We did everything we could to prevent this happening. We initially litigated this very complex matter on an expedited timeline, and sought a preliminary injunction before the 2014 midterms, which the Fourth Circuit granted.[49] Unfortunately, the Supreme Court stayed that ruling,[50] likely due to concerns that the case was decided too close to the election[51]—effectively leaving the discriminatory regime in place for the 2014 election. The Supreme Court subsequently permitted that preliminary ruling to go into effect,[52] and we ultimately prevailed on

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[44] *Missouri NAACP v. FFSD*, 894 F.3d 924, 930 (8th Cir. 2018).

[45] *See id.*

[46] *See* Appendix A.

[47] *See* North Carolina State Board of Elections, 11/04/2014 General Election Results – Statewide, available at https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=FED&contest=0.

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

[49] *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014).

[50] *North Carolina v. League of Women Voters of N.C.*, 135 S.Ct. 6 (Oct. 08, 2014).

[51] Richard L. Hasen, *Reining in the Purcell Principle*, 43 Fla. St. U. L. Rev. 427, 449 (2016).

[52] That is, despite temporarily staying that preliminary ruling, the Supreme Court declined to hear the case on appeal, leaving the preliminary injunction in place for subsequent local elections. *See North Carolina v. League of Women Voters of N. Carolina*, 135 S. Ct. 1735 (2015). This suggests that the Supreme

the final merits of the case.[53] But even though we did everything in our power to prevent this discriminatory law from tainting the 2014 election, we lacked adequate tools to do so.

New congressional action is therefore warranted to enforce the guarantees of the Fourteenth and Fifteenth Amendments because, as our experience in the North Carolina case and others illustrates, existing voting rights protections are inadequate to protect voters from unlawful racial discrimination. The Voting Rights Advancement Act addresses these problems in at least two respects.

First, the VRAA includes a new preclearance provision—with a rolling formula based on recent voting rights violations—that would prevent discriminatory changes to voting laws from taking effect before an election. The VRAA would make states and other jurisdictions eligible for preclearance coverage based on recent voting rights violations, with coverage generally triggered by 15 violations in the state (or ten violations in the state if at least one was committed by the state itself) over the most recent 25 calendar years.[54] The VRAA's preclearance provisions would therefore apply equally to every state, assessing them on an individualized basis, and subjecting states to preclearance based only on recent evidence of voting discrimination. If, in 2013, North Carolina had been subject to preclearance, it is unlikely that it would have been able to pass the sweeping voter suppression bill that I discussed above, given the significant burdens disproportionately imposed on African-American voters by the law.

Second, the VRAA clarifies the standard for obtaining and sustaining a preliminary injunction in Section 2 litigation—thus facilitating the ability of plaintiffs to block discriminatory voting laws *before* they can taint an election. First, Section 7(b)(2) of the VRAA clarifies that plaintiffs may obtain preliminary relief based on a simple showing of (1) a "serious question" that the challenged practice violates the VRA or the Constitution; and (2) that the "balance" of hardships falls in favor of the plaintiffs.[55] Second, Section 7(c) of the VRAA provides that, on appeal, a jurisdiction's inability to enforce its voting laws will not, "standing alone," constitute irreparable harm that would tilt decisively in favor of a stay of preliminary relief. Had this provision been in place in 2014, the preliminary injunction that we won in North Carolina may have remained in effect for the 2014 midterm, thus blocking North Carolina's discriminatory law during the that election.

Court's stay of the preliminary injunction was issued due primarily to the proximity of the Fourth Circuit's ruling to the 2014 general election. *See* Hasen, *Reining in the Purcell Principle*, *supra* note 52.

[53] When the law was struck down after final judgment before the 2016 presidential election, *see NAACP v. McCrory*, 769 F.3d 224), the Supreme Court declined to hear an appeal of that decision as well. *See North Carolina v. N.C. State Conference of NAACP*, 137 S. Ct. 1399 (2017).

[54] *See* VRAA, Section 3(b).

[55] This standard largely mirrors how the Second Circuit has articulated the preliminary injunction standard in all cases. *See, e.g., Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (noting that a preliminary injunction is appropriate where there are "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.)".

All of this underscores what makes the right to vote different from other civil rights. In theory, victims of discrimination in other areas—such as employment or housing—can be compensated after the fact with money damages, and thereby made fully whole. But the right to vote is different. Once an election has occurred under a discriminatory regime, that election cannot be re-run. Government officials are elected, the benefits of incumbency vest, and there is no way to undo the discrimination that has occurred. Perhaps more so than in any other area, discrimination in voting must be prevented *before* it occurs. And our experience illustrates that stronger statutory protections are necessary for that prophylactic purpose.

B. Section 2 Litigation Generally Since *Shelby County*

Since *Shelby County*, federal courts have issued decisions in dozens of Section 2 cases beyond the ACLU's litigation docket. Because, as I noted above, successful Section 2 litigation is in some sense probative of unconstitutional racial discrimination in voting, the relative prevalence of such successful litigation provides some useful information as to conditions with respect to ongoing racial discrimination in voting at different levels of government, and in different states.

Our review of recent successful Section 2 litigation reveals two basic points: (1) much voting discrimination occurs at the local level, where changes to voting laws are more difficult to monitor (at least as compared to the state level), highlighting the need for more effective transparency and notice requirements; and (2) voting discrimination remains concentrated in certain states, justifying particularly strong protections in those states.

Since *Shelby County* was decided, there have been a total of 75 Section 2 cases that have been reported on Westlaw[56] in which courts have rendered a determination on liability—preliminary or otherwise—or in which the parties have settled. A list of these cases is attached as Appendix B.

Of these 75 Section 2 cases available on Westlaw, the plaintiffs have been successful in 26 cases, which are listed below:

[56] I note that while we have attempted to be systematic in this research, we do not purport to present a complete picture of all Section 2 litigation. Because this analysis is limited only to cases reported on Westlaw, it is inevitably under-inclusive in some respects. It does not, for example, include all of the ACLU cases discussed in the previous section—some of which have not been reported on Westlaw.

Successful Section 2 Cases Decided Since *Shelby County* That Are Reported on Westlaw							
	Case Name	**Citation**	**State**	**Frmrly Cvrd?**	**Year**	**Dilution / Denial**	**Defendant**
1	Allen v. City of Evergreen	2014 WL 12607819	AL	Y	2014	Dilution	City
2	Luna v. County of Kern	291 F.Supp.3d 1088	CA	N	2018	Dilution	County
3	Florida Democratic Party v. Scott	2016 WL 6080225	FL	N	2016	Denial	State
4	Ga. NAACP v. Fayette County	118 F.Supp.3d 1338	GA	Y	2015	Dilution	County
5	Wright v. Sumter Cty. Bd. of Elections & Registration	301 F.Supp.3d 1297	GA	Y	2018	Dilution	County
6	Davis v. Guam	932 F.3d 822	Guam	N	2019	Denial	Territory
7	Terrebone Parish NAACP v. Jindal	2017 WL 3574878	LA	Y	2017	Dilution	Parish
8	MI APRI v. Johnson	2019 WL 2314861	MI	Y	2016	Denial	State
9	United States v. City of Eastpointe	2019 WL 1379974	MI	N	2019	Dilution	City
10	Missouri NAACP v. FFSD	894 F.3d 924	MO	N	2018	Dilution	County
11	Jackson v. Bd. of Trustees of Wolf Point, Mont., Sch. Dist. No. 45-45A	2014 WL 1794551	MT	N	2014	Dilution	City
12	NC NAACP v. McCrory	831 F.3d 204	NC	Y	2016	Denial	State
13	Sanchez v. Cegavske	214 F.Supp.3d 961	NE	N	2016	Denial	State
14	Favors v. Cuomo	39 F.Supp.3d 276	NY	Y	2014	Dilution	State
15	Molina v. County of Orange	2013 WL 3009716	NY	N	2013	Dilution	County
16	Pope v. County of Albany	94 F.Supp.3d 302	NY	N	2015	Dilution	County
17	OH NAACP v. Husted	2014 WL 10384647	OH	N	2014	Denial	State
18	Bear v. County of Jackson	2017 WL 52575	SD	N	2017	Denial	County

19	Benavidéz v. Irving Indep. Sch. Dist.	2014 WL 4055366	TX	Y	2014	Dilution	School Board
20	Harding v. County of Dallas	2018 WL 1157166	TX	Y	2018	Dilution	County
21	Patino v. City of Pasadena	230 F.Supp.3d 667	TX	Y	2017	Dilution	County
22	Veasey v. Abbott	830 F.3d 216	TX	Y	2016	Denial	State
23	Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136	UT	N	2017	Denial	County
24	Navajo Nation v. San Juan County	266 F.Supp.3d 1341	UT	N	2017	Dilution	County
25	Montes v. City of Yakima	2015 WL 11120966	WA	N	2015	Dilution	City
26	OWI v. Thomsen	198 F.Supp.3d 896	WI	N	2016	Denial	State

I note that the ACLU and/or its affiliates were counsel in 8 of these 26 successful Section 2 cases;[57] by way of comparison, the Department of Justice was counsel in only 3.[58] And again, the current Administration has not filed a single Section 2 case.

Before discussing any observations that can be drawn from this table, I note a few caveats. First, any observations drawn from this table can only be preliminary in nature, as litigation remains ongoing in some of these cases—for example, on appeal.[59] Second, I note that

[57] *See Florida Democratic Party v. Scott*, 2016 WL 6080225 (N.D. Fla. Oct. 12, 2016); *Jackson v. Wolf Point*, 2014 WL 1794551 (D. Montana April 24, 2014) (settled); *Missouri NAACP v. FFSD*, 894 F.3d 924 (8th Cir. 2018); *Montes v. City of Yakima*, 2015 WL 11120966 (E.D. Wash. June 19, 2015); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, 281 F. Supp. 3d 1136 (D. Utah 2016); *NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); *Ohio NAACP v. Husted*, 768 F.3d 524 (2016) (vacated as moot, but ultimately settled); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F.Supp.3d 1297 (M.D. Ga. 2018).

[58] *See NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); *United States v. City of Eastpointe*, 2019 WL 1379974 (E.D. Mich. March 27, 2019) (subsequently settled); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

[59] Several of these cases are on appeal or have only been litigated at the preliminary injunction stage, and their status as "successful" or "unsuccessful" Section 2 cases may change in later proceedings. For example, I count as "successful" cases those in which a preliminary injunction has been granted for plaintiffs, but where a final decision (which could go either way) has not yet been rendered; others are cases in which a final judgment has been rendered by the district court, but in which appeals are pending. The list will therefore ultimately be over-inclusive in some respects, as it is possible that plaintiffs not prevail in some of these cases at final judgment or on appeal. By the same token, however, the list will also likely be underinclusive in some respects, as is does not include cases where plaintiffs have been unsuccessful in seeking preliminary injunctions or on final judgments from the trial court, but may yet

focusing exclusively on Section 2 litigation understates the amount of racial discrimination in voting we face today, because it omits racially discriminatory voting rights violations that were successfully challenged under different legal theories aside from Section 2. Many of these cases occurred in jurisdictions that were previously subject to preclearance, including:

- **racial gerrymandering** in violation of the Equal Protection Clause of the Fourteenth Amendment, in **Alabama**,[60] **North Carolina**,[61] **Texas**,[62] and **Virginia**[63];
- interference with the guarantee of **language assistance under Section 203** of the Voting Rights Act in **Texas**;[64] and
- a **voter purge program** in **Florida**, under which 82% of voters purged were non-white and 60% were Hispanic,[65] and which the Eleventh Circuit found violated the National Voter Registration Act.[66]

With these caveats in mind, looking exclusively at Section 2 litigation, we can see two patterns.

First, **most recent successful Section 2 litigation (17 out of 26 cases) has occurred not at the state level, but at the local level, where discriminatory changes to voting laws and practices are often harder to detect.** This underscores the importance of the notice and transparency requirements under Section 4 of the VRAA. While state-level changes to voting laws are often covered in the media, local-level changes to voting laws are much more difficult to monitor. The VRAA's notice requirements are therefore critical to facilitate community awareness of changes to voting laws before they are implemented. For us, half the battle is simply learning about new voting changes. This is particularly true at the local level, where there

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succeed on appeal. This list also does not include ongoing Section 2 cases in which the only decision rendered thus far is a denial of a defendant's motion to dismiss, motion for summary judgment, or motion for a stay—and where no preliminary or final determination has been rendered on the merits of the plaintiffs' claims.

[60] *Alabama Legislative Black Caucus v. Alabama*, 231 F.Supp.3d 1026 (M.D. Ala. 2017). Although the plaintiffs in this case brought Section 2 claims, they obtained a favorable ruling only on racial gerrymandering claims; I therefore do not include this case as a successful Section 2 claim.

[61] *Cooper v. Harris*, 137 S. Ct. 1455 (2017).

[62] *Abbott v. Perez*, 138 S.Ct. 2305 (2018). I do not include this case as a successful Section 2 case for the same reason that I exclude the Alabama racial gerrymandering case.

[63] *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017).

[64] *See OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017).

[65] *See* Jeff Burlew, *Florida's latest voter purge bid draws criticism*, USA Today, Jan. 14, 2014, https://www.usatoday.com/story/news/nation/2014/01/14/florida-purge-voter-rolls/4470685/.

[66] *Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014).

are often fewer resources available to assist community members dealing with a change to voting laws which they may not know how to analyze or respond to.

Second, while the Supreme Court has not required that preclearance determinations be made with perfect precision,[67] **the relative prevalence of successful Section 2 litigation provides a basis for congressional action that would subject certain states to stronger voting rights protections.** Since *Shelby County*, more than one-half of the successful Section 2 cases (14 of 26 cases) have occurred in a handful of states that were formerly-covered by Section 5 (in whole or in part): Alabama, California, Florida, Georgia, Louisiana, North Carolina, New York, and Texas. The prevalence of recent successful Section 2 litigation in certain states suggests that subjecting some but not all states to preclearance coverage may be warranted.

Conclusion

Voting discrimination remains a stubborn problem in 2019. Strong congressional action is justified to fulfill the promise of the Reconstruction Amendments: that all Americans should be free to participate in our democracy on equal terms, free from racial discrimination.

I thank you again for the opportunity to testify before you, and look forward to answering any questions that you have.

[67] *See South Carolina v. Katzenbach*, 383 U.S. 301, 329-30 (1966) (upholding original preclearance coverage provision, which applied to states like "Alabama, Louisiana, and Mississippi—in which federal courts have repeatedly found substantial voting discrimination," and other states, like "Georgia and South Carolina—plus large portions of a third State—North Carolina—for which there was more fragmentary evidence of recent voting discrimination").

Appendix A

Case Name	Elections Conducted during Litigation	Elected Offices up for Election during Litigation	Authority	URL
LULAC v. Cox	2018 General Election	**1 Township Clerk**	Ford County Elections Results	http://www.fordcounty.net/DocumentCenter/View/15080/Official-General-Election-results-for-11-6-2018
Missouri NAACP v. FFSD	2015 Municipal General (04/07/2015)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/YourGovernment/Elections/ElectionResultsHistory#47005572-2015
	2016 Municipal General (04/05/2016)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el160405/el45.htm
	2017 Municipal General (04/04/2017)	**3 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el170404/el45.htm
	2018 Municipal General (04/03/2018)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el180403/1802Certs/EL45.HTM
Montes v. City of Yakima	2013 General Election	**3 At-Large Positions**	Yakima County Election Results	https://www.yakimacounty.us/ArchiveCenter/ViewFile/Item/214
NC NAACP v. McCrory	2014 General Election	**9 Statewide Elections** (US Senator; Supreme Court Chief Justice (Parker); Supreme Court Associate Justice (Martin); Supreme Court Associate Justice (Hudson); Supreme Court Associate Justice (Beasley); Court of Appeals Judge (Martin); Court of Appeals Judge (Hunter); Court of Appeals Judge (Stroud); Court of Appeals Judge (Davis) + **13 Congressional Seats + 170 State Legislative Seats** (50 NC Senate Seats + 120 NC House Seats)	North Carolina State Board of Elections	https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=FED&contest=0; https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=COS&contest=0; https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=JUD&contest=0
Navajo Nation Human Rights Comm'n v. San Juan Cty.	2016 General Election	**1 Commissioner Seat**	San Juan County	https://sanjuancounty.org/sjc-content/documents/2016%20general%20election%20results.pdf
OH NAACP v. Husted	2014 General Election	**7 Statewide Elections** (Governor, Attorney General, Auditor of State, Secretary of State; Treasurer of State; OH Supreme Court Seat 1; OH Supreme Court Seat 2) + **16 Congressional Seats** + **116 State Legislative Seats** (17 OH Senate Seats + 99 OH House Seats)	Ohio Secretary of State	https://www.sos.state.oh.us/elections/election-results-and-data/2014-elections-results/#gref
Wright v. Sumter Cty. Bd. of Elections & Registration	2014 Board Election (05/20/2014)	**7 Board of Education Seats**	Georgia Secretary of State	http://results.enr.clarityelections.com/GA/Sumter/51475/130800/en/summary.html
	2016 Board Election (05/24/2016)	**3 Board of Education Seats**	Georgia Secretary of State	http://results.enr.clarityelections.com/GA/Sumter/60171/170542/en/summary.html

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
1	ADC v. Strange	838 F.3d 1057	AL	Y	2016	Denial	State	N
2	AL Leg Black Caucus v. Alabama	231 F.Supp.3d 1026	AL	Y	2017	Dilution	State	N
3	Allen v. City of Evergreen	2014 WL 12607819	AL	Y	2014	Dilution	City	Y
4	Barber v. Bice	44 F.Supp.3d 1182	AL	Y	2014	N/A	State	N
5	Ford v. Strange	580 Fed.Appx. 701	AL	Y	2014	N/A	State	N
6	Lewis v. Governor of Alabama	896 F.3d 1282	AL	Y	2018	Dilution	State	N
7	Harris v. City of Texarkana	2015 WL 128576	AR	N	2015	Dilution	City	N
8	AZ Secretary of State v. Feldman	137 S.Ct. 446	AZ	Y	2016	Denial	State	N
9	Jennerjahn v. City of Los Angeles	2016 WL 1327555	CA	N	2016	N/A	City	N
10	Vang v. Lopey	2017 WL 132056	CA	N	2017	N/A	County	N
11	Rios-Andino v. Orange County	51 F.Supp.3d 1215	FL	N	2014	Dilution	County	N
12	Bethea v. Deal	2016 WL 6123241	GA	Y	2016	Denial	State	N
13	Ga. NAACP v. Fayette County	118 F.Supp.3d 1338	GA	Y	2015	Dilution	County	Y
14	Ga. NAACP v. Georgia	269 F.Supp.3d 1266	GA	Y	2017	Dilution	State	N
15	Davis v. Guam	932 F.3d 822	Guam	N	2017	Denial	Territory	Y
16	Akina v. Hawaii	835 F.3d 1003	HI	N	2016	Denial	State	N
17	Gonzales v. Madigan	2017 WL 3978703	IL	N	2017	Dilution		N
18	Kowalski v. Cook County Officers Elec. Bd.	2016 WL 4765711	IL	N	2016	N/A	County	N
19	Quinn v. Bd. of Ed.of the City of Chicago	887 F.3d 322	IL	N	2018	Dilution	City	N
20	Hall v. Louisiana	884 F.3d 546	LA	Y	2018	Dilution	Parish	N
21	Terrebone Parish NAACP v. Jindal	2017 WL 3574878	LA	Y	2017	Dilution	Parish	Y
22	York v. City of Gabriel	89 F.Supp.3d 843	LA	Y	2015	Dilution	City	N
23	Chong Su Yi v. DNC	666 Fed.Appx. 279	MD	N	2016	Denial	Party	N
24	VOIE v. Baltimore City Elections Bd.	214 F.Supp.3d 448	MD	N	2016	Denial	City	N
25	Davis v. Detroit Public Sch. Comm. Dist.	899 F.3d 437	MI	N	2018	Dilution		N
26	MI APRI v. Johnson	2019 WL 2314861	MI	Y	2016	Denial	State	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
27	Philips v. Snyder	836 F.3d 707	MI	Y	2016	Dilution	State	N
28	Berry v. Kander	191 F.Supp.3d 982	MO	N	2016	Dilution	State	N
29	Missouri NAACP v. FFSD	894 F.3d 924	MO	N	2018	Dilution	County	Y
30	Fairley v. Hattiesburg	662 Fed.Appx. 291	MS	Y	2016	Dilution	City	N
31	Thompson v. Attorney General of MS	2015 WL 12916336	MS	Y	2015	N/A	State	N
32	West v. Natchez	2016 WL 1178771	MS	Y	2016	Dilution	City	N
33	Jackson v. Bd. of Trustees of Wolf Point, Mont., Sch. Dist. No. 45-45A	2014 WL 1794551	MT	N	2014	Dilution	City	Y
34	NC NAACP v. McCrory	831 F.3d 204	NC	Y	2016	Denial	State	Y
35	Walker v. Hoke County	694 Fed.Appx. 143	NC	Y	2017	Dilution	County	N
36	Brakebill v. Jaeger	932 F.3d 671	ND	N	2016	Denial	State	N
37	Sanchez v. Cegavske	214 F.Supp.3d 961	NE	N	2016	Denial	State	Y
38	Baca v. Berry	806 F.3d 1262	NM	N	2015	Dilution	City	N
39	Favors v. Cuomo	39 F.Supp.3d 276	NY	Y	2014	Dilution	State	Y
40	Molina v. County of Orange	2013 WL 3009716	NY	N	2013	Dilution	County	Y
41	Pope v. County of Albany	94 F.Supp.3d 302	NY	N	2015	Dilution	County	Y
42	Fair Elections Ohio v. Husted	770 F.3d 456	OH	N	2014	Denial	State	N
43	NEOCH v. Husted	837 F.3d 612	OH	N	2016	Denial	State	N
44	OH Democratic Party v. Husted	834 F.3d 620	OH	N	2016	Denial	State	N
45	OH Democratic Party v. OH Republican Party	2016 WL 10570271	OH	N	2016	Denial	Party	N
46	OH NAACP v. Husted	2014 WL 10384647	OH	N	2014	Denial	State	Y
47	Bear v. County of Jackson	2017 WL 52575	SD	N	2017	Denial	County	Y
48	Clayton v. Forrester	2014 WL 2964969	TN	N	2014	Dilution		N
49	Tigrett v. Cooper	595 Fed.Appx. 554	TN	N	2014	Dilution	State	N
50	Benavidez v. Irving Indep. Sch. Dist.	2014 WL 4055366	TX	Y	2014	Dilution	School Board	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
51	Cisneros v. Pasadena Indep. Sch. Dist.	2014 WL 1668500	TX	Y	2014	Dilution	School Board	N
52	Gonzalez v. Harris County	601 Fed.Appx. 255	TX	Y	2015	Dilution	County	N
53	Patino v. City of Pasadena	230 F.Supp.3d 667	TX	Y	2017	Dilution	County	Y
54	Abbott v. Perez	138 S.Ct. 2305	TX	Y	2018	Dilution	State	N
55	Petteway v. Henry	738 F.3d 132	TX	Y	2013	Dilution	County	N
56	Veasey v. Abbott	830 F.3d 216	TX	Y	2016	Denial	State	Y
57	Krieger v. Virginia	599 Fed.Appx. 112	VA	Y	2015	Denial	State	N
58	Lee v. VA Bd. of Elections	843 F.3d 592	VA	Y	2016	Denial	State	N
59	Parson v. Alcorn	157 F.Supp.3d 479	VA	Y	2016	Denial	State	N
60	Perry-Bey v. Holder	2015 WL 11120509	VA	Y	2015	Denial	State	N
61	Schwiekert v. Herring	2016 WL 7046845	VA	Y	2016	N/A	State	N
62	Montes v. City of Yakima	2015 WL 11120966	WA	N	2015	Dilution	City	Y
63	Frank v. Walker	768 F.3d 744	WI	N	2014	Denial	State	N
64	OWI v. Thomsen	198 F.Supp.3d 896	WI	N	2016	Denial	State	Y
65	Luna v. County of Kern	291 F.Supp.3d 1088	CA	N	2018	Dilution	County	Y
66	Lopez v. Abbott	339 F.Supp.3d 589	TX	Y	2018	Dilution	State	N
67	Wright v. Sumter Cty. Bd. of Elections & Registration	301 F.Supp.3d 1297	GA	Y	2018	Dilution	County	Y
68	Greater Birmingham Ministries v. Merrill	284 F.Supp.3d 1253	AL	Y	2018	Dilution	State	N
69	Harding v. County of Dallas	2018 WL 1157166	TX	Y	2018	Dilution	County	Y
70	Frank v. Walker	768 F.3d 744	WI	N	2014	Denial	State	N
71	Florida Democratic Party v. Scott	215 F.Supp.3d 1250	FL	N	2016	Denial	State	Y
72	Bethea v. Deal	2016 WL 6123241	GA	Y	2016	Denial	State	N
73	Navajo Nation v. San Juan County	266 F.Supp.3d 1341	UT	N	2017	Dilution	County	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
74	Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136	UT	N	2017	Denial	County	Y
75	United States v. City of Eastpointe	2019 WL 1379974	MI	N	2019	Dilution	City	Y

Mr. COHEN. Thank you, Mr. Ho.

Our next witness is Mr. J. Christian Adams, who has appeared before us previously, president and general counsel of Public Interest Legal Foundation. From 2005 to 2010, he worked in the Voting Section at the United States Department of Justice. Prior to his time at the Justice Department, he served as general counsel to the South Carolina Secretary of State. He received his law degree from the University of South Carolina School of Law.

Mr. Adams, you are recognized for 5 minutes.

STATEMENT OF J. CHRISTIAN ADAMS

Mr. ADAMS. Thank you very much, Chairman Nadler, Chairman Cohen, Ranking Member Johnson. I am president and general counsel of the Public Interest Legal Foundation. We are dedicated to preserving election integrity and the constitutional decentralization of power so that States may administer their own elections.

I am presenting evidence today of two instances of voting discrimination and disenfranchisement that I have been working on.

The first is a case recently decided by the Ninth Circuit in July. I represented retired Air Force Major "Dave" Davis. Major Davis served on Guam and decided to live there on retirement. Guam is governed by the Federal Organic Act of 1950. The Organic Act bans racial discrimination in voting and explicitly incorporates the protections of the Fifteenth Amendment. Nevertheless, the legislature of Guam passed an election law confining the right to vote in a status plebiscite to a preferred racial group—so-called native inhabitants.

In other words, Guam imposed voter qualifications based on blood ancestry, much like the Oklahoma grandfather clauses struck down by the Supreme Court over a century ago.

Now, Congress has required Guam to adhere to civil rights obligations in the Fifteenth Amendment and other Federal statutes. But, ironically, Guam also received over $300,000 in Federal funds from the Department of the Interior to conduct education campaigns about this very same racially discriminatory voting process. That is something Congress can fix.

When Dave Davis sought to register to vote at the Government office, his registration form was marked "Void" by election officials. The form is in my written record, in my written statement. Even in the Jim Crow South of the early 1960s, Southern registrars were not brazen enough to deny the right to vote explicitly on having the wrong racial blood.

We filed suit in Federal court way back in 2011, and the case is still continuing because Guam has been zealous in defending their racially discriminatory laws. It is so blatant that the United States District Court on Guam granted Mr. Davis summary judgment in 2017. And in July of this year, the Ninth Circuit Court affirmed.

Despite this brazen racial discrimination, not a single civil rights organization took the case. Not a single civil rights organization offered to help Mr. Davis. Now, despite the long inventory of voting cases that we know about, not even a single civil rights organization filed an amicus in this case. In some voting cases, such as challenges to South Carolina voter ID, these same groups manage

to duplicate or triplicate each other, despite the fact that not a single person was disenfranchised by the South Carolina voter ID law.

Why is this important? It is important that reauthorization of the Voting Rights Act, if it occurs, is not done in a way that affects partisan interests, because all too often civil rights enforcement is also about partisan interests.

To add insult to injury, Mr. Davis could not even get the United States Department of Justice to help him in 2011. His pleas were ignored by the Civil Rights Division. No case was filed on his behalf. No amicus was filed to help him. No nothing. Even after the Ninth Circuit Court of Appeals in 2005 ruled that he had a ripe case, the Justice Department failed to act. Oddly, ripeness was cited by the Chief of the Voting Section in an internal Inspector General report as to why the DOJ did not help Mr. Davis. Finally, in November 2017, the Justice Department did what it should have done 6 years earlier and appeared in court seeking to strike down the racially discriminatory voting law.

Congress can do something. For one, stop public funding of racially discriminatory election public information campaigns. Congress has exclusive power in the territories and can stop this.

The second example which I will briefly mention involves the Commonwealth of Virginia canceling citizen registration; in other words, citizens are having their voter registrations canceled in Virginia. We found this out when we began to inquire about records regarding noncitizens, and we found that the Commonwealth is routinely canceling citizens.

In sum, there are things Congress can do: first of all, reexamine the interplay between motor-voter DMV laws and election officials. The DMV part of motor-voter is hidden from the public because Congress hid it.

Secondly, Congress has shielded State motor vehicle departments, and that shield should go away.

Third, Congress should strengthen obligations for election officials to be transparent. We are currently suing the State of Pennsylvania, North Carolina, and Harris County, Texas, because they are not allowing public inspection of election records in those three places.

Fourth, Congress should allow States to verify citizenship.

Thank you very much for this opportunity.

[The statement of Mr. Adams follows:]

I am President and General Counsel for the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections. I also served as an attorney in the Voting Section at the Department of Justice. I have brought multiple enforcement actions under the Voting Rights Act and federal guarantees of the right to vote.

I am presenting evidence today of two clear instances of voting discrimination and disenfranchisement that I have helped combat.

The first case was recently decided by the Ninth Circuit in July. The Ninth Circuit Court of Appeals affirmed a summary judgment ruling by the United States District Court that a territory under the exclusive jurisdiction of this Congress was imposing race-based voter qualifications. Namely, **Guam imposed voter qualifications based on blood ancestry** much like the Oklahoma grandfather clauses struck down by the Supreme Court over a century ago.

Congress has required Guam to adhere to civil rights obligations of the 15th Amendment and other federal statutes. But Guam's legislature gave the right to vote on an important plebiscite only to those of a preferred race. Ironically, Guam also received over $300,000 in federal funds from the Department of the Interior to conduct education campaigns about this racially discriminatory voting process.[1] That is something Congress can fix.

The second example I will discuss involves the **Commonwealth of Virginia cancelling the voter registrations of citizens by declaring them non-citizens.** Our organization discovered this problem after we sought records related to the cancellation of non-citizens. We have since given Virginia the statutory notice required by the National Voter Registration Act that they are in violation of the law by removing citizens from the voter rolls improperly.

Proving that no good deed goes unpunished, when we reported on Virginia's removal of non-citizens on the voter rolls based on government documents entitled "declared non-citizens," our organization was sued for reporting these facts, republishing government documents, and making reasonable inferences about them. Ultimately, it was revealed that the Commonwealth of Virginia has been removing citizens from the voter rolls improperly as non-citizens. Our organization –

[1] See, https://www.doi.gov/oia/interior-approves-15-million-fy-2016-funds-guam.

despite being sued for reporting these circumstances – has been steadfast in trying to fix the problem of Virginia cancelling citizen voters as non-citizens. Congress can fix this problem by refining the Motor Voter process. Motor Voter itself instigated this mess, and it can be fixed.

Guam: Racial Tests to Vote Struck Down

I represent retired Air Force Major Arnold "Dave" Davis.[2] Major Davis served on Guam and decided to live there upon retirement. Guam is governed by the Organic Act of 1950.[3] The Organic Act bans racial discrimination in voting and explicitly incorporates the protections of the Fifteenth Amendment. Nevertheless, the legislature of Guam passed an election law confining the right to vote in a status plebiscite to a preferred racial group – so called "native inhabitants."

When Dave Davis sought to register to vote at the government office, his registration form was marked "VOID" by election officials. I have attached the form. Even in the Jim Crow south of the early 1960's, southern registrars weren't brazen enough to deny the right to vote explicitly on having the wrong racial blood. They were craftier, erecting a variety of barriers that were fluid, arbitrary and difficult to enjoin until the passage of the Voting Rights Act of 1965. But for Mr. Davis, his voter application was void because he was the not the preferred race, explicitly.

We filed suit in federal court way back in 2011. The case is still continuing because Guam has been zealous in defending their racially discriminatory laws. Congress, having exclusive jurisdiction over the territories, might take note of the zeal that a territory has defended blatant racial discrimination in voting. It is so blatant that the United States District Court on Guam granted Mr. Davis summary judgment in 2017. In July of this year, 2019, the Ninth Circuit Court of Appeals affirmed the summary judgment finding that Guam was engaging in racial discrimination in voting.[4]

The unanimous Ninth Circuit panel ruled:

> Here, the parallels between the 2000 Plebiscite Law and previously enacted statutes expressly employing racial classifications are too glaring to brush aside. The near

[2] Co-counsel in the case include Michael Rosman at the Center for Individual Rights, Doug Cox and Lucas C. Townsend at Gibson Dunn and Crutcher and local counsel Mun Su Park.
[3] Pub. L. No. 81-630, 64 Stat. 384 (1950) (codified at 48 U.S.C. §§ 1421–24) ("Organic Act").
[4] The Ninth Circuit in 2015 had already ruled that the case was ripe and that real substantive issues were at stake in the plebiscite election. *Davis v. Guam*, 785 F.3d 1311, 1314 (9th Cir.2015).

> identity of the definitions for "Native Inhabitants of Guam" and "Chamorro," the lack of other substantive changes, and the timing of the 2000 Plebiscite Law's enactment all indicate that the Law rests on a disguised but evident racial classification.[5]

Despite the brazen racial discrimination, not a single organization sitting at this table today has even spoken about the racial discrimination on Guam, much less offered to help Mr. Davis. Mr. Davis attempted to interest organizations in his vote denial but none of the usual "civil rights groups" would help. They haven't even filed a single amicus case to help the plaintiff in the case.

All of this is most strange considering the hefty endowment that groups like the ACLU and NAACP LDF enjoy. In some voting cases – such as challenges to South Carolina voter ID laws – these same groups manage to duplicate or triplicate each other's work, despite the fact that not a single person was disenfranchised by the South Carolina voter ID law.

I took Mr. Davis' case *pro bono* in 2011 spending my own uncompensated time for multiple trips back and forth to Guam to help Mr. Davis. For reasons I cannot guess, the brazen racial discrimination in voting on Guam has never managed to appear in any of the materials these groups have so zealously submitted to Congress to bolster the Congressional record related to the Voting Rights Act.

To add insult to injury, Mr. Davis could not even get the United States Justice Department to help him in 2011. His pleas were largely ignored by the Civil Rights Division. No case was filed on his behalf. No amicus was filed to help him. No nothing. Even after the Ninth Circuit Court of Appeals ruled in 2015 that Mr. Davis had a ripe case and had standing, the Justice Department failed to act. Oddly, ripeness had been cited by the Chief of the Voting Section to an internal Inspector General investigation as the excuse why the Justice Department did not act to help Mr. Davis.[6] The Voting Section Chief also told the Inspector General that there was a higher priority for "traditional minority victims," at the Department in 2011 despite the fact that the victims of the racial discrimination struck down on Guam included "traditional minorities."

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[5] The Ninth Circuit opinion in Davis v. Guam ___ F.3d ____ (9th Cir. 2019), No. 17-15719 is attached to this testimony.
[6] A Review of the Operations of the Voting Section of the Civil Rights Division, March 2013, available at https://oig.justice.gov/reports/2013/s1303.pdf, pages 76-78.

These excuses by Department of Justice employees, of course, were revealed to be a pretext after the Ninth Circuit in 2015 ruled that Mr. Davis had a ripe case. Yet the Department of Justice Civil Rights Division still continued to ignore the brazen racial discrimination on Guam in 2015 and 2016.

Finally, on November 28, 2017, the Justice Department did what it should have done six years earlier, appeared in court seeking to strike down the racially discriminatory voting law. The amicus filing by the Civil Rights Division states, the "Department of Justice has substantial responsibility for the enforcement of the CRA and Section 2 of the VRA, which prohibit racial discrimination in voting. See 52 U.S.C. 10101(c), 10308(d). . . . Guam's plebiscite law purposefully discriminates against non-Chamorros based on race in violation of the Fifteenth and Fourteenth Amendments."

The "substantial responsibility" to protect the right to vote was ignored until 2017. That's a shame, and this Congress should wonder why all of the resources of the Civil Rights Division, and all of the resources of the groups now before you sounding the alarm about widespread discrimination in voting did nothing about the brazen denial of Mr. Davis' right to vote on the basis of race.

Congress can do something. For one, stop funding public information campaigns about the racially discriminatory election process on Guam. Second, Congress – as having exclusive power over the territories - can side with the Ninth Circuit and uphold the principle that no election should ever take place in the United States or territories where blood ancestry is a voting prequalification. Racial blood tests for voting were struck down by the Supreme Court over a century ago and it is unfortunate that in 2019, they still have not gone away.

Virginia is Cancelling Citizens as Alien Voters

Virginia has been cancelling the voter registrations of American citizens, mistakenly cancelling them as "declared non-citizens." This is happening because the Motor Voter law passed in 1993 is outdated. It has not been examined carefully since its passage almost three decades ago.

My organization was the impetus for discovering Virginia's mistake. We routinely collect public information about non-citizens who have been registering to vote and have been voting.[7] As part of that broader inquiry, we asked the Commonwealth of Virginia to provide lists of all such cancellations. We also asked various county election officials for the same records. Amazingly, some counties refused to provide the information despite Congress making all list maintenance records public as part of the National Voter Registration Act of 1993.[8]

Nevertheless, the Commonwealth of Virginia as well as various counties provided public documents of non-citizen cancellation reports entitled "declared non-citizen." The state elections director confirmed in writing that none of the individuals on these reports eventually re-registered affirming United States citizenship.

Virginia's reports were later revealed to be a mess. For starters, the Commonwealth of Virginia is cancelling American citizens as non-citizens. Second, some of those who appeared on the report eventually re-registered, affirming citizenship despite the guarantees to the contrary given to us by state election officials. The National Voter Registration Act, in my view, does not permit this.

Our organization learned of these problems after three individuals sued not state election officials who improperly removed them from the rolls, but rather our organization for reporting the fact that they were declared non-citizens on public list maintenance records. That case has since settled and we apologized for overly relying on the government list maintenance records and repeated statements by election officials that the cancelled registrants were declared non-citizens. We have also since provided statutory notice to Virginia election officials that they are in violation of the National Voter Registration Act for improperly wiping from the voter rolls American citizens, declaring them "non-citizens."

Yet as in Guam, the improper cancellation of American citizens on the voter rolls has not seemed to draw the attention of any of the traditional civil rights groups who so zealously catalog

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[7] See, Steeling the Vote: Allegheny County Reveals How Citizenship Verification Protects Citizens and Immigrants Alike, at https://publicinterestlegal.org/blog/steeling-the-vote-allegheny-county-reveals-how-citizenship-verification-protects-citizens-and-immigrants-alike/.

[8] Even more amazingly, the Public Interest Legal Foundation has had to take the State of North Carolina, Commonwealth of Pennsylvania and Harris County (TX) to federal court for refusing to provide public list maintenance records related to non-citizen cancellations of registrants. Those three cases are ongoing.

the latest threat to voting. Indeed, when we sought to add the Commonwealth of Virginia to the lawsuit I mentioned, the Protect Democracy Project and the Southern Coalition for Social Justice opposed our effort.[9] Simply, they opposed the entity most responsible for the entire chain of improper removal and our reporting on those removals from being held responsible. As far as I know, the Public Interest Legal Foundation is the only organization who has sought to hold the Commonwealth of Virginia responsible for these improper removals of American citizens as non-citizens.

This should command the full attention of Congress because there are ways to solve this problem. The answer is not to stop states from addressing citizenship defects in the Motor Voter registration process.

First, Congress should reexamine the interplay between state motor vehicle departments and state election officials charged with administering voter registration. In many cases, the motor vehicle employees are ambivalent, accepting as proof of identification documents *used by aliens such as green cards*, yet allowing that voter registration application to be passed on to election officials.

Second, Congress has shielded state motor vehicle departments from the obligation to disclose list maintenance records, thus making it more difficult for parties to ascertain where the failures are occurring.

Third, Congress should strengthen obligations for election officials to be transparent. That it requires federal court cases to pry loose public information about our election systems is a disgrace.

Fourth, Congress should expressly allow states to verify citizenship of new registrants so that non-citizens don't unwittingly jeopardize their immigration status by ending up on voter rolls, something that is happening.

Fifth and perhaps most important, Congress should ensure that federal agencies work cooperatively with state election officials to allow states to effectively and efficiently verify citizenship. These steps would protect our elections by ensuring non-citizens do not vote, and

[9] See, United States District Court, Eastern District of Virginia, Case 1:18-cv-00423-LO-IDD, ECF Document 83.

would also protect non-citizens by eliminating weak points in the motor vehicle departments' process that is putting them on the voter rolls and their immigration status at risk.

Thank you again for the opportunity to submit testimony on this very important matter.

Date: September 10, 2019

Respectfully submitted,
J. Christian Adams

Mr. COHEN. Thank you, Mr. Adams.

Ms. Myrna Pérez is director of the Voting Rights and Elections Program at the Brennan Center for Justice at NYU School of Law; author of several nationally recognized reports and articles, including "Purges: A Growing Threat to the Right to Vote," "Noncitizen Voting: The Missing Millions," and "Election Day Long Lines: Resource Allocation." She is a lecturer-in-law at Columbia and has served as an adjunct professor of clinical law at the NYU School of Law. She received her law degree from Columbia. She is also a Lowenstein Public Interest Fellow, received a master of public policy from Harvard's Kennedy School of Government, and an undergraduate degree from Yale.

Ms. Pérez, you are recognized for 5 minutes.

STATEMENT OF MYRNA PÉREZ

Ms. PÉREZ. Thank you, committee members, for having me. I am Myrna Pérez, and I am the director of the Voting Rights and Elections Program at the Brennan Center for Justice at NYU School of Law.

The Supreme Court in Shelby County left Congress with a critical challenge: pass a revised coverage formula. Accordingly, we ask this committee to take note. A number of State and local jurisdictions have continued to implement discriminatory voting laws. They have continued to disenfranchise voters of color in our elections. In fact, over the past decade, the Brennan Center has documented a wave of new laws and practices burdening the right to vote, especially targeting communities of color.

These ongoing problems demand a thoughtful and strong response. Section 5 of the Voting Rights Act reflects an important insight: State and local officials looking to suppress the vote have a wide variety of tools and tactics at their disposal. I go through some of these tools and tactics during my written testimony, but the one I will focus on here is that of aggressive voter purges, which can aggressively and unfairly target voters of color and disenfranchise large numbers of eligible citizens.

Purges refer to the process election officials use to try and remove the names of ineligible voters from voter registration lists. Obviously, this process is an important part of any election officials' jobs. When purges are done right, they ensure that the voter rolls are accurate and up-to-date—something we all agree is useful.

However, when purges are done improperly, they disenfranchise legitimate voters and undermine confidence in our democratic processes. Moreover, improper purges can lead to discriminatory results, sometimes by mistake and sometimes on purpose. For example, reports indicate that New York's purge leading into the 2016 election disproportionately affected Latino voters. So did Florida's 2012 purge attempt.

Prior to Shelby, covered jurisdictions were required to preclear changes to their purge practices before implementing them. Not anymore. And what have we seen? Between 2014 and 2016, States removed almost 16 million voters from the rolls. That is almost 4 million more than States removed between 2006 and 2008. That is an increase of 33 percent, far outstripping growth in both total registered voters and total population.

Our research suggests that Shelby County had a notable impact on that growth. Prior to Shelby County, jurisdictions subject to preclearance had purge rates in line with the rest of the country. But for the three election cycles ending in 2014, 2016, and 2018—in other words, after Shelby County—preclearance jurisdictions had significantly higher purge rates than other jurisdictions.

To put it another way, before Shelby County, jurisdictions subject to preclearance looked like the rest of the country when it came to purges. But after, formerly covered jurisdictions increased their purge rates while everyone else remained about the same.

We calculated that 2 million fewer voters would have been purged between 2012 and 2016 if jurisdictions previously subject to preclearance had purged at the same rate as other jurisdictions.

We have seen several improper purges since Shelby. Just this year, for example, a Federal court stepped in to stop Texas officials from purging about 95,000 voters from the rolls. Texas initially claimed these people were noncitizens, but the State relied on bad data and methodology. In 2016, New York wrongly deleted more than 100,000 names from the rolls. That same year, the Arkansas Secretary of State prepared a highly inaccurate purge list of nearly 8,000 names.

Purges typically happen behind closed doors with the stroke of a keyboard. As a result, voters often don't know they have been purged until they show up to vote. Because they are below the public radar, it is difficult to address the effects of bad purges until it is too late. And that is why Section 5's preclearance process is particularly well tailored to address not only voter discrimination and other reforms, but the purge problem specifically, because a revitalized preclearance regime would require covered jurisdictions to obtain approval for new purge practices before they get into place.

The need for preclearance is particularly urgent in light of developments over the last decade. We have new databases popping up which supposedly identify ineligible voters, but they are producing flawed results that can lead to improper purges. States are passing new laws looking for different grounds upon which to purge people, and relying on discredited methodology, certain groups are pushing localities to increase the aggressiveness of their purges.

Many advocates sitting here will do our very best to protect voters against discriminatory laws and policies under the laws that we have, including against improper purges. But Congress can and should also act to protect voters. The Supreme Court has repeatedly affirmed congressional power to enact a coverage formula for Section 5 preclearance, including the Shelby County decision itself. We urge Congress to revitalize the VRA, and I am very much looking forward to the questions.

[The statement of Ms. Pérez follows:]

Testimony of

Myrna Pérez

Director, Voting Rights & Elections Program

Brennan Center for Justice at NYU School of Law[1]

Hearing on Evidence of Current and Ongoing Voting Discrimination

The Committee on the Judiciary, U.S. House of Representatives

Subcommittee on the Constitution, Civil Rights and Civil Liberties

September 10, 2019

Thank you for the opportunity to submit this testimony in support of restoring the Voting Rights Act ("VRA" or "Act"), a law that has been an important guardian of American democracy. The Brennan Center for Justice at NYU School of Law strongly supports this Committee's important efforts to restore and revitalize the Act. My oral testimony will focus on voter purges. In this written testimony, I also highlight additional problems caused by the Supreme Court's *Shelby County v. Holder* decision[2] and the concomitant need for an updated VRA.

The VRA is considered the most effective civil rights legislation in the history of our country.[3] In June 2013, however, a 5-4 majority of the Supreme Court struck down a key provision of the VRA.[4] That provision—Section 4(b)—determined which jurisdictions were required to pre-clear any changes to their voting rules with the federal government prior to implementing them.[5] In his majority opinion, Chief Justice Roberts claimed that the coverage formula was no longer "grounded in current conditions" because the "country has changed" since the formula was first adopted.[6] By striking down Section 4, the Court effectively mothballed the pre-clearance regime.

The years that have followed provide ample evidence to justify congressional action. State and local jurisdictions have continued to implement discriminatory voting rules,

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[1] The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice. I am the Director of the Brennan Center's Voting Rights and Elections Program. I have authored several nationally recognized reports and articles, including Purges: A Growing Threat to the Right to Vote (July 2018), Noncitizen Voting: The Missing Millions (May 2017), and Election Day Long Lines: Resource Allocation (Sept. 2014). My work has been featured in media outlets across the country, including The New York Times, The Wall Street Journal, MSNBC, and others. I have testified previously before Congress, as well as several state legislatures, on a variety of voting rights related issues. I am a lecturer-in-law at Columbia Law School and I have also served as an Adjunct Professor of Clinical Law at NYU School of Law. My testimony does not purport to convey the views, if any, of the New York University School of Law.

[2] 570 U.S. 529 (2013) (Ex. A).

[3] U.S. Dep't of Justice, "The Effect of the Voting Rights Act," last modified June 19, 2009, https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0 (Ex. A).

[4] *Shelby Cty.*, 570 U.S. at 556-57.

[5] *Id.* at 536-40.

[6] *Id.* at 554, 557.

disenfranchising voters of color in election after election.[7] The Brennan Center has documented a particularly disturbing increase in the number of people purged from the voter rolls in states formerly subject to preclearance.[8] These ongoing problems demand a strong, but measured response. We urge the Committee to act expeditiously to restore the VRA to full strength.

I. The VRA and *Shelby County*

The VRA is the engine of voting equality in our nation. Congress has repeatedly recognized its importance and effectiveness, as well the ongoing need for its protections. Since its initial passage in 1965, Congress has reauthorized, updated, and expanded the VRA four times.[9] As recently as 2006, Congress reauthorized the VRA with overwhelming bipartisan support and the reauthorization was signed into law by President George W. Bush.[10]

For almost half a century, the Section 5 pre-clearance provision was central to the VRA's success. That provision required certain jurisdictions with a history of voting discrimination to obtain approval from the federal government for any voting rules changes before putting them into effect. As the Supreme Court acknowledged in *Shelby County*, the VRA "proved immensely successful at redressing racial discrimination and integrating the voting process."[11] Indeed, Section 5 deterred discriminatory voting rules changes right up until the Court froze its operation. Between 1998 and 2013, Section 5 blocked 86 discriminatory changes (including 13 in the 18 months before *Shelby County* was handed down). It prompted hundreds more changes to be withdrawn, and it prevented even more of those changes from being offered in the first place because policymakers knew they would not get federal approval.[12]

Shelby County gutted Section 5 by invalidating the "coverage formula" that determined which jurisdictions were subject to pre-clearance. Predictably, a flood of discriminatory voting changes followed.

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[7] Wendy Weiser and Max Feldman, *The State of Voting 2018*, Brennan Center for Justice, 2018, *available at* https://www.brennancenter.org/sites/default/files/publications/2018_06_StateOfVoting_v5%20%281%29.pdf; Brennan Center for Justice, "New Voting Restrictions in America," last modified July 3, 2019, https://www.brennancenter.org/new-voting-restrictions-america; Brennan Center for Justice, "Voting Laws Roundup 2019," last modified July 10, 2019, https://www.brennancenter.org/analysis/voting-laws-roundup-2019 (Ex. B).

[8] Kevin Morris, Brennan Center for Justice, "Voter Purge Rates Remain High, Analysis Finds," Aug. 1, 2019, https://www.brennancenter.org/blog/voter-purge-rates-remain-high-analysis-finds; Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote,* Brennan Center for Justice 2018, 3-5, *available at* https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf (Ex. C).

[9] U.S. Dep't of Justice, "History of Federal Voting Rights Laws," last modified July 28, 2017, https://www.justice.gov/crt/history-federal-voting-rights-laws (Ex. A).

[10] U.S. Senate, "H.R.9 Vote Summary," July 20, 2006, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00212; U.S. House of Representatives, "Final Vote Results for Roll Call 374," July 13, 2006, http://clerk.house.gov/evs/2006/roll374.xml; The White House, Press Release, "Fact Sheet: Voting Rights Act Reauthorization and Amendments Act of 2006," July 27, 2006, https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-1.html (Ex. A).

[11] *Shelby Cty.*, 570 U.S. at 548.

[12] Tomas Lopez, Shelby County: *One Year Later*, Brennan Center for Justice, June 24, 2014, https://www.brennancenter.org/analysis/shelby-county-one-year-later (Ex. D).

II. Direct Burdens on Voting Since *Shelby County*

Over the course of the last decade, we have seen a surge in *direct* burdens on the right to vote (in addition to efforts to dilute minority voting power), which the Brennan Center has documented extensively.[13] The *Shelby County* decision gave the greenlight to states to continue to implement these voting restrictions.

a. Restrictive Voting Laws Implemented Immediately Following *Shelby County*

The damage caused by *Shelby County* started the same day the Supreme Court handed down its opinion, as states put in place voting rules that either were or likely would have been blocked by the federal government under Section 5.

- Within hours of the Court's decision, Texas moved forward with implementing what was then the nation's strictest voter identification law, which had been denied preclearance because of its discriminatory impact.[14] Years and years of expensive and burdensome litigation by many dozen lawyers resulted in the federal courts striking down the law as unlawfully discriminatory on two different occasions.[15] But even after all that expense and time, Texas passed a different photo ID law in 2017.[16]

- Mississippi also announced that it would move to implement its voter ID law the same day the Court's decision was handed down.[17] The state had previously submitted the policy for preclearance but had not obtained approval to implement it.[18]

- The day after the *Shelby County* decision, Alabama moved forward with its strict voter ID law. The state passed the law in 2011 and would have been required to obtain preclearance, but state officials never submitted the bill for approval.[19] The law is subject to an ongoing lawsuit in the federal courts. [20]

- Within two months after *Shelby County*, North Carolina enacted a law that imposed a strict photo ID requirement, cut back on early voting, and reduced the window for voter

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[13] Weiser & Feldman, *supra* note 7; Brennan Center for Justice, "New Voting Restrictions in America," *supra* note 7; Brennan Center for Justice, "Voting Laws Roundup 2019," *supra* note 7; Wendy Weiser and Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice, 2011, *available at* http://www.brennancenter.org/publication/voting-law-changes-2012 (Ex. B).

[14] Lopez, *supra* note 12.

[15] Brennan Center for Justice, "Texas NAACP v. Steen (consolidated with Veasey v. Abbott)," last modified Sept. 21, 2018, https://www.brennancenter.org/legal-work/naacp-v-steen; *Veasey v. Abbott*, 265 F. Supp. 3d 684, 693 (S.D. Tex. 2017), *rev'd in part*, 888 F.3d 792 (5th Cir. 2018); *Veasey v. Abbott*, 249 F. Supp. 3d 868, 875 (S.D. Tex.), *reconsideration denied*, 265 F. Supp. 3d 684 (S.D. Tex. 2017), *rev'd in part*, 888 F.3d 792 (5th Cir. 2018); *Veasey v. Perry*, 71 F. Supp. 3d 627 (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.), *and aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (Ex. E).

[16] Brennan Center for Justice, "Texas NAACP v. Steen (consolidated with Veasey v. Abbott)," *supra* note 15.

[17] Press Release, Secretary of State of Mississippi, Statement on Supreme Court Voting Rights Act Opinion, June 25, 2013, https://www.sos.ms.gov/About/Pages/Press-Release.aspx?pr=422 (Ex. F).

[18] Lopez, *supra* note 12.

[19] *Ibid.*

[20] NAACP LDF, "Case: Greater Birmingham Ministries v. Alabama," last accessed Sept. 3, 2019, https://www.naacpldf.org/case-issue/greater-birmingham-ministries-v-alabama/ (Ex. G).

registration. Following the decision, a state senator told the press, "now we can go with the full bill," rather than less a restrictive version.[21] As in Texas, extensive and protracted litigation resulted in a federal appeals court striking down the law, finding that it targeted African-Americans with "surgical precision."[22]

b. Restrictive Voting Laws Passed in the Years After *Shelby County*

This burst of restrictive voting laws was not contained to the period immediately following *Shelby County*. In the six years since the decision, states have continued to enact burdensome voting laws, in some cases piling restriction on restriction. For example:

- Georgia has repeatedly implemented—and repeatedly been forced to alter—a requirement that voter registration forms match exactly with other state records in order for an individual to be registered.[23] In 2017, the state enacted a "no match, no vote" law, even though only months earlier, the secretary of state agreed in a court settlement to stop a similar procedure that had blocked tens of thousands of registration applications.[24] The new law drew a court challenge and a federal district court entered a preliminary injunction prior to the 2018 election, halting its effect with respect to certain impacted voters.[25] The state subsequently enacted a law that largely ended the policy.[26]

- Florida this year passed a law cutting back on the expansive changes made by Amendment 4—a constitutional amendment that restores voting rights to many Floridians with a felony conviction and that was passed overwhelmingly by Florida voters in November 2018. The new law is subject to a series of federal court challenges.[27]

- North Carolina lawmakers enacted a law in 2018, initially introduced in the middle of the night, cutting back early voting opportunities.[28] They also put a constitutional amendment enshrining a photo ID requirement for voting on the 2018 ballot, which subsequently passed, and then rushed to pass implementing legislation prior to a change

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[21] Lopez, *supra* note 12.
[22] *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) (Ex. H).
[23] Jonathan Brater and Rebecca Ayala, "What's the Matter with Georgia?." Brennan Center for Justice, Oct. 12, 2018, https://www.brennancenter.org/blog/whats-matter-georgia (Ex. I).
[24] *Ibid.*; Press Release, Lawyers' Committee for Civil Rights Under Law, "Voting Advocates Announce a Settlement of 'Exact Match' Lawsuit in Georgia," Feb. 10, 2017, https://lawyerscommittee.org/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/ (Ex. J).
[25] *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (Ex. J).
[26] Press Release, Lawyers' Committee for Civil Rights Under Law, "Georgia Largely Abandons Its Broken 'Exact Match' Voter Registration Process, Apr. 5, 2019, https://lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/ (Ex. J).
[27] Brennan Center for Justice, "Gruver v. Barton (consolidated with Jones v. DeSantis)," last modified Aug. 3, 2019, https://www.brennancenter.org/legal-work/gruver-v-barton; Complaint, *Gruver v. Barton*, No. 1:19-cv-00121 (N.D. Fla. June 28, 2019) (Ex. K). The Brennan Center represents individual returning citizens, the Florida NAACP, and the League of Women Voters of Florida, along with co-counsel at the ACLU, the ACLU of Florida, and the NAACP Legal Defense and Education Fund in one of the cases. That case has been consolidated with others.
[28] Max Feldman, "A Familiar Scene in North Carolina as State Lawmakers Introduce New Voting Restrictions," Brennan Center for Justice, June 15, 2018, https://www.brennancenter.org/blog/familiar-scene-in-north-carolina-as-state-lawmakers-introduce-new-voting-restrictions (Ex. H).

in the partisan composition of the state legislature.[29] The voter ID law has drawn a series of state and federal court challenges.[30]

- Texas, as described above, implemented its strict photo ID law in 2013. After it was repeatedly struck down, the state enacted a new law in 2017. While an improvement over the law that was implemented in 2013, the new law is still harsher than the temporary, court-ordered ID requirements that were in place for the 2016 election.[31] In addition, this year, the state enacted a new law restricting the use of mobile early voting units.[32]

- Virginia enacted a new photo ID law in 2013, which went into effect in 2014. The state also enacted new limits on third-party voter registration in 2013.[33]

- Arizona enacted a law in 2016 limiting collection of mail-in ballots and making it a felony to knowingly collect and turn in another voter's completed ballot, even with that voter's permission (with some exceptions).[34] This year, the state imposed new restrictions on access to emergency early and absentee voting and extended voter ID requirements to early voting.[35]

These are only some of the restrictive voting laws that states have enacted since *Shelby County*. Furthermore, many forms of voter suppression are implemented administratively or at the sub-state level. Our research regarding last year's election confirmed that state and local officials continue to develop new tactics to keep people from voting.[36]

c. Voter Purges After *Shelby County*

One significant, specific area of concern in the wake of *Shelby County* is voter purges—the sometimes-flawed process by which election officials attempt to remove from voter registration lists the names of those ineligible to vote.[37] When they are executed properly, purges

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[29] Lynn Bonner, "NC Senate overrides Cooper's voter ID veto," The News & Observer, Dec. 18, 2018, https://www.newsobserver.com/news/politics-government/article223216960.html (Ex. H).
[30] Max Feldman and Peter Dunphy, "The State of Voting Rights Litigation (July 2019)," Brennan Center for Justice, July 31, 2019, https://www.brennancenter.org/analysis/state-voting-rights-litigation-july-2019 (Ex. L).
[31] Brennan Center for Justice, "Texas NAACP v. Steen (consolidated with Veasey v. Abbott)," *supra* note 15.
[32] Brennan Center for Justice, "Voting Laws Roundup 2019," *supra* note 7.
[33] Brennan Center for Justice, "New Voting Restrictions in America," *supra* note 7; Brennan Center for Justice, "Voting Laws Roundup 2013," last modified Dec. 19, 2013, https://www.brennancenter.org/analysis/election-2013-voting-laws-roundup (Ex. B).
[34] Brennan Center for Justice, "New Voting Restrictions in America," *supra* note 7; Brennan Center for Justice, "Voting Laws Roundup 2016," last modified Apr. 18, 2016, https://www.brennancenter.org/analysis/voting-laws-roundup-2016 (Ex. B).
[35] Brennan Center for Justice, "Voting Laws Roundup 2019," *supra* note 7; 2019 Ariz. Legis. Serv. Ch. 15 (S.B. 1072); 2019 Ariz. Legis. Serv. Ch. 107 (S.B. 1090) (Ex. M). South Carolina also enacted a voter ID law in 2011. The law obtained pre-clearance after state officials interpreted it to be substantially less restrictive during the course of the pre-clearance litigation. See the materials collected as Exhibit U.
[36] Zachary Roth and Wendy Weiser, Brennan Center for Justice, "This Is the Worst Voter Suppression We've Seen in the Modern Era," last modified Nov. 2, 2018, http://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era; Rebecca Ayala, Brennan Center for Justice, "Voting Problems 2018," last modified Nov. 5, 2018, https://www.brennancenter.org/blog/voting-problems-2018 (Ex. B).
[37] *See* Myrna Pérez, *Voter Purges*, Brennan Center for Justice 2008 1-3, https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf (explaining voter purge process) (Ex. C).

ensure that the voter rolls are accurate and up-to-date. When they are executed improperly, however, purges disenfranchise legitimate voters—often too close to an election to correct the error—and cause confusion and delay at the polls.

Prior to the *Shelby County* decision, covered jurisdictions were required to pre-clear changes to their purge practices before implementing them.[38] This requirement protected voters from ill-conceived purge practices. That protection is now gone. And voter purges are on the rise.

Between 2014 and 2016, states removed almost 16 million voters from the rolls—nearly 4 million more than they removed between 2006 and 2008.[39] This growth in the number of removed voters represented an increase of 33 percent, which far outstrips growth in both total registered voters (18 percent) and total population (six percent). Brennan Center research suggests that *Shelby County* has had a profound and negative impact. Prior to the *Shelby County* decision, jurisdictions that had been subject to pre-clearance had purge rates in line with the rest of the country. In the election cycles following the decision—those ending in 2014, 2016, and 2018—those same jurisdictions that were previously subject to preclearance had purge rates that were significantly higher than other jurisdictions.[40] We calculated that 2 million fewer voters would have been purged between 2012 and 2016 if previously covered jurisdictions had purged at the same rate as other jurisdictions.[41]

Improper purges, and attempts at improper purges, litter our recent history. These purges can have severe consequences for voters. For example:

- Earlier this year, a federal court stopped Texas's attempt to purge approximately 95,000 purported non-citizens from the voter rolls. Texas relied on stale data and weak comparisons between databases to develop its purge plan. As a result of this attempted purge, Texas's Secretary of State resigned.[42]

- In the leadup to the April 2016 primary election, New York election officials improperly removed more than 200,000 names from the voter rolls, giving little notice to those who had been purged.[43] During the September 2018 primary, some voters reported that they continued to encounter significant problems at the polls as a result of the purge.[44]

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[38] *See, e.g.*, *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1060 (E.D. Tex. 2000); Letter from John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Dep't of Justice to Charlie Crist, Attorney General of Florida (Sept. 6, 2005); Letter from John R. Dunne, Asst. Att'y Gen., Civil Rights Division, U.S. Dep't of Justice to Debbie Barnes, Chairperson, Dallas County (Alabama) Board of Registrars (June 22, 1990) (interposing Section 5 objection to implementation of new purge practices) (Ex. C).

[39] Brater et al., *supra* note 8.

[40] *Id.* at 3.

[41] *Id.* at 4; *see also* Kevin Morris and Myrna Pérez, "Florida, Georgia, North Carolina Still Purging Voters at High Rates," Brennan Center for Justice, Oct. 1, 2018, https://www.brennancenter.org/blog/florida-georgia-north-carolina-still-purging-voters-high-rates (Ex. C).

[42] See the materials collected as Exhibit O.

[43] Brater et al., *supra* note 8, at 5-6.

[44] Ayala, *supra* note 38. See also the materials collected as Exhibit P.

- In 2016, the Arkansas Secretary of State sent the state's county clerks more than 7,700 names to be removed from the rolls due to felony convictions. The list, however, was highly inaccurate. It included some people who had never been convicted of a felony and others with past convictions whose voting rights had been restored.[45]

- In 2013, in Virginia, nearly 39,000 voters were removed from the rolls after the state relied on a faulty database to delete voters who had allegedly moved out-of-state. In some counties, error rates ran as high as 17 percent.[46]

- The same year, Florida officials sought to purge thousands of purported non-citizens people from the rolls, but ultimately suspended the purge. When the state tried the same thing in 2012, its purge list was reduced from 180,000 supposed non-citizens to approximately 2,700. Notably, that purge list contained a disproportionate number of Latino surnames.[47]

Purges tend be problematic for at least two reasons. First, they happen behind closed doors. As a result, voters often only learn that they have been purged when they show up to the polls. Second, states sometimes rely on faulty data and fail to conduct sufficient research before concluding that a voter is ineligible to vote. Furthermore, improper matching of data between databases in order to identify voters for purging can lead to discriminatory results.[48] The last election provided a clear example of discriminatory outcomes resulting from improper data matching, albeit outside of the purge context. In the leadup to the 2018 election, approximately 80 percent of Georgia voters not registered because of the state's "no match, no vote" law were people of color.[49]

III. Congress Should Act to Renew and Revitalize the VRA

It is undeniable that our nation has suffered from a long, sorry, and sometimes violent history of racialized voter suppression. The VRA was enacted to confront this suppression head on. Despite the VRA's substantial success over the past five decades, racial discrimination still infects our election system, as the preceding sections make clear. While the *Shelby County* Court was correct that the "country has changed," it has not changed enough to warrant halting preclearance.

Federal courts have repeatedly found that new laws passed after *Shelby County* made it harder for minorities to vote, some intentionally so.[50] These conclusions have been confirmed by academic studies finding that a state's racial makeup is related to its adoption of voting

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[45] Brater et al., *supra* note 8, at 5. See also the materials collected as Exhibit Q.
[46] Brater et al., *supra* note 8, at 8. See also the materials collected as Exhibit R.
[47] Lopez, *supra* note 7. See also the materials collected as Exhibit S.
[48] Brater et al., *supra* note 8, at 7 (explaining that voters with common names are more likely to match with other individuals in database comparisons and that "African-American, Asian-American, and Latino voters are much more likely than Caucasians to have one of the most common 100 last names in the United States").
[49] Amended Complaint at 5, *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018) (No. 1:18-cv-04727); Answer at 5, *Georgia Coal.*, 347 F. Supp. 3d at 1251 (No. 1:18-cv-04727) (Ex. J).
[50] *See, e.g.*, *McCrory*, 831 F.3d at 214; *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904-05 (W.D. Wis. 2016), *order enforced*, 351 F. Supp. 3d 1160 (W.D. Wis. 2019) (Ex. T); *Veasey*, 71 F. Supp. 3d at 633.

restrictions.[51] At times they have been confirmed by the public comments of these restrictions' proponents themselves.[52]

To be clear, voting rights advocates are not going to stand on the sidelines when would-be suppressors act, notwithstanding a weakened VRA. Section 2 of the VRA, which allows private parties and the Justice Department to challenge discriminatory voting practices in court is being readily leaned on to fight racial discrimination in the post-*Shelby* world. In some circumstances, these Section 2 lawsuits have ultimately been successful. But they are not a substitute for pre-clearance. Litigating section 2 cases is far more lengthy and expensive than being involved in the pre-clearance process, and these cases often do not yield results for impacted voters until after an election is over.[53]

Our case against Texas's 2011 voter ID law illustrates this point.[54] After the state passed the law, a three-judge federal court prevented the state from implementing it, refusing to preclear the law under Section 5. That decision, however, was vacated after *Shelby County*, leading to years of litigation under Section 2. Even though every court that considered the law found it to be discriminatory (and a federal district court found that it was intentionally discriminatory), the law remained in effect until a temporary, court-ordered remedy was put in place for the November 2016 election. In the meantime, Texans were forced to vote in 3 federal and 4 statewide elections and numerous local elections under discriminatory voting rules. Moreover, litigating the case was extremely expensive. According to news reports, the state spent more than $3.5 million defending the law through 2016—before the last round of appeals in the case concluded.[55] Plaintiffs in the case have filed attorneys' fees petitions totaling millions of dollars more.

The Texas case is consistent with other voting discrimination cases since *Shelby County*. For example, a challenge to Alabama's voter ID law was filed in December 15, 2015 and is still ongoing.[56]

Furthermore, courts have permitted potentially discriminatory laws to govern our elections, under the Supreme Court's *Purcell* doctrine, supposedly to avoid disrupting election administration.[57] Ironically, this approach may *compound* confusion at the polls, by constantly shifting the ground rules that govern elections in a state. Preclearance pretermits this disruption by forcing covered jurisdictions to establish that new voting rules are non-discriminatory prior to implementing them.

In short, the *Shelby County* Court has left us with a system that is both ineffective and inefficient. Congress can and should fix this problem. The Supreme Court has repeatedly

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[51] *See, e.g.*, Bentele & O'Brien, *Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies*, 11 Perspective on Politics 1088 (Dec. 2013) (Ex. B).

[52] Brennan Center for Justice, "When Politicians Tell the Truth on Voting Restrictions," Aug. 10, 2016, https://www.brennancenter.org/analysis/when-politicians-tell-truth-voting-restrictions (Ex. B).

[53] Lopez, *supra* note 7.

[54] The Brennan Center represented the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives, along with the Lawyers' Committee for Civil Rights Under Law and other co-counsel. The case was consolidated with several others.

[55] Jim Malewitz and Lindsay Carbonell, *Texas' Voter ID Defense Has Cost $3.5 Million*, Texas Tribune, June 17, 2016, https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/ (Ex. E)

[56] *See* NAACP LDF, "Case: Greater Birmingham Ministries v. Alabama," *supra* note 20.

[57] *See, e.g.*, *Veasey v. Perry*, 769 F.3d 890, 893-96 (5th Cir. 2014) (issuing stay and collecting cases) (Ex. E).

affirmed congressional power to enact a coverage formula for Section 5 pre-clearance, including in *Shelby County*. We urge Congress to act expeditiously to renew and revitalize the VRA.

Mr. COHEN. Thank you, Ms. Pérez.

Our final witness is Ms. Natalie Landreth, senior staff attorney for the Native American Rights Fund based in NARF's Anchorage, Alaska, office; a member of the litigation management committee of that group. Her practice covers a wide variety of Federal Indian law and election law issues, including the VRA and constitutional voter protections. She has been instrumental in establishing key voter protections in Alaska through two significant cases and testified in Congress in support of the renewal of the VRA in 2006. She is a magna cum laude graduate of Harvard University and received her law degree from Harvard as well. She is a member of the Chickasaw Nation.

Ms. Landreth, you are recognized for 5 minutes.

Ms. Pérez, can you help her?

Ms. PÉREZ. Yes.

Mr. COHEN. We have a faulty machine.

STATEMENT OF NATALIE A. LANDRETH

Ms. LANDRETH. Thank you very much. My name is Natalie Landreth, I am a citizen of the Chickasaw Nation, Imatobby family. I am here today in my capacity as a staff attorney at the Native American Rights Fund, otherwise known as NARF. I have held this position since 2003 and worked on voting cases since 2006. I thank you for the invitation to speak here today, to speak on ongoing voter discrimination in Indian Country, because there is a lot and it is egregious.

There is a view that what are called "first-generation barriers"—direct impediments to polling places and access to voting—is a thing of the past, and that view is wrong. First-generation barriers are not gone, and this month—in support of this testimony—the Native American Rights Fund will be submitting a report on nine field hearings we conducted throughout Indian Country that show the extent of these barriers, including testimony from voters who said they were forced to vote in an abandoned chicken coop, complete with egg boxes remaining behind, and voters who claimed that they had been forced to vote in a sheriff station with an armed sheriff who ran their plates before they walked inside.

I want to address three things in my testimony today briefly. First, I want to talk about how the loss of preclearance has affected our work and how it is impacting your constituents. Second, I want to talk about what previously discovered—previously covered jurisdictions are now doing. And, third, I want to talk a little bit about "known practices coverage," which is included in this draft of the VRAA.

First, the loss of preclearance means just that the burden has shifted from the jurisdictions onto the voters themselves. What I mean is that they previously had to submit them to the DOJ, and now we have to sue to get them undone. It is enormously burdensome, and in an average voting case, NARF alone, a fairly small organization, will spend thousands of hours over several years and over $1 million to stop a single discriminatory voting change. And what ends up happening is that because Native Americans have brought 95 voting cases, approximately, and won 92.5 percent of the time is that these jurisdictions end up paying our attorneys'

fees and shifting that cost onto the taxpayer so that taxpayers end up subsidizing the discrimination that is occurring by local officials. This tells us, the success rate, that discrimination is real and it is ongoing.

Second, the loss of preclearance means that the previously covered jurisdictions implemented discriminatory changes that had previously been denied. One example is, of course, the Arizona ballot harvesting law. The reason that was so critical in Indian Country is that only 18 percent of Native Americans outside of Pima and Maricopa counties actually have home mail delivery. So what they would have to do is pool their ballots. Neighbors would collect all of your mail and take it to the post office at the same time, and this law turned them into potential felons for handling a voted or unvoted ballot that did not have their name on it.

The other thing that happened in this jurisdiction after the loss of preclearance was that testimony indicated—and this is currently in litigation—there was an astounding step removing polling locations from hundreds down to about 60 in 2016. The result, according to testimony, was lines 4 to 6 hours long, and this can be found specifically in the Arizona field transcripts that we will be providing, complete with locations and names of witnesses.

I want to speak briefly to the fact that there are some bad actors everywhere. We talk about how people feeling like certain States are targeted, that is not true. The known practices formula in—the known practices list, I should say, in this bill will help. Let me give you an example from California.

Somebody testified that they were unable to register to vote in Northern California because their local jurisdiction considered a mobile home not to be a permanent residence and, therefore, people on this Indian reservation were not being allowed to vote. Fortunately, Secretary of State Alex Padilla was in the audience at the time, and we understand this has since received some attention.

Another jurisdiction not covered whose practices would be addressed by the known practices component of this bill: North Dakota. A very well publicized situation, what some people consider to be a facially neutral law that is completely false because 24 percent of Native Americans have no ID. The court said it best: You need an ID to get an ID in North Dakota. Most of the elderly Native Americans were born at home, so they don't have birth certificates from the '20s, '30s, and '40s. And they can't get the documents they need, not to mention a significant number of them have no access to transportation to do that.

So I would like to close by saying that the known practices section lists these pieces, but so does a component bill that we have drafted based on our field hearings and the findings therein called the "Native American Voting Rights Act." We encourage this committee and Congress to pass the VRAA and also the Native American Voting Rights Act.

Thank you.

[The statement of Ms. Landreth follows:]

"Evidence of Current and Ongoing Voting Discrimination"
Tuesday, September 10th at 10:00 a.m.
Rayburn House Office Building, Room 2141
Testimony of Natalie A. Landreth
Senior Staff Attorney, Native American Rights Fund

Good morning. My name is Natalie Landreth and a member of the Chickasaw Nation, the Imatobby family. I am here today in my capacity as a senior staff attorney at the Native American Rights Fund. I have held this position since 2003 and I have worked on voting rights cases since 2006. Thank you for inviting me to speak on Current and Ongoing Voting Discrimination – because there is a lot in Indian Country.

There is a view that what are called first generation barriers, that is direct impediments to polling place and access to voting, is a thing of the past. That view is wrong. First generation barriers are not gone, and this month – in support of this testimony – the Native American Rights Fund will be submitting a report on nine field hearings we conducted throughout Indian Country that show the extent of such barriers across the country.

I want to address three things in my testimony today. First, I want to talk about how the loss of preclearance has impacted our work and the voting rights of our clients. Second, I want to talk about how some previously covered jurisdictions have conducted themselves in the absence of preclearance. And finally, I want to say a few words in support of what is called "known practices coverage," because what we found in the hearings extended beyond the previously covered jurisdictions.

First, the loss of preclearance means that the burden has shifted from the jurisdictions directly onto the voters themselves. What I mean is that previously jurisdictions subject to preclearance had to submit their proposed changes for DOJ approval, a simple process that approved the vast majority of changes but caught some of the most egregious attempts at voter suppression. Now, there is no line of defense between jurisdictions and voters and so when a discriminatory or suppressive practice is implemented, voters themselves have to sue to block a change. This is the situation we are now in at NARF. It is enormously burdensome for voters, their lawyers and for the public at large. In an average voting case, we expend thousands of attorney hours over a period of years, and usually over $1 million to stop a discriminatory voting change. The citizens of the jurisdiction end

up paying for this folly with their tax dollars. Notably – and I can't stress this point enough – the voters in Indian voting cases are almost always right, and almost always win. There have been approximately 94 voting cases about Indian voting rights and the Indians have prevailed in 87 of those – for a 92.5 percent success rate. What does that tell us? That the discrimination is real and it is ongoing. And that the voters are bearing heavier burdens than ever just to protect the basic right to vote.

Second, the loss of preclearance means that previously covered jurisdictions freely implemented discriminatory changes as soon as they could. Take for example Arizona. While preclearance was in effect, the State submitted HB 2023, commonly called the Ballot Harvesting law, that makes it a felony to possess anyone else's early ballot, whether voted or not. This was subject to a lot of controversy from the start, and the Department of Justice made a "more information request" or MIR that usually signaled to a jurisdiction that the change might not be approved. It was withdrawn. This is exactly how preclearance worked, and exactly how it is supposed to work. Rights after the *Shelby County* decision, Arizona immediately implemented this controversial change and we heard testimony described in detail the negative impact if would have on Native voters in particular. Outside of Pima and Maricopa counties, only 18 percent of Native Americans have home mail delivery. They rely on post office boxes that are often very far from their homes so families commonly "pool" their mail, meaning one person who is going to town would collect it for everyone else to drop it off at the post office. If that mail contained early ballots, that good neighbor helping you with your mail would suddenly be a felon. Years after this case began, it remains unresolved.

Also in formerly covered Arizona, in the first election conducted after the Shelby County case, Maricopa County took the astounding step of removing many of their polling locations from hundreds down to about 60 in March of 2016. The result was lines of four to six hours according to testimony we heard in the Arizona field hearing. This change would clearly have a negative impact on voters and thus never would have been approved under preclearance. Without that protection, the jurisdiction went ahead with these drastic changes and voters had to sue to get those polling locations back.

Why do these voters have to sue to not wait in a 4-6 hour line, have to sue to have a neighbor pick up or bring their sealed ballot to the post office for them? Because preclearance is gone. And when these actions are inevitably found to violate the law the economic burden falls on the voters to compensate for the all the expense

that had to be taken to prove the very obvious point that waiting 4-6 hours for a polling location is wrong. It's the taxpayers who are forced to pay for officials making these poor decisions.

Finally, I want to speak briefly to the fact that there are bad actors everywhere. Let me give you just one example from California. During the field hearings, NARF heard testimony that on a reservation in northern California, some voters were told they could not register to vote if they lived in a mobile home because it was "not a permanent residence." These kind of obviously discriminatory practices can and do pop up in unlikely places. With respect to another jurisdiction not previously covered, I probably do not need to go into detail about the well-publicized situation in North Dakota, where the state legislature passed a voter photo ID law requiring a street address that was felt very heavily on reservations Indians who have no street addresses, only P.O. boxes. Several individual Indians sued and won an injunction for the 2016 election and the legislature then promptly moved the ball for the 2018 election and passed a new law to try and get around the court's decision. This case is ongoing today.

While jurisdictions previously covered by Section 5 may have earned extra special attention, there are certain practices that should be prohibited everywhere. I am referring to what is called the "known practices" section of the VRAA but also to the list of prohibited practices in the Native American Voting Rights Act. These kinds of suppressive tactics can and should be prohibited nationwide.

NARF will be submitting the full report on its field hearings and the conclusions therefrom in conjunction with this testimony. I am happy to answer any questions you may have.

Mr. COHEN. Thank you. Firstly, I would like to compliment our panel, the first panel I think I have ever witnessed that all got to 5 minutes and stopped. Great.

We will now proceed under our questioning, which is a 5-minute rule of questions, and I will recognize myself for questions.

Mr. Ho, you mentioned some jurisdictions where Section 2 cases have taken place since Holder, Shelby v. Holder. Where are those jurisdictions? Are they predominantly in any particular class of jurisdiction?

Mr. HO. So there have been 26 successful Section 2 cases since Shelby County v. Holder, and I define "successful case" as a case where either a court ruled in favor of the plaintiffs or the parties settled and the plaintiffs got some of the relief—some or all of the relief that they sought. I think two things stand out when you look at what kind of jurisdictions those cases arose from.

The first is that, of those 26 cases, I think 16 of them—and there is a table in my written testimony that sets this out—happened at the local level. So a majority of the successful Section 2 litigation that we have seen happens at the city, county, school board level. And I think what that speaks to is the importance of the notice and transparency requirements of the VRAA because changes to voting laws at the local level are harder to detect. And that is something that we lost with the demise of the preclearance regime.

The second thing is that a majority of these cases arose from a small handful of States—and, again, they are set forth in my testimony—that used to be covered by Section 5; and that provides, I think, some evidence that the problem of voting discrimination remains concentrated in particular places and justifies particular congressional attention to those places.

Mr. COHEN. And those States, if I remember correctly, that were in the preclearance area were all in the Old Confederacy but for Arizona as far as States go. Is that not accurate?

Mr. HO. As far as fully covered States go, I believe that is right, but there were some partially covered States—California, New York—that were not.

Mr. COHEN. And when you say partially covered, that is because they were local jurisdictions. They happened to be in the State.

Mr. HO. That is correct.

Mr. COHEN. And then those were the States where most of this Section 2 action took place.

Mr. HO. That is correct.

Mr. COHEN. So the old expression in the song "Dixie," "Old times there are not forgotten" maybe has more of a current ring than one would understand.

Mr. HO. Well, I think the numbers speak for themselves.

Mr. COHEN. Yes, sir. Ms. Pérez, on purges, what are some of the reasons for purges?

Ms. PÉREZ. There are a lot of reasons for purges. Some of them are necessary. We want our voter rolls to be clean, so people are removing them because people have died, people have moved, people are no longer eligible because of a criminal conviction.

The problem that we are seeing in this country is that purges are on the rise. The protections that were once available to let the public and the Department of Justice know about purge practices that

had changed or are no longer available, and when people are purged, they often find out on election day when it is too late.

Mr. COHEN. Are some of the purges because people have not voted in X amount of elections or a certain period of time?

Ms. PÉREZ. A number of States have different practices that they use, and every State in the country that is subject to the NVRA has a process by which, if someone is flagged for a certain reason for removal, they can be given a notice, and if they do not respond to——

Mr. COHEN. Let me go back to my question.

Ms. PÉREZ. Sure.

Mr. COHEN. Do not some jurisdictions purge you because you have not voted within the last 2 years, 4 years, 6 years, or whatever?

Ms. PÉREZ. There are some States that have policies like that, yes.

Mr. COHEN. And are those States—have any particular similarities? Are they particularly in preclearance States? Or are they just willy-nilly?

Ms. PÉREZ. No, sir. But one of the things that is important about the preclearance provision is that it accounts for changing practices, so a State could change its practice to encapsulate more people in the purge process.

Mr. COHEN. But you said—did you not say that since Shelby v. Holder purges have increased in preclearance States while they have not increased in other States?

Ms. PÉREZ. That is correct. That is correct. The States, however, that use a policy like, for example—I am assuming you are pointing to Ohio's and the like—that use a failure to vote as a trigger for sending a notice and other ones are in more places just than the Southern States.

Mr. COHEN. You are familiar with Australia where it is required by law that you have to vote?

Ms. PÉREZ. That is correct.

Mr. COHEN. So how do they get along? They do not have to purge anybody, do they?

Ms. PÉREZ. I am actually not familiar with how they—that they enact the law, but what I think is important in this country is that we have a continuing evidence of discrimination, and Congress has vast authority to be able to rectify that pursuant to its authority under the Fifteenth Amendment.

Mr. COHEN. Ms. Gupta, since the effective suspension of Section 5 preclearance, Holder, Shelby, what has been the pace of litigation on Section 2, which we discussed with Mr. Ho, in formerly covered jurisdictions compared to noncovered ones? Have you seen preclearance States that were in the previous Voting Rights Act be more active and have been found in litigation to have been more active?

Ms. GUPTA. Well, private litigants like my colleagues sitting here at the table have certainly had to engage in much greater activity in Section 2 litigation, and my colleague Dale Ho, the chart really shows the degree to which there has been a need for Section 2 litigation in jurisdictions that were previously precleared or had a preclearance regime with the Justice Department. And I also—I

mean, there has been a stark marked contrast now with the Justice Department under the Trump administration which has not opened a single voting rights investigation. But for the private litigants, the effort now to become aware of hyper-local changes, which are often very hard to detect at the national level, has become imperative to be able to protect people's right to vote, and it is why we are here today to urge restoration of the Voting Rights Act.

Mr. COHEN. Thank you.

Mr. Johnson, you are recognized for 5 minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chairman.

Mr. Adams, I have watched you with a very pensive expression on your face here the last few moments. Is there anything you want to respond to before I ask questions that—something you have heard?

Mr. ADAMS. First of all, I apologize for not having a poker face. A couple States were left off the list of States under the old preclearance regime were covered. It is not all Dixie. It is South Dakota. It is Alaska. It is New Hampshire. It is Michigan. Parts of New York were covered, New York City, but that translates into New York State when it comes to rules that are passed in Albany related to the elections in New York. So it is not just Mississippi and South Carolina.

Mr. JOHNSON of Louisiana. Thanks for that clarification. It is not often in this era that a Federal appeals court finds purposeful discrimination based on race in voting. But the Ninth Circuit Court of Appeals did just that in the case you have described.

Can you just elaborate a little bit more on the significance of that Ninth Circuit decision and how it compares to any other recent Federal courts—Federal appeals court rulings of intentional race discrimination in voting?

Mr. ADAMS. Well, right, the case in Guam that I testified about, you literally have on the voter registration a blood ancestry test. It is on the form that you have to say who your parents are. And it says you have to have the right blood before you can vote. And the court in the Ninth Circuit ruled that this is intentional discrimination.

Now, we often hear—and I understand that circuit courts trump district courts, but we often hear about the surgical precision quote. We hear that over and over on a loop. But the reality that really bears some reading is the lower-court ruling, which I understand was reversed, but it was a rare, many-hundred-page factual finding that there was not intentional discrimination. It is not often that an appeals court reverses factual findings, but they did in that case.

Mr. JOHNSON of Louisiana. Has it ever been easier to vote in this country? In other words, it seems we have made a lot of progress on access to voting. I wonder if you would elaborate on that.

Mr. ADAMS. I think there is an awareness among election officials at the State level about the importance of making it easier to register to vote. I have testified, I think, to this committee or maybe it was to the Oversight Committee, that it has never been easier to register to vote in America than it is in 2019. It has never been easier to vote in America than it is in 2019.

Mr. JOHNSON of Louisiana. When an illegally cast vote negates the effect of a legally cast vote, that constitutes a suppression of voting as much as any other vote suppression efforts. Can you describe how measures to protect the integrity of the vote are themselves measures designed to protect the vote?

Mr. ADAMS. Right, and look, I don't buy the idea that you can't get it right. Right? You can have clean voter rolls, you can have integrity, and everybody gets a chance to vote. I think, for example, that voter ID should be free and easy to get, and that is why the South Carolina voter ID law should have never been objected to by the Holder Justice Department. In fact, there was a fail-safe mechanism, and in the end we know what the outcome of that was, of the district court, even though that the burdens were reversed. And that is what Section 5 does, is reverse the burdens. The district court still ruled in favor of South Carolina and said, despite the millions of dollars spent by the groups fighting it and saying that it was discriminatory, the court ruled that it was not. And it is an example of how Section 5 can be abused if it is reauthorized.

Mr. JOHNSON of Louisiana. I think I have time for one more question about the Guam case. I noticed it was only the Trump Justice Department that was willing to ultimately help Major Davis in his case against Guam. What was going on during the previous administration that they would not help a retired servicemember protect his right to vote?

Mr. ADAMS. That is a great question, and there is not a lot of answers except in the Inspector General report where the Chief of the Voting Section said that they did not think the case was ripe. Well, the Ninth Circuit put that to rest in 2015 and said that the case was ripe. We still saw 2 years of inactivity, unwillingness, not even an amicus brief to help this brazen voter discrimination.

If you look at the record of the Bush Justice Department, the Obama Justice Department, and the number of cases filed, you will see very clearly the Bush Justice Department was far more active in Section 2 enforcement—and I have testified in previous testimony to this committee. Section 2 enforcement from 2009 to 2017 virtually went to sleep.

Mr. JOHNSON of Louisiana. I have got 30 seconds left. Why didn't any of the other groups assembled at the table today do anything about the cases you mentioned today? Do you have any theory about that?

Mr. ADAMS. Well, I caution the committee that it is important, if you are reauthorizing the Voting Rights Act, to not make it partisan. And in some corners, I think that the Voting Rights Act is viewed as a partisan weapon. In fact, a professor, Ellen Katz in Michigan—I believe she wrote this—even said that the Justice Department should use the Voting Rights Act as a partisan weapon obviously against this side of the room. And so I think that is the danger; when you see South Carolina voter ID being attacked, that is how it is viewed.

Mr. JOHNSON of Louisiana. I am out of time. I yield back.

Mr. COHEN. Thank you.

Before I recognize Mr. Nadler, just so we have the facts straight, I had made the statement about the States that were covered, and with the exception of Arizona, which I mentioned, the only State

covered in whole outside of the Old Confederacy is Alaska. The other States are local jurisdictions, which I also mentioned there are local jurisdictions other places. So I forget—I apologize for forgetting Alaska and for not knowing about Guam.

Mr. Nadler, you are recognized.

Chairman NADLER. Thank you. I won't comment on the obvious distraction of the Guam case, which has nothing to do with what we are talking about and was pretty egregious.

Let me ask Mr. Ho, at our hearing last week in Memphis, the minority witness suggested that Congress was constrained in its ability to adopt legislation to reinvigorate Section 5 preclearance, notwithstanding its power under the Fourteenth and Fifteenth Amendments, essentially because the current level of discrimination is not severe enough, in his opinion, to justify Federal interference in State and local elections and because Congress looks at evidence of discriminatory effect and not just discriminatory purpose.

What is your response? Is it not well within Congress' broad constitutional authority under the Reconstruction Amendments to determine not only the existence of discrimination but also to assess whether such discrimination is sufficiently severe so as to justify a Federal legislative response?

Mr. HO. Thank you for that question, Chairman Nadler. I believe that Congress does, in fact, have the authority in light of current conditions to reinvigorate the Voting Rights Act. The Supreme Court in City of Boerne issued a decision that creates a rule that if Congress wants to exercise its Fourteenth Amendment enforcement powers, there must be a record of constitutional violations. I think we have that here. And I think that the Section 2 evidence that I referenced earlier, although a violation of Section 2 does not require a judicial finding of intentional unconstitutional discrimination, the test for liability under Section 2's results test is, in fact, quite similar to the test that the Supreme Court announced in Rogers v. Lodge for unconstitutional voting discrimination.

We heard a little bit of commentary about the disparate impact standard. I just want to say something about that. This Congress adopted Section 2's results standard in 1982. It was signed into law by President Ronald Reagan. It is not a pure disparate impact standard. Liability depends on factors that are similar to the factors for a finding of unconstitutional discrimination. And it was adopted specifically because Congress didn't want to put judges—this is in the '82 Congressional Record—didn't want to put judges in the difficult position of having to call legislators in their counties or in their States racist, to have to call out their intent. But it functions a lot like an intent test, and I think it would be a bit perverse today to look at Section 2 violations, which are intended to make it easier for courts to strike down discriminatory laws, and say that is not relevant in assessing whether or not constitutional violations have occurred and whether or not stronger congressional action is necessary.

Chairman NADLER. Thank you.

Let me ask Ms. Gupta, we heard testimony at the hearing in Memphis last week that—and we have heard testimony all over the place—to the effect that enforcing the law through Section 2 litiga-

tion is time-consuming, very expensive—even if you win the case, you spend $2 million on it—and so forth. What would you think of legislation to impose all costs, all costs, on the defendant government if it loses a Section 2 case? All plaintiffs' costs, not just attorneys' fees.

Ms. GUPTA. Well, so just to start out, it is indeed incredibly costly and time-consuming. I think the most pernicious effect of the loss of the preclearance regime and the amount of Section 2 litigation that has been required since the Shelby County decision has actually been the number of elections that have taken place pursuant to laws that have later been found by Federal courts to have been enacted through intentional discrimination as well as through violations of constitutional and Federal law. And there is no accountability or mechanism to actually seek that redress because those election have taken place and voters were penalized unlawfully for that.

But on this question of cost, it is an interesting idea. I think one of the major issues around the loss of Section 5 has been the inability to hold officials accountable when they do engage even in intentional discrimination in the enactment of laws. And so this notion of cost, some kind of shifting the burden of cost, I think is an interesting remedy to pursue. I don't think it is enough, though, as a substitute for preclearance, but certainly to be able to have some deterrent mechanisms in place such that officials kind of think twice, hopefully the Constitution is something else that they think about when they are enacting these laws, that it is certainly something to be—to be researched.

Chairman NADLER. Thank you. In the 27 seconds that I have left, would you support amending Section 1983 or use of Section 1983 to allow the Justice Department to sue local officials for damages for voting rights violations, for deprivation of civil rights under color of law in effect?

Ms. GUPTA. Congressman, that is a really interesting idea. I would love to come back to you with my thoughts on it. Section 1983 is definitely a really important civil rights statute that has been used in the police misconduct context. And I think that there—on this issue of accountability, it may be another tool that is at our disposal. As you know, the Supreme Court has withered down Section 1983's protections, and I would welcome the opportunity to talk about the importance of strengthening Section 1983 by Congress.

Chairman NADLER. Thank you very much. I yield back.

Mr. COHEN. Thank you, Mr. Chair.

I now recognize for 5 minutes Mr. Gohmert of Texas.

Mr. GOHMERT. Thank you, Mr. Chairman. And I appreciate the witnesses' being here.

Just so that we can inform our full committee chairman who said that the Guam information is not relevant to anything here, the subject of this hearing is, according to the Democrats, "Evidence of Current and Ongoing Voting Discrimination." And, you know, here is the form that was used in Guam. It is relevant in this decade that we would have a form like this and not one of the groups represented here would go stand up and say this is absolutely intolerable to make somebody go through, and even down to the mother

and father, both parents, certifying you were a native in 1950. It is prejudicial to the groups of Chinese, Palauan, Japanese, Ponpeiian, the Korean—all of those that were not there in 1950. And I appreciate the looks I am getting from some of our witnesses, but it really is embarrassing that nobody stepped up.

Mr. Christian, I recall a Black Panther intimidation case that occurred when you were there at the Justice Department. Were you allowed to go ahead and get judgment against those people that were intimidating at an election site?

Mr. ADAMS. Well, I confess I have tried to forget about that case, but I will do my best.

Mr. GOHMERT. I am just asking——

Mr. ADAMS. Right.

Mr. GOHMERT. Were you allowed?

Mr. ADAMS. The case was dismissed as to, I believe, two defendants, a corporate defendant. I think the man—no, Mr. Jackson—it was dismissed against two of the defendants, right.

Mr. GOHMERT. And you were not allowed to pursue that; it was dismissed?

Mr. ADAMS. Well, yeah, there is a long record there.

Mr. GOHMERT. Well, and you mentioned this incident in Guam where the Justice Department under the Obama administration would not go in and say this is wrong, we can't have these kind of forms. It does not matter what your race is. You ought to be able to come in and vote.

Who was head of the Civil Rights Section at that time in 2012?

Mr. ADAMS. That is a good question. I am not sure exactly who was the head of—the Assistant Attorney General. I know that after—the Inspector General questions were directed toward the Voting Section Chief, who said that ripeness was the barrier.

Mr. GOHMERT. Well, I know. You testified to that. But I know Tom Perez was there at some point.

Mr. ADAMS. He may have been the AAG. I can't remember.

Mr. GOHMERT. Yeah, and where is he now?

Mr. ADAMS. DNC.

Mr. GOHMERT. Yeah, he is chair of DNC. That is right.

Now, our chairman of the full committee called them "draconian voter ID laws," and I know—he is apparently not aware, but I know I read in 2012 the Democratic National Convention would not allow anyone to come in and vote unless they had, in their words, a State-issued ID. Wow. The Democratic National Convention is using and has used in this decade a draconian voter ID requirement. That is incredible.

Having gone through John Fund's book, "Stealing Elections," John Fund makes the point that the greatest election fraud is the statement that there is no election fraud. It has gone on for years, for those that don't know. You can go back and look at Duval County in Texas or Cook County in Illinois. It has gone on, and there are places it still goes on. And anytime we allow people to vote without showing some evidence that they are allowable to vote, it disenfranchises all of the legally voting people, and people that vote more than once.

Anyway, there are a lot of problems that need to be dealt with, and it is just amazing to me. Let me tell you, back when this was

reauthorized, I wanted to vote for the voter—for the VRA. It needed to be reauthorized. But none of you have brought up it had a formula that required punishing States for what had happened 50 years before. Generations were being punished. And I went to the Republican leader at that point of this committee, Mr. Sensenbrenner, and as I recall, there was a district in Wisconsin that had racial disparity. And he said, "We are not changing that 50-year-old formula. We are going to keep punishing the original States."

And I went to John Conyers, and he was very gracious. And he said, "Louie, let me talk to some people." And he did. He said, "You got a good point, but we are going to be able to get it passed. Let's let it go to the courts." I said, "It is going to be struck down," and I named some very liberal people, including the dean from the New York Law School had just left there, and he said, "Yeah, it has got to be struck down. It is unconstitutional."

For those that were not aware, we should not be punishing generations for the sins of 50-year-before generations. That is where we ought to be able to come together. Let's deal with racial disparity where it is and then allow Section 5 in those. But I was not allowed to have that as an amendment. That is why we are here with you blaming Shelby County.

I yield back.

Mr. COHEN. Thank you.

Mr. Raskin, you are recognized.

Mr. RASKIN. Mr. Chairman, thank you very much.

Mr. Ho, we just heard from my thoughtful colleague about how Southern States were punished under the Voting Rights Act. He repeatedly used the word "punishment." Was there any punishment in the Voting Rights Act before the Shelby County case? Did anybody go to jail? Was anybody imprisoned because of voting rights violations?

Mr. HO. There was certainly no punishment in the way that you have described it, Congressman Raskin. And I just want to say in response to Congressman Gohmert's comments, I appreciate the comments about the need to have a preclearance provision that reflects current conditions, and I think the Voting Rights Advancement Act, which is based on findings of recent voting rights violations, does precisely that, and I hope we can come together and pass something. And I appreciated your support for the Voting Rights Act in 2006, and I hope to see your support for stronger voting rights protections today.

Mr. RASKIN. Ms. Gupta, let me come to you. If somebody robs a bank or a gas station, they are going to be prosecuted and go to jail for that if they are convicted. Today in the wake of Shelby County v. Holder, if a State engages in a deliberate effort to suppress voting rights or to keep people from voting or to dilute the votes of a minority group, what happens?

Ms. GUPTA. Well, as we said, often getting to those decisions or determinations where Federal courts will actually declare that takes years of litigation.

Mr. RASKIN. Right, so many years later, after the offense has taken place, what would happen to them?

Ms. GUPTA. There is no accountability for the State officials that enacted laws that were found to be racially discriminatory after the fact.

Mr. RASKIN. Nobody goes to jail, right?

Ms. GUPTA. Nobody goes.

Mr. RASKIN. There is actually no punishment. But what about the actual voting rights violations that took place—

Mr. GOHMERT. Will the gentleman yield?

Mr. RASKIN [continuing]. In the meantime? Well, I only have 4 minutes. I mean, I would be happy to do it at the end if I have got time left over. But what happens in the meantime? In other words, you go to—now in the absence of the preclearance requirement, you go to court. Many years later, maybe you get a ruling on your behalf. In the meantime, there have been all of these elections that have taken place with the voting rights violation in force. So what can be done retroactively to make the democracy whole?

Ms. GUPTA. There is nothing. Voters have essentially been disenfranchised while elections have taken place.

Mr. RASKIN. Okay. So let's be very clear about this. When the Supreme Court wiped out the preclearance requirement because of the coverage provision in Section 4, essentially what it did was knock the teeth out of the Voting Rights Act because there is nothing to keep a jurisdiction now from engaging in a voting rights violation because nobody is going to go to jail for it. And even if the people who bring the case, the plaintiffs, win several years later, all that you would get is an order to stop doing it in the future. In the meantime, you have had all these elections that have essentially been fixed by the fraud of voting rights suppression, dilution, discrimination, and so on.

Mr. Johnson, let me come to you. Before leading the national NAACP, you were president of the Mississippi Conference, am I right? Which Mississippi has the highest percentage of African Americans than any State in the Union, yet the State has not elected an African American statewide in more than 130 years, since Reconstruction. In fact, the Mississippi Constitution requires candidates for statewide office to win not only more than 50 percent of the popular vote—or, actually, a plurality of the popular vote, but also more than half of the State's 120 legislative districts, two-thirds of which are majority white. Do I have that right?

Mr. JOHNSON. That is correct.

Mr. RASKIN. Okay. Now, if a candidate doesn't meet both of those conditions, winning a majority in the election and then winning more than half of the State's legislative districts, then the State House chooses the winner, regardless of who got the most votes. Do I have that right?

Mr. JOHNSON. That is correct.

Mr. RASKIN. Okay. And this is being challenged in court right now.

Mr. JOHNSON. That is correct.

Mr. RASKIN. I assume that is right.

Now, why was this constitutional requirement put into place in the first place? What was its historical origin?

Mr. JOHNSON. Much of Mississippi's electoral policy was—is derived out of the Constitution of 1890. That Constitution was after

a period we call "redemption," when former Confederate soldiers and politicians took back control of government. As a result of that, they put in place systems to suffocate the ability of African Americans to fully participate, not only the grandfather clauses and other literacy tests but additional barriers, because then, as it is now, Mississippi had the highest percentage of African Americans, and they wanted to keep in place——

Mr. RASKIN. Let me just ask you, because my time is running out, how has the corresponding lack of African American representation statewide affected the social, economic, and political rights in development of the African American community?

Mr. JOHNSON. Not only is Mississippi the poorest State in the Union, but it underfunds much of the basic needs of African Americans and Mississippians as a whole. We have the poorest education systems, the poorest structures, and that is a result of the lack of representation of all citizens of the State because of these electoral barriers.

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

Mr. COHEN. Thank you. Thank you, sir.

Mr. Cline, the successor in interest to Mr. Goodlatte, and before that, what was the gentleman's name that was—Caldwell Butler.

Mr. CLINE. Well, Jim Olin came between them. He was on your side. But——

Mr. COHEN. Well, Caldwell Butler is the one I so well regard.

Mr. CLINE. Thank you, Mr. Chairman.

I am very interested in Mr. Adams' testimony about the events that were occurring in Virginia, and I want to ask him about that. But, first, I really am shocked to hear that this type of activity that occurred in Guam is occurring in the 21st century. And just to make it clear, let me go down the row really quickly and just a yes or no. Ms. Gupta, would you agree that that type of discriminatory election is unacceptable in the 21st century in the United States?

Ms. GUPTA. Congressman, I unfortunately cannot speak to a matter that was under investigation during my full tenure in the Justice Department.

Mr. CLINE. Okay. Mr. Johnson, yes or no. Unacceptable?

Mr. JOHNSON. Well, I don't know much about the case, but if there is grandfather clauses or blood tests, that is something that we oppose.

Mr. CLINE. Okay. Mr. Ho?

Mr. HO. The Ninth Circuit appropriately found a violation of the Fifteenth Amendment.

Mr. CLINE. Appropriate. Thank you. Keep going. Yes?

Ms. PÉREZ. Myrna Pérez. I am hesitant to answer too definitively given the reimagination of some of the cases that we have heard here today. But I will say that if the facts as presented suggest a grandfather clause, we would be opposed to it.

Mr. CLINE. Ms. Landreth?

Ms. LANDRETH. I am not going to opine on a case that I know nothing about, but, frankly, I wanted to add that I find it embarrassing that almost half this House doesn't seem equally as disturbed by Native Americans voting in chicken coops and driving 98 miles one way to register. I would like you to focus on that for a while.

Mr. CLINE. I am focused on a form that was displayed that is blatantly discriminatory in its application for an election in a territory of the United States in the 21st century. And it is disturbing that I cannot get more unanimity that it is unacceptable.

Now, Mr. Adams, you talked about Virginia. You talked about the motor-voter law and how it contributes to noncitizens not only getting on our voter rolls but also the improper elimination of citizens from Virginia's voter rolls. Can you elaborate on that and what we can do about it?

Mr. ADAMS. Thank you, Mr. Cline. My organization has been data mining all around the country the process of noncitizen cancellation, and we have found and published multiple reports in Pennsylvania, for example, frankly of immigrants and green card holders who were inadvertently getting on the voter rolls. Right? This is not a conspiracy. This is a glitch. And in Pennsylvania's case, it was a glitch that affected the entire Commonwealth for 20 years. And what is happening is when they vote, they jeopardize their immigration status.

In Virginia, the problem was even worse than noncitizens getting on the rolls. It was citizens actually being canceled through the citizenship process in Virginia. Individuals who were American citizens were being declared noncitizens by the State election officials and being removed from the rolls. This is a problem that Congress needs to address because the motor-voter system is broken. It is not working because of technology changes in the last 30 years since motor-voter—25 years since it was passed.

So it is important, I believe, that only citizens be on the rolls, and there are easy ways to fix that. Cooperate with State officials, Federal Government and State officials cooperate to, post-registration, verify citizenship. Allow States to do some form of citizenship verification that is nonintrusive. It is easily solved.

Mr. CLINE. Mr. Chairman, I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Cline.

Ms. Scanlon, you are recognized.

Ms. SCANLON. Thank you.

The ranking member suggested in his opening remarks that evidence of disparate impact is not proof of discrimination, and I have to differ based upon our experience in the Commonwealth of Pennsylvania. Almost a decade ago, Pennsylvania's Republican-controlled legislature and executive passed a number of voter suppression measures which have since been struck down, including a strict voter ID law and some wildly gerrymandered electoral maps.

Now, this legislation was facially neutral, but it had a disparate impact upon voters who were poor, elderly, women, residents of cities, people of color—in other words, voters who were overwhelmingly Democrats. I would submit that that disparate impact was evidence of identity politics of the most pernicious kind, which is trying to suppress the votes of citizens on the basis of their political identity as Democrats.

In challenging the voter ID law in particular, advocates were fortunate in being able to uncover a recording of the House majority leader bragging to the statewide Republican Committee that his legislative accomplishments included—and this was 2012—"voter

ID, which is going to allow Governor Romney to win the State of Pennsylvania."

So I am not so naive as to believe that those who would suppress the vote will always be so indiscreet. So I would like to ask, Ms. Pérez, can you address what kind of evidence we use to show disparate impact to show that there is actual discrimination occurring in these cases?

Ms. PÉREZ. Certainly. Under Section 2 we have what many of us call a "disparate impact plus standard" whereby Congress in its wisdom set forth a series of factors that are designed to smoke out intentional discrimination because folks are exactly, as Member Scanlon noted, a little bit more discreet. And that evidence is, in fact, probative of what people are intending to do if they felt like they could get away with it.

In addition, we have the continuing evidence of current conditions which would justify Section 5 of the Voting Rights Act and a reauthorzied Voting Rights Act that includes a coverage formula that is rolling, dynamic, and looks at a number of factors, both geographically and in terms of conditions that cause problems. So taken together, a Voting Rights Act which has a robust Section 5, a modern Section 4, and a strong Section 2 will go a very, very long way in rooting out racial discrimination.

Ms. SCANLON. Okay. Thank you.

Ms. Gupta, when Acting Attorney General Whitaker was here in February, I think, I asked him whether the Trump Department of Justice had brought any voting rights enforcement actions, and he was unable to recall that. Is it your testimony that the Trump administration has not acted to protect voting rights in any case since January 2017?

Ms. GUPTA. That is correct.

Ms. SCANLON. That is what I thought.

Ms. GUPTA. Congresswoman, if you wouldn't mind, if I can just very quickly respond to something that is just somewhat galling at the table at the moment, something that Mr. Adams said. Those of us at this table know that Mr. Adams recently had to enter a settlement agreement in which he was actually forced to apologize for reports that contained inaccurate information about specific individuals removed from voter rolls in Virginia, the matter he was just talking about, allegedly because they were noncitizens. And I feel like it is important to also put that into the record.

Ms. SCANLON. Thank you.

One more follow-up question. Location and accessibility of polling places has been an issue in my district, and toward that end we introduced the Disability Voting Rights Act, which passed with H.R. 1 and would make it easier for individuals with disabilities, including seniors and veterans, to register, obtain absentee ballots, and access polling places.

Can you describe how the locations of polling stations and their degree of accessibility present voting rights challenges for disabled and minority communities? And I think you have got some material about this in your new report that just came out.

Ms. GUPTA. We do. There has been a lot of enforcement on the part of both private organizations and the Justice Department in prior administrations around the lack of accessible polling places,

and so there is a lot of work to be done. That has been a rigorous area of our work.

I will say, though, that it is important to note that closing polling places because of ADA noncompliance really should be something of last resort because there are many ways to actually make polling places more accessible, including things like creating ample parking for temporary signage, you get same-day modifications that can be made, building temporary ramps and the like. And in a number of instances, that is exactly how accessibility has been improved without resulting in the need to close polling places to begin with.

Ms. SCANLON. Okay. Thank you. I yield back.

Mr. COHEN. Thank you.

Mr. Armstrong, you are recognized for 5 minutes, sir.

Mr. ARMSTRONG. Thank you, Mr. Chairman. And, Mr. Adams, I guess if we are going to enter stuff on the record, I would give you an opportunity to—I know you talk about it a little bit in your written testimony, so I will give you an opportunity to respond.

Mr. ADAMS. Thank you, Mr. Armstrong. Indeed, I discuss this at some length in my written testimony. Ms. Gupta's assertion that Mr. Adams was forced to apologize is flatly wrong. Mr. Adams chose to apologize for our organization relying on government election records which stated that noncitizens in Virginia were being removed from the rolls when, in fact, we discovered that those were actually citizens.

I would note that Ms. Gupta's organization has done absolutely nothing about citizens being removed from the voter rolls; whereas, our organization is attempting to fix the problem. That was part of a settlement in a case. Nobody was forced to do anything, and there was no finding of any liability.

Mr. ARMSTRONG. Thank you. And then I just want to go into this motor-voter issue a little bit, primarily because, I mean, we are dealing with oftentimes people who English is not their first language and continue to move through this, and by automatically getting added to the rolls—I mean, we run into these election cycles. They get unbelievably competitive. It doesn't matter if it is Democrats or Republicans. People are running hot. Volunteers are out there.

But there is another part to this, and then I will back up and tell a North Dakota story here in a second. But, I mean, if they register to vote or get into those situations, I mean, doesn't that impact their ability to become a citizen later?

Mr. ADAMS. Absolutely. It is Question 12 on the INS form, and Question 12 says, "Have you ever registered to vote? Have you ever voted?" And what is happening that we are finding through public records requests is that those individuals who were not citizens who got caught up in this broken motor-voter system are jeopardizing their immigration status.

Now, you would think everybody would care about that. But as we have seen today, that is not the case. What is happening is they are jeopardizing their immigration status, so both noncitizens are getting on the rolls, they are voting. We have been harvesting sort of their "please take me off the rolls," their self-deportation from the voter rolls, if you will, where they thought they were registering for something else. They didn't understand the form. It

wasn't in the language in Allegheny County, Pennsylvania, that they spoke because it is not covered by 203. And so the system has flaws in it that we are attempting to catalogue and to fix. Occasionally, there is glitches on the way like relying on Virginia for, we would assume, not be removing citizens, but they are.

Mr. ARMSTRONG. And so my wife is not a citizen. She is a permanent resident alien, and she comes from Norway, and it is a little different situation. But in a State that doesn't have voter registration—and they have attempted to deal with this at the State legislature. Her ID looks identical to mine. I mean, it is absolutely—and there is no situation that would—I mean, it is absolutely an honor system, and we continue to work through it. And so obviously she is married to a politician, which we can judge her for that in her own right. But, I mean, we know the laws, and we know where it is at. But she could walk in and vote in North Dakota at any point in time she would, and the election people wouldn't know the difference. I mean, that is just—now, we are different. We are the only State in there without voter registration, so—but it really truly is an issue.

And then I would just—I am going to end this, and I agree, we need to make it easier to—I am getting a bunch of calls on REAL ID in North Dakota right now because, as is all things, people wait until the absolute last minute. We need to make it easier for people in situations, whether they are Native Americans or elderly in general, to be able to prove their ID and work for it.

And I would also just like to say regarding—I mean, there was a preliminary injunction issued in the North Dakota case. It was overturned by the Supreme—or the Eighth Circuit. The Supreme Court chose not to take it up, and there was a mechanism and timing as to when that decision came out that made it incredibly problematic in the 2018 election. And regardless of policy or anything like that, I believe this, that the organizations who went to work and activated on the Native American reservations in North Dakota to ensure that people did get IDs and vote because they turned out—regardless of how difficult it was, they turned out in absolute record numbers in 2018, and it shouldn't be that hard to get an ID, and we should continue that, particularly with older people. And the birth certificate thing is a real issue, and it is a real issue in rural America, and it is exponentially—I mean, it is magnified on the Native American reservations, and I recognize that. But they should be commended—and I know this full well. Most of them didn't vote for me, and they should be absolutely commended for what they got done in a short period of time.

So, with that, I yield back.

Mr. COHEN. Thank you. Mr. Armstrong, if you don't mind, how do you do it in North Dakota? If you don't have voter registration, is everybody just on the rolls? How do you do it?

Mr. ARMSTRONG. Yes, sir, and we have a 30-day residency requirement, and all you have to do is show an ID, which is—I mean, a point of consternation, but there is no voter registration. You have to have a valid ID and proof of address.

Mr. COHEN. And just for the record—and I think we should mention—I have had a lot of constituents be concerned that the new

Government ID requirement is something to do with stopping people from having the right to vote. That is not at all true, is it?

Mr. ARMSTRONG. It is not true. We are running into a lot of problems. One, I think, in fairness, people wait until the last minute to go get their ID, and so there is long delays. I mean, they have had the opportunity to do it. And providing the documentation to get the REAL ID versus your regular driver's license—I think this is the same fairly across the country—is proving to be cumbersome.

Mr. COHEN. Thank you. Is it the Lamoureux sisters that were the hockey stars?

Mr. ARMSTRONG. Yes.

Mr. COHEN. They were in Memphis last week and represented North Dakota well.

Mr. ARMSTRONG. We are proud of them.

Mr. COHEN. I am sure you are. Thank you.

To the panel, does anybody on the panel think that the new Federal ID law about having—has anything to do with stopping people from voting?

[No response.]

Mr. COHEN. Good. Ms. Dean, you are recognized.

Ms. DEAN. Thank you, Mr. Chairman.

You know, we are in awfully anxious times in our democracy, and so when I have that fear overcome me, I try to remind myself of a quote that I like from Thomas Jefferson. He said, "Should things go wrong at any time, the people will set them to rights by the peaceable exercise of their elective rights." So that gives me some consolation, except when we have conversations like we are having today and when we have a history of what we have seen today. How can the people truly right a wrong when their elective rights referred to by Thomas Jefferson are attacked, are weakened, are thwarted in many, many ways?

Ms. Gupta, I would like to start with you. You mentioned several common tactics we have seen since the Shelby decision: barriers to voter registration, cuts to early voting, purges of voter rolls, strict photo identification, last-minute polling place closures or consolidations. Can you tell us of the frequency of some of these implementations? I am thinking if we reflect back on 2018 and also your concerns for 2020.

Ms. GUPTA. Yes, thank you for the question. We just today actually released a report, the Leadership Conference Education Fund, about the number of poll closures around the country since the Shelby County decision and found that 1,688 polling place closures happened since the Shelby County decision in jurisdictions that were previously covered by Section 5 of the Voting Rights Act. These are the kinds of hyper-local changes that would have required preclearance by the Justice Department, not because they were automatically going to be deemed as racially discriminatory but actually to allow for analysis and evaluation of whether it would create a disparate impact on voters of color or language minorities, but also to provide notice, advanced notice to voters about where these places have been moved.

There is an abundance of evidence through litigation that my colleagues have mentioned that has taken years to really kind of uncover around discriminatory practices in voting and election admin-

istration that add to the current record of contemporary, ongoing, systemic racial discrimination in voting.

Ms. DEAN. Thank you for that.

Ms. Landreth, in addition to polling—poll closures, what are some of the other voting problems that we have seen across the country that H.R. 4 would address?

Ms. LANDRETH. Well, I think there is a couple of things. One is that H.R. 4, if I am not wrong—and it depends on how you count jurisdictions—it would end up protecting over 20 percent of tribes in the United States from retrogressive polling practices because it would cover, I believe—and, again, we would have to check this, and it depends on how you count—California, which has over 100 tribes; New York, which has eight tribes; and then the Mississippi Choctaw would also be protected. They have ten also sub-jurisdictions covered for Section 203. So it would prevent retrogression for fully 20 percent of Native American tribes.

But the known practices piece would prevent the vote dilution that we commonly see in Indian Country where they switch these jurisdictions to at-large in order to make sure that you never get a seat that represents you and your community, even if it is sizable, and particularly the polling place closures, because that is one of the things that we find in Indian Country that is very unique.

I am not sure that anyone here is familiar with this, but a lot of tribes are told if they want a polling place, they have to pay for it. I would like you to try that. I would like you to go to constituents in Atlanta or New York or anywhere in California and tell them, "If you want a polling place, you need to give us $25,000 for it."

Ms. DEAN. And who is saying that? Who is suggesting that they would have to pay for it?

Ms. LANDRETH. There are several well-known cases that I believe—and subject to your perjury limitation, let me say I am not 100 percent sure, so I am going to have to correct this on the record, but these were cases, I believe, in Blaine County, Montana, as one example; and the other would be South Dakota cases where it had become commonplace to say, "We do not have enough money for elections." These cases may have been resolved now, but this is an issue where, if you go to a jurisdiction and say, "Our tribe wants a polling place on tribal lands," mostly you will be refused——

Ms. DEAN. Okay.

Ms. LANDRETH [continuing]. On the grounds of cost. And then they will say, "You pay for it. You provide the poll workers, you give the space, and maybe we will let you have one."

Ms. DEAN. That is stunning.

Ms. LANDRETH. So protecting that would be hugely valuable.

Ms. DEAN. That is incredibly un-American.

Mr. Johnson, I just have a few seconds left. I am a former member of the Pennsylvania Legislature. I came in in a special election in 2012, right after voter ID. I saw personally the consequences going around my district and trying to help elderly people, young people, the barrier of birth certificates and all of the rest. So could you please explain how photo identification requirements bar Americans from exercising their rights to vote?

Mr. JOHNSON. Sure, in negative 10 seconds.

Ms. DEAN. Sorry.

Mr. JOHNSON. We have never found an individual seeking to vote under an assumed name. It creates an additional barrier that is not necessary, particularly for Southern rural precincts. Everyone knows each other. There are very few cases of someone walking to the polling place and the poll workers don't know the individuals, on top of the fact that there has not been any true evidence of someone trying to voter under an assumed name. So you create an additional barrier or you create a chilling effect to voting.

Ms. DEAN. That is right. Thank you very much. I see my time has expired. Thank you very much.

Mr. COHEN. Thank you, Ms. Dean.

And now, patiently having waited, Ms. Garcia.

Ms. GARCIA. Saving the best for last, Mr. Chairman. Thank you.

First, let me begin by responding to something that my colleague from Texas said, disparaging my home county where I was born, Dual County, because he seemed to suggest that there was voter fraud there for many, many years and it is still going on, and that is simply not true. South Texas, including my birth county and my home county of Jim Wells, have made great efforts to clean all that up. And I have not heard, seen, or been witness to any voter fraud in either one of those two counties—my birth county or my home county.

Of course, I am elected from Harris County, and I am not going to belabor the point other than to say that I believe that the witness has sort of mischaracterized a bit of his lawsuit against Harris County and access to some of the materials that he was after. But I do not want to get into that because, as Lyndon Johnson said, there is no more important right under the Constitution than voting, because who you vote for then determines the freedoms and the liberties that you get from all the other constitutional rights.

So, Mr. Chairman, thank you for bringing us together to talk about this topic, and as one who has been the recipient of a purging letter, all this is very personal to me. I have been turned away from the polls. I have been—gone to a poll that wasn't there. I have been to a poll where machines weren't ready. And you can look at me. You know, I don't look Mexican, so you know it is based on the surname, Garcia, the data that you are after, sir. So please know that I take this not only as an advocate for my district, but for myself and my family and my friends.

So I wanted to start with you, Ms. Pérez, on this purging letter issue. What really can we do to stop these letters from going—almost threatening that if you don't do something, your name is going to get purged? Or how do we stop this flawed data that is sometimes given, as it was in the Texas case that you cited, where the information was just wrong and all those people who were supposedly thousands of people who were registered or maybe registering was just not true? So how do we—what can we do from here in Washington in our Federal laws to make sure those things just stop?

Ms. PÉREZ. Thank you, Member Garcia. I am also from the great State of Texas, and I think Texas is a ripe example of the need for a robust preclearance regime because Texas is one of these jurisdictions that keep popping up in terms of election problems. In addi-

tion to making it harder for groups to go out and register people to vote, they have a strict photo ID law that many of us had to spend 5 years challenging. There is aggressive prosecutions of folks who run afoul of some of the election laws. There is attempts at voter purges. It seems like at every step——

Ms. DEAN. But what do we do? The question is——

Ms. PÉREZ. What we can do with purges is ensure that there is a strong preclearance regime that would require that changes to the preclearance process get precleared so that it didn't have a discriminatory impact or discriminatory effect. We can have stricter compliance with the National Voter Registration Act. We can have greater public education to ensure people to check their voter registration status. And we can inform election administrators that when they receive threatening emails from groups who are trying to pressure them into aggressively purging the voter rolls, that they know that the Federal Government is there to protect them.

Ms. DEAN. Thank you.

Mr. Ho, on some of the testimony that you presented, I know that you talked a lot about some of the cases and the cost of litigation. You quoted 5 million. Is that an average for ACLU? And, also, is there anything else that you wanted to respond to, any of the testimony from the gentleman to your left?

Mr. HO. Sure. Five million was in reference to the court-ordered award of attorneys' fees and costs in the North Carolina litigation that you have heard a lot about today. It was certainly, I think, a more expensive and time-consuming case than is average. So I don't want the committee to think that that is the average Section 2 case. It is certainly on the more expensive side.

I just want to say one thing and make the record ——

Ms. DEAN. Do you have an average?

Mr. HO. I don't.

Ms. DEAN. You don't? Okay.

Mr. HO. I think the record should be clear that it is very remarkable, I think, that Mr. Adams is in here today claiming credit for protecting voters in Virginia. His organization published a report titled "Alien Invasion" with a UFO on the cover, hyping a supposed "cover-up of noncitizen registration" in Virginia. The report published the names and contact information of voters who were United States citizens, including a Los Angeles-born employee of the USCIS named Luis, claiming that they were noncitizens and accusing them of committing felonies, despite warnings——

Mr. ADAMS. Not true.

Mr. HO [continuing]. From Government officials that the list he used contained false positives.

Mr. ADAMS. It is not true.

Mr. HO. He was sued for defamation by those voters, and it takes, I think, extraordinary chutzpah for him to come in here and claim that he protected United States citizens.

Ms. DEAN. Thank you clearing the record. I yield back.

Mr. COHEN. Thank you, Ms. Garcia.

I appreciate all the witnesses today and all of the testimony. I think it is a valuable hearing on the importance of the voting rights bill we have before us to set up a new standard in Section

4 and reactivate—restore Section 5 of the Voting Rights Act. So I thank each of you.

This concludes today's hearing. I want to thank all of our witnesses for appearing today. And I want to thank the minority for educating me about Guam. That is something I didn't know about. Very important.

Without objection, all members have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record, and the hearing is adjourned.

[Whereupon, at 11:56 a.m., the subcommittee was adjourned.]

APPENDIX

Statement of Ranking Member Doug Collins
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Hearing on
"Evidence of Current and Ongoing Voting Discrimination"
September 10, 2019

Mr. Chairman, the right to vote is of paramount importance in a democracy. Its protection from discriminatory barriers has been grounded in federal law since the Civil War, and, more recently, through the Voting Rights Act of 1965.

Many members today will mention the *Shelby County* Supreme Court decision, and, each time it's mentioned, it's important to remember the Court only struck down one outdated provision of the Voting Rights Act — an outdated formula based on decades-old data that doesn't hold true anymore because it describes which jurisdictions had to receive approval from the Department of Justice before their voting rules went into effect. Nonetheless, several other key provisions of the Voting Rights Act remain in place today, including Sections 2 and 3.

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

Section 3 of the Voting Rights Act also remains in place. Section 3 authorizes federal courts to impose preclearance requirements on states and political subdivisions that previously enacted voting procedures to treat people differently based on race — a violation of the Fourteenth and Fifteenth Amendments. If the federal court finds a state or political subdivision treated people differently based on race, the court has discretion to retain supervisory jurisdiction and impose preclearance requirements on the state or political subdivision as the court sees fit until a future date at the court's discretion. This means the state or political subdivision would have to submit all future voting rule changes for

approval to either the court itself or the Department of Justice before the changes could go into effect. As set out in 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 the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General."

Again, Section 3's procedures remain available today to those challenging voting rules as discriminatory. Just a couple of years ago, U.S. District Judge Lee Rosenthal issued an opinion in a redistricting case that required the Justice Department to monitor the City of Pasadena, Texas, because it had intentionally changed its city council districts to decrease Hispanic influence. Pasadena, which the court ruled has a "long history of discrimination against minorities," was required to have its future voting rules changes precleared by the Justice Department for the next six years, during which time the federal judge "retains jurisdiction . . . to review before enforcement any change to the

election map or plan that was in effect in Pasadena on December 1, 2013." A change to the city's election plan can be enforced without review by the judge only if it has been submitted to the Attorney General and the Justice Department has not objected within 60 days.

Voting rights are protected in this country including in my own state of Georgia, where Hispanic and African-American voter turnout has soared over the last several election cycles, increasing by double digits. I look forward to making sure the ballot box is open to all eligible voters, and I look forward to hearing from all our witnesses today.

[Word count: 586]

Items for the record submitted by Myrna Pérez: https://docs.house.gov/meetings/JU/JU10/20190910/109895/HHRG-116-JU10-20190910-SD003.pdf.

Arnold Davis v. Guam Opinion: https://docs.house.gov/meetings/JU/JU10/20190910/109895/HHRG-116-JU10-20190910-SD001.pdf.

GUAM DECOLONIZATION REGISTRY
APPLICATION FOR REGISTRATION
AND CERTIFICATION OF VOTER ELIGIBILITY

Guam Election Commission, P.O. Box BG, Hagatna, Guam 96932
Suite 200, 414 West Soledad Avenue, Hagatna, Guam 96910
Tel: (671) 477-9791/2/3 Fax: (671) 477-1895

Title 3 Guam Code Annotated, Sec. 21009, as added by Public Law 25-106. Unlawful Registration a Crime. Any person who willfully causes, procures or allows that person, or any person, to be registered with the Guam Decolonization Registry, while knowing that the person, or other person, is not entitled to register with the Guam Decolonization Registry, shall be guilty of perjury as a misdemeanor. The Guam Decolonization Registry shall have such false affidavit of registration automatically stricken from the Registry.

PART I - APPLICATION FOR REGISTRATION

NAME Davis (Last) Arnold (First) E (Middle Name) (Family Name)

Mailing Address P.O. Box 4261
AAFB Guam 96929

Residence

I.D.# 122807974G | Date of Birth: 7/15/36 | Date of Death (If Applicable) | (Male) Female (Circle One)

CERTIFICATION

I ARNOLD E DAVIS hereby certify that I am a Native Inhabitant of Guam which is defined as a person who became a U.S. Citizen by virtue of the authority and enactment of the 1950 Organic Act of Guam, or a descendant thereof.

Subscribed and sworn to before me on:

Officer authorized to take oaths

I hereby certify under penalty of perjury pursuant to the laws of Guam, that the information provided is true to the best of my knowledge.

Signature of Applicant, Legal Guardian, or Registrant — 3/4/09 Date

Legal Guardian Relationship with Minor / Registrant:

PART II - CERTIFICATION OF VOTER ELIGIBILITY

CERTIFICATION

I _____ hereby certify that I will be eighteen (18) years of age or older on the date of the Political Status Plebiscite Election, a registered voter in Guam, and that I am a Native Inhabitant of Guam which is defined as a person who became a U.S. Citizen by virtue of the authority and enactment of the 1950 Organic Act of Guam, or a descendant thereof.

Subscribed and sworn to before me on:

Officer authorized to take oaths

I hereby swear under penalty of perjury pursuant to the laws of Guam, that the information provided is true to the best of my knowledge.

Signature — Date

APPLICANT NATIVE INHABITANT INFORMATION

As the applicant, I claim I am a descendant of a Native Inhabitant of Guam through my: (Check One)

MOTHER ☐ **FATHER** ☐ **BOTH PARENTS** ☐

MOTHER

Maiden Last (First) (Middle Name) (Paternal Family Name)

Date of Birth I.D.#