

# VOTING RIGHTS AND ELECTION ADMINISTRATION IN AMERICA

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## HEARING BEFORE THE SUBCOMMITTEE ON ELECTIONS COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION OCTOBER 17, 2019

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## VOTING RIGHTS AND ELECTION ADMINISTRATION IN AMERICA

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THURSDAY, OCTOBER 17, 2019

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ELECTIONS,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 1310, Longworth House Office Building, Hon. Marcia L. Fudge [chair of the Subcommittee] presiding.

Present: Representatives Fudge, Aguilar, Davis of Illinois, and Lofgren.

Staff Present: Sean Jones, Legislative Clerk; David Tucker, Senior Counsel and Parliamentarian; Sarah Nasta, Elections Counsel; Peter Whippy, Communications Director; Veleter Mazyck, Chief of Staff, Office of Representative Fudge; Evan Dorner, Office of Representative Aguilar; Courtney Parella, Minority Communications Director; Cole Felder, Minority General Counsel; Jesse Roberts, Minority Counsel; Jen Daulby, Minority Staff Director; Tim Monahan, Minority Oversight Director; and Carson Steelman, Minority Professional Staff.

Chairwoman FUDGE. If our witnesses could come to the table, please.

Good morning. The Subcommittee on Elections of the Committee of House Administration will come to order.

I would like to thank the Members of the Committee as well as our witnesses and those in the audience for being here today.

I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and that any written statements be made part of the record.

Hearing no objection, so ordered.

We are here today to examine the state of voting rights and election administration in America. The right to vote is sacred, and as Members of Congress, we take our responsibility to protect access to the ballot very seriously.

This Subcommittee, and our Committee as a whole, is charged with overseeing the administration of Federal elections. This country has a long history of failing to ensure equal and unencumbered access to the ballot for all her citizens. And while States and localities have a significant role in carrying out elections, Congress cannot abdicate its critical responsibility to ensure every eligible American can access the ballot box, cast a ballot free from discrimination and suppression, and has a steadfast faith in our democratic process that their ballot will be counted as cast.

Since the beginning of the 116th Congress, this Subcommittee has been holding field hearings across the country, convening forums to hear from voting and election advocates, experts, community leaders, litigators, and voters about the state of voting rights and election administration in their communities.

We have been listening closely and collecting testimony and evidence regarding the wide range of methods of voter suppression and discrimination being deployed across the Nation. Throughout our hearings in Brownsville, Texas; Atlanta, Georgia; Standing Rock Sioux Reservation, North Dakota; Halifax, North Carolina; Cleveland, Ohio; Ft. Lauderdale, Florida; Birmingham, Alabama; and Phoenix, Arizona, the Subcommittee has heard testimony on barriers new and old.

We have heard testimony about how polling place closures, consolidations, and movements cause confusion for voters and lead to long lines and wait times that are unacceptable for the integrity of our democracy; how restrictions and cutbacks to early voting disenfranchises voters, especially those with limited transportation options or inflexible work hours; strict voter ID requirements that can be overly burdensome on the poor and minority voters and create a modern day poll tax.

Discriminatory voter-purge practices can disproportionately impact otherwise eligible minority voters. Denying the right to vote to nearly 6 million formerly incarcerated individuals fundamentally undermines our democracy and continues to deny citizens their constitutional right. How Native American communities have faced more than 200 years of discrimination, disenfranchisement, and voter suppression, which continues to this day, and is exacerbated when Tribes are not consulted when States and the Federal Government craft voting laws.

The lack of adequate access to properly translated materials and language assistance at the polls disenfranchises protected voters. And how litigation under Section 2 of the Voting Rights Act, remains a critical tool for protecting the franchise but is not an adequate remedy to enforce such a fundamental right.

Today's hearing will expand upon these issues, providing us with a national scope and stories from States the Subcommittee has yet to visit. We will hear from experts, advocates, litigators, and leaders who have worked for years to ensure every American can exercise his or her right to vote. Your testimony will help guide us as this Committee seeks to understand what needs to be done to safeguard our elections and guarantee access to the ballot box.

Nearly 6 years after the Supreme Court decided *Shelby County v. Holder*, we are doing this work because voter suppression and discrimination still exists. It is our duty as elected Members of Congress to uphold and defend the Constitution and protect the rights of the voter. Chief Justice Roberts himself said, "voting discrimination still exists, no one doubts that." It is critical Congress continuously examine the state of voting in America and build a true contemporaneous record of ongoing discrimination and barriers to voting. That is why we are here today.

America is great because of her ability to repair her faults. It is time for us to set the right example as a democracy and encourage people to vote, rather than continuing to erect barriers that seek

to suppress the vote and the voices of our communities. There is much work to be done.

I will now yield to the Ranking Member, Mr. Davis of Illinois, for your opening statement.

[The statement of Chairwoman Fudge follows:]

ZOE LOFGREN, CALIFORNIA  
CHAIRPERSON

JAMIE RASKIN, MARYLAND  
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA  
G.K. BUTTERFIELD, NORTH CAROLINA  
MARCIA FUDGE, OHIO  
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JAMIE FLEET, STAFF DIRECTOR

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### House of Representatives

#### COMMITTEE ON HOUSE ADMINISTRATION

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ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

### Chairwoman Marcia L. Fudge Voting Rights and Election Administration in America Opening Statement

We are here today to examine the state of Voting Rights and Election Administration in America. The right to vote is sacred, and as Members of Congress we take our responsibility to protect access to the ballot very seriously.

This Subcommittee, and our Committee as a whole, is charged with overseeing the administration of federal elections. This country has a long history of failing to ensure equal and unencumbered access to the ballot for all her citizens, and while states and localities have a significant role in carrying out elections, Congress cannot abdicate its critical responsibility to ensure every eligible American can access the ballot box, cast a ballot free from discrimination and suppression, and has a steadfast faith in our democratic process that their ballot will be counted as cast.

Since the beginning of the 116<sup>th</sup> Congress, this Subcommittee has been holding field hearings across the country, convening forums to hear from voting and election advocates, experts, community leaders, litigators and voters about the state of voting rights and election administration in their communities. We have been listening closely and collecting testimony and evidence regarding the wide range of methods of voter suppression and discrimination being deployed across the nation.

Throughout our hearings in Brownsville, Texas; Atlanta, Georgia; Standing Rock Sioux Reservation, North Dakota; Halifax, North Carolina; Cleveland, Ohio; Fort Lauderdale, Florida; Birmingham, Alabama; and Phoenix, Arizona, the Subcommittee has heard testimony on barriers new and old. We have heard testimony about: How polling place closures, consolidations and movements cause confusion for voters and lead to long lines and wait times that are unacceptable for the integrity of our democracy; How restrictions and cutbacks to early voting disenfranchises voters, especially those with limited transportation options or inflexible work hours; Strict voter ID requirements can be overly burdensome on poor and/or minority voters and create a modern-day poll tax; Discriminatory voter purge practices can disproportionately impact otherwise eligible minority voters; Denying the right to vote to nearly six million formerly incarcerated individuals fundamentally undermines our democracy and continue to deny citizens their constitutional right; How Native American communities have faced more than two hundred years of discrimination, disenfranchisement and voter suppression, which

continues to this day and is exacerbated when Tribes are not consulted when states and the federal government craft voting laws;

The lack of adequate access to properly translated materials and language assistance at the polls disenfranchises protected voters; and how litigation under Section 2 of the Voting Rights Act remains a critical tool for protecting the franchise but is not an adequate remedy to enforce such a fundamental right.

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Chief Justice Roberts himself said voting discrimination still exists; no one doubts that. It is critical Congress continuously examine the state of voting in America and build a true, contemporaneous record of ongoing discrimination and barriers to voting. That is why we are here today. America is great because of her ability to repair her faults. It is time for us to set the right example as a democracy and encourage people to vote rather than continuing to erect barriers that seek to suppress the votes and voices of communities. There is much work to be done.

Mr. DAVIS of Illinois. Thank you, Madam Chairperson.

The Committee on House Administration has the extremely important task to conduct oversight of Federal elections. Throughout the Committee's existence, Republicans and Democrats have worked across the aisle to create significant election policy that widely impacted this Nation, including legislation to eliminate the poll tax, legislation to create easier access to members of the military and their families when voting overseas, and the Help America Vote Act of 2002, a landmark piece of legislation that took substantial steps to remedy the problems seen during the 2000 Presidential election.

The Subcommittee on Elections was created for the primary purpose to be an extension of House Administration to enhance the Committee's oversight capabilities of Federal elections and how these elections are administered. Chairwoman Fudge has been leading our Subcommittee with the intention to investigate voting rights issues in order to create a new formula that will reauthorize Section 5 of the Voting Rights Act. And I have been proud to travel to a few of the stops that this Election Subcommittee has participated in throughout the Nation, and it has been an educational experience each and every time and a great opportunity for, I think, everyone to see how we here on this side of the dais can work together to get things done.

So thank you, Madam Chairwoman, for your diligence, and thank you for your willingness to talk about these issues, not just here in Washington, D.C.

The Voting Rights Act, enacted in 1965, for the purpose of removing racial-based restrictions on voting, has historically been a bipartisan effort. This legislation was most recently authorized under a Republican President and a Republican Congress. In 2013, the Supreme Court determined Section 4 of the VRA to be unconstitutional, in *Shelby County v. Holder*. Chief Justice Roberts said the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem.

While the Court did not weigh in on whether there still is an extraordinary problem the Supreme Court did hold that what made sense at one time may have lost its relevance. They noted that nearly 50 years later, things have changed dramatically.

VRA primarily remains under the jurisdiction of the House Judiciary Committee, but the House Administration Committee has an obligation to review how elections are administered and recognize if any issue should elevate from a State to a Federal level, which is what we all hope to do here today.

This Subcommittee, as I said, has held—as Madam Chairwoman has said and I alluded to, has held seven field hearings and one listening session across the country in an effort to reveal widespread voter discrimination. Though the Subcommittee has yet to find a single citizen who wanted to vote but was unable to cast a vote, we still have a duty to the American people to protect and defend everyone's right to vote. As I have said many times since coming into my role as the Ranking Member of the House Administration Committee, and the lone member of the Election Subcommittee on our side of the aisle, the greatest threat to our election system is partisanship in the administering of elections.



If there is clear evidence of intentional widespread voter discrimination, Congress should take steps to remedy that in a bipartisan manner. We must commit to diligently review the facts and the numbers carefully, as well as hear from all relevant stakeholders. We should take time to examine the voter registration trends and the voter turnout trends. It is essential that Congress make well-informed decisions and understand our role in assisting States, while not overpowering them.

Voting is a fundamental right for every single American citizen, and protecting that right is a responsibility that I and everyone I serve with on my side of the aisle and the other side of the aisle take very seriously.

Today, I am here to listen and learn more from our witnesses about voting rights and election administration. I look forward to hearing from all of you who have agreed to share their testimony with all of us this morning.

And thank you, Madam Chairwoman. I yield back.

[The statement of Mr. Davis of Illinois follows:]

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### Ranking Member Rodney Davis Voting Rights and Election Administration in America Opening Statement

Thank you, Madam Chair. Thank you for your diligence and thank you for your willingness to talk about these issues, not just here in Washington, D.C. The Voting Rights Act, enacted in 1965, for the purpose of removing racial-based restrictions on voting, has historically been a bipartisan effort. This legislation was most recently re-authorized under a Republican President and a Republican Congress. In 2013, the Supreme Court determined Section 4 of the Voting Rights Act to be unconstitutional, in *Shelby County v. Holder*. Chief Justice Roberts said the Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem.

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Chairwoman FUDGE. Thank you.

I thank my friend, the Ranking Member, for participating and really understanding that our goal as a Congress is to get to the truth. So I appreciate that and I thank you.

Now I will introduce our panel, but as I prepare to do that, let me go through some housekeeping matters. Each of you will be recognized for 5 minutes. I will remind our witnesses that their entire written statements will be made part of the record and that the record will remain open for at least five days for additional materials to be submitted. The lighting system which you have in front of you will tell you how much time you have remaining. You will have five minutes. Yellow means you have one minute left. Red means please wrap up your statement.

Our first panel, we will hear from Kristen Clarke—welcome—is President and Executive Director of the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee seeks to promote fair housing and community development, economic justice, voting rights, equal educational opportunity, criminal justice reform—criminal justice, judicial diversity and more. Ms. Clarke previously served as the head of the Civil Rights Bureau for the New York State Attorney General's Office, and has spent several years at the NAACP Legal Defense and Educational Fund, and worked at the U.S. Department of Justice in the Civil Rights Division.

Welcome.

Dale Ho is the Director of the ACLU's Voting Rights Project and supervise—it is one of them days. It is been a tough day. Dale Ho is the Director of the ACLU's Voting Rights Project and supervisors—this is because it is written wrong—and supervised the ACLU's voting rights litigation and advocacy work nationwide. Mr. Ho has active cases in over a dozen States throughout the country and is also an adjunct professor of law at NYU School of Law. Prior to joining the ACLU, Dale was Assistant Counsel at the NAACP Legal Defense Fund, an associate at—Fried?

Mr. HO. Fried.

Chairwoman FUDGE [continuing]. Fried, Frank, Harris, Shriver, & Jacobson, LLP, and a judicial law clerk.

Thank you, sir. Welcome.

Deuel Ross—did I get it right?

Mr. ROSS. Deuel.

Chairwoman FUDGE. Deuel?

Mr. ROSS. Yes.

Chairwoman FUDGE. Deuel Ross serves as Senior Counsel at the NAACP Legal Defense and Educational Fund. In that capacity, Mr. Ross uses litigation, public education, and other advocacy strategies to ensure that Black people have equal access to the political process and to educational opportunities. Among his ongoing cases, Mr. Ross is lead counsel in *Greater Birmingham Ministries v. Merrill*, an ongoing Voting Rights Act lawsuit that challenges Alabama's racially discriminatory voter ID law. He was a member of the trial team that has coauthored the appellate briefs in *Veasey v. Perry*, the successful challenge to Texas' unconstitutional voter ID law. Mr. Ross is also an Adjunct Professor at the University of Pennsylvania Law School where he teaches a seminar course on the Voting Rights Act.

Welcome all.

And we have been joined by the Chairperson of the Committee, the whole Committee, Ms. Lofgren.

The CHAIRPERSON. Well, thank you very much.

You know, this Committee is charged with overseeing the administration of Federal elections, and in recognition of that responsibility, we established the Subcommittee on Elections. This Subcommittee has been led by its outstanding Chairwoman, Marcia Fudge. They have held eight hearings throughout the country, giving voice to many not generally heard in Washington, D.C., and convening this hearing today.

You know, too many Americans view themselves as shut out of our representative system, and others can't participate because of election administration procedures that fail to consider how Americans live and work in the 21st century. Some of these barriers to participation make it harder for certain populations, including communities of color and other underrepresented groups, to vote. And this is especially the case after the Supreme Court gutted core provisions of the Voting Rights Act in *Shelby County v. Holder*.

Additionally, we know now that foreign agents, specifically the Russians, attempted to interfere in American elections in 2016. And as we discussed yesterday in the full Committee hearing, no single group has been targeted more with disinformation than African Americans. That is a voter suppression tactic.

So we do know that, for years, the House has failed to adequately protect the right to vote. The House allowed discriminatory, suppressive laws to be enacted throughout the country, laws so discriminatory they targeted African Americans—and this is from a court case—with surgical precision.

The work of the Subcommittee on Elections is critical to achieving the principle that every American has the right to vote, the right free from discrimination and from administrative barriers so cumbersome that they actually suppress the vote. We know it is time for Congress to act to ensure equal access to the ballot for every American.

I look forward to the testimony today. And once again, I just want to thank the Chairwoman and the others on the Election Subcommittee who have worked so very hard to gather information throughout the United States for their outstanding work that serves our country so well.

And with that, I yield back.

[The statement of Chairperson Lofgren follows:]

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### Chairperson Zoe Lofgren Voting Rights and Election Administration in America Opening Statement

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The work of the Subcommittee on Elections is critical to achieving the principle that every American has the right to vote, the right free from discrimination and from administrative barriers so cumbersome that they actually suppress the vote. We know it is time for Congress to act to ensure equal access to the ballot for every American. I look forward to the testimony today and once again just want to thank the Chairwoman and the other Members on the Election Subcommittee who have worked very hard to gather information throughout the United States for their outstanding work that serves our Nation so well.

Chairwoman FUDGE. Thank you.

And thank you for your support, Madam Chairperson. We could not have made these field hearings work without you. So we appreciate it.

Ms. Clarke, you are now recognized for 5 minutes.

**STATEMENTS OF KRISTEN CLARKE, PRESIDENT AND EXECUTIVE DIRECTOR, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; DALE HO, DIRECTOR, VOTING RIGHTS PROJECT; AND DEUEL ROSS, SENIOR COUNSEL, NAACP LEGAL DEFENSE FUND**

**STATEMENT OF KRISTEN CLARKE**

Ms. CLARKE. Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections, my name is Kristen Clarke, and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law. Thank you for the opportunity to testify today on issues that are consequential to the fate of American democracy.

The Lawyers' Committee for Civil Rights Under Law has been at the forefront of our Nation's battle for equal rights since it was created in 1963 at the request of President Kennedy to enlist the private bar in the fight to combat racial discrimination. Our work to safeguard voting rights and to fight voter suppression has been central to this mission. The Lawyers' Committee has been a leader in many of the core voting rights cases over the last several decades and stands at the forefront of current efforts to ensure that our laws safeguard, not restrict, access to the franchise. The Lawyers' Committee also leads Election Protection, the Nation's largest and longest running, nonpartisan voter protection program.

In *Shelby County v. Holder*, Chief Justice Roberts observed that "things have changed dramatically," in the South since passage of the Voting Rights Act, and that "blatantly discriminatory evasions of Federal decrees are rare." Our experience and the record shows that this proclamation was not true in 2013 and remains untrue today. Modern-day voter suppression efforts are proliferating. Moreover, the *Shelby* decision opened the floodgates to discrimination and voter suppression. There is no doubt our Nation is currently in a period of retrenchment concerning access to the franchise.

Since *Shelby*, the Lawyers' Committee has been involved in 41 cases relating to discriminatory voting practices or policies that have had an adverse effect on the rights of African Americans and other minority voters. These instances are summarized in my written testimony.

Twenty-four of these actions were filed since January 20, 2017. Sadly, DOJ has filed no such cases during this timeframe. While we have achieved substantial success in about three-quarters of these 24 cases, this is just the tip of the iceberg of potential voting rights violations that could be challenged by DOJ, were they actively enforcing the law in a restored Section 5.

Without the prophylactic protections of Section 5, and given that parts of our country are becoming more racially diverse, we have seen voter suppression efforts intensify. Examples of the ways in

which officials are working to undermine minority voting rights are outlined in my testimony and include barriers to voter registration; draconian requirements imposed on groups that are working to register people to vote; purge programs; restrictive mandatory photo ID laws; polling place closures, polling places moved to hostile locations like police departments; ineffective language assistance for LEP voters; long lines at polling sites due to staffing or machine issues; mass rejection of absentee ballots; faulty technology that risks votes not properly counted and systems subject to hacking; cuts on early voting opportunities, vote dilution, and racially gerrymandered maps.

Case-by-case litigation is simply not enough to counter the magnitude of this threat. Writing for the dissent in *Shelby*, Justice Ginsburg observed that Congress passed the Voting Rights Act because requiring private individuals and civil rights groups to litigate every threat to voting rights was ineffective and extremely expensive, like battling the Hydra, the multiheaded monster in Greek mythology. These cases are costly, time-intensive, long and protracted, and for every case that we file, Americans have to wait months and sometimes years for a resolution to protect their right to vote. This is not sustainable.

Even when courts strike a discriminatory law or practice, officials often resort to a slightly different practice, thrusting communities into a game of whack-a-mole. There is no better example of this than Georgia, where officials resurrect discriminatory practices repeatedly. In the post-*Shelby* era, local and State officials act with impunity when it comes to suppressing the rights of minority voters. Along with officials, we sued Georgia three times to stop its exact-match practice in voter registration.

The record makes clear that Congress must restore the full protections of the Voting Rights Act. I urge this Committee and this Congress to carefully study the record amassed during the extensive hearings and field work and to fulfill the promise of our Constitution and restore protections needed to ensure that African Americans, Latinos, and other people of color enjoy equal voice in our democracy.

Thank you.

[The statement of Ms. Clarke follows:]



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

**U.S. HOUSE COMMITTEE ON ADMINISTRATION  
SUBCOMMITTEE ON ELECTIONS  
HEARING ON  
"VOTING RIGHTS AND ELECTION ADMINISTRATION IN AMERICA"**

**OCTOBER 17, 2019**



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Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections of the U.S House of Representatives Committee on House Administration, my name is Kristen Clarke and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). As a former attorney at the U.S. Department of Justice, I handled countless cases under the Voting Rights Act, including matters that arose under Section 5, and presented argument for the court in the *Shelby County v. Holder* litigation. Thank you for the opportunity to testify today on voting rights and election administration in America; not only is this issue central to our democracy, but it is vital to ensuring equality and equal justice for African Americans, Latinos, and other people of color in this country.

The Lawyers' Committee for Civil Rights Under Law, the organization that I lead, has been at the forefront of the battle for equal rights since it was created in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. To accomplish its mission, the Lawyers' Committee has been a leader in many of the most important voting rights cases litigated over more than the last half century.

We spearheaded the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Act, and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization. In 2014, we organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.<sup>1</sup> Since its creation 18 years ago, the Lawyers' Committee has also led Election Protection, the largest and longest-running non-partisan voter protection program in the U.S. And, to this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching—both geographically and in terms of the issues raised—as any in the nation.

Broadly, we are in a period of retrenchment against nearly all civil rights and liberties, but the threats to the right to vote challenge the very foundation of our democracy and our decades-long march towards equality. Voting is the right that is "preservative of all rights,"<sup>2</sup> because it empowers people to elect candidates of their choice, who will then govern and legislate to advance other rights. As voting rights were guaranteed under law and enforced by the federal government, the makeup of state and local legislatures, and Congress changed significantly, and legal protections have been increasingly expanded for marginalized groups—especially people of color. But, voting rights have always been contested in this country, with gains in turnout and representation by people of color often met with an inevitable backlash that sought to suppress our electoral power.<sup>3</sup>

In important ways, we are farther away from victory in this battle than we were less than a

<sup>1</sup> NATIONAL COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

<sup>2</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

<sup>3</sup> ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA (2015).



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decade ago. Before 2013, we had the protections of Section 5 of the Voting Rights Act, which established a bulwark against state and local action in those states with a long and documented history of racial discrimination in voting. Under Section 5, covered jurisdictions—jurisdictions with a statutorily defined and demonstrated history of racial discrimination in voting—had to show federal authorities that a proposed voting change did not have a discriminatory purpose or the discriminatory effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice. That protection is gone.

In *Shelby County v. Holder*, Chief Justice Roberts wrote that “things have changed dramatically” in the South since passage of the Voting Rights Act in 1965, and that “[b]latantly discriminatory evasions of federal decrees are rare.”<sup>4</sup> Unfortunately, that has proven to be an overly optimistic view of the state of voting rights in this country.

Of course, some “things” have changed—we no longer have literacy tests or direct poll taxes, and people understand that discrimination is illegal and actionable. But, the “[b]latantly discriminatory evasions” of decades past have been replaced by subtler, but equally pernicious discrimination. At a time when the country is progressing towards becoming majority people of color,<sup>5</sup> access to the franchise is under threat by both overt and covert voter suppression laws and tactics, (1) including making voter registration more difficult and restricting organizations from helping people register, (2) voter purges of eligible voters, (3) unduly restrictive photo ID laws, (4) polling place closures and polling place relocations to sites deemed hostile by voters of color, (5) ineffective language assistance for voters with limited English proficiency, (6) long lines at polling places due to insufficient staffing and poll locations, (7) improper handling of absentee ballots, (8) faulty technology, particularly in minority communities, that risks votes not being properly counted and exposes the machines to the risk of tampering, and (9) vote dilution that undermines the ability of people of color to elect candidates of their choice.

Prior to *Shelby*, covered jurisdictions had to provide notice to the federal government—which meant notice to the public—before they could implement changes in their voting practices or procedures. Such notice is of paramount importance, because the ways that the voting rights of minority citizens are jeopardized are often subtle. They range from the consolidation of polling places so as to make it less convenient for minority voters to vote, to the curtailing of early voting hours that makes it more difficult for low-income people of color to vote, to the disproportionate purging of minority voters from voting lists under the pretext of “list maintenance.” As Congressman John Lewis said after the *Shelby* decision was handed down, the Supreme Court “struck a dagger in the heart of the Voting Rights Act.”<sup>6</sup>

Nor do we have the protections of a Department of Justice committed to the core

<sup>4</sup> *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 531 (2013).

<sup>5</sup> William H. Frey, *The US will become 'minority white' in 2045*, *Census projects*, The Brookings Institution (Oct. 15, 2019, 1:22 PM), <https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/>.

<sup>6</sup> Press Release, Rep. John Lewis, Rep. John Lewis Calls Court Decision “A Dagger” in the Heart of Voting Access (June 25, 2013), <https://johnlewis.house.gov/media-center/press-releases/rep-john-lewis-calls-court-decision-dagger-heart-voting-access>.



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constitutional mandate of equal justice under law for all. Before 2017, we had in the Department of Justice a partner in the fight for civil rights, and—importantly— one with the capacity and resources which civil rights organizations could not match. Today, the Department is not only sitting on the sidelines in this crucial battle, but it is also taking affirmative stands against positions that would further equal justice—positions it had previously fought for.

Although Section 2 of the Voting Rights Act remains a viable weapon in the fight against racial discrimination in voting, it is nowhere near as potent a weapon as was Section 5. Where Section 5 protected against discriminatory changes in voting, against an easily applied standard of whether minority voters would be worse off as a result of the change, Section 2 requires plaintiffs to bear the burden of complex and costly protracted litigation to show that an existing or newly instituted policy or practice is discriminatory. Where, under Section 5, the Department of Justice would necessarily bear the relatively modest costs of defending against the jurisdiction's claim that the change in voting practices was not retrogressive, Section 2 places those costs on resource-strapped private litigants.

Nevertheless, organizations like the Lawyers' Committee have continued to fight the fight, made even more essential by the vacuum left by the evisceration of Section 5 of the Voting Rights Act and the Department of Justice's decision to go AWOL from its historic role of protecting civil rights. Since *Shelby County*, the Lawyers' Committee has been involved in 41 cases relating to discriminatory practices in voting or adverse effects on the voting rights of minority voters, summarized in Appendices A and B to this testimony.

Twenty-four of these actions were filed since January 20, 2017—which is twenty-four more cases than instituted by the current administration's Department of Justice. Not including the four cases where we sued the federal government, in twenty-nine of the thirty-seven (78.3%) cases we have been opposed by state or local jurisdictions that were covered by Section 5, even though far less than half of the country was covered by Section 5. Importantly, we have achieved substantial success—measured by final judgment, advantageous settlement, or effective injunctive relief in three-quarters of these cases.

The voting rights cases we handle run the gamut of the voting process: from registration to the casting of the vote to ensuring that a minority voter's vote has an equal chance to be effective as that cast by a white voter. The breadth and scope of the cases we have handled in just the last few years highlights dramatically the problems still faced by voters from communities of color. These cases are but some of the Lawyers' Committee entire docket of cases from just over the past half-decade. Moreover, they represent even a smaller fraction of the many cases brought by our brother and sister organizations. I will note that mounting these litigation efforts have come at great expense and required significant diversion of resources.

In my testimony, I will outline the modern forms of voting discrimination—which can be subtle, but no less pernicious than first generation barriers to the ballot—through highlights of our active and substantial voting rights litigation. I will also provide an overview of Election Protection, which provides a front-line defense for voters against discrimination and election administration errors in real time, as the nation's largest and longest-running non-partisan voter protection program.



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### Obstacles to Voter Registration

There are significant obstacles to voter registration, some natural, some technological, and some man-made. In 2016, Chatham County, Georgia, was hard hit by Hurricane Matthew, just days before the close of voter registration. Chatham County has over 200,000 voting age citizens, of whom more than 40 percent are African American. Almost half of its residents lost electrical power during the storm, and the county had been subject to mandatory evacuation. Yet Governor Nathan Deal and then Secretary of State Brian Kemp refused to extend the deadline. We sought and obtained emergency relief extending the deadline to register, allowing over 1400 citizens, predominately African American and Latino to vote.<sup>7</sup> That same year, we sought and obtained similar relief, extending the voter registration deadline, in Virginia, after its online voter registration system crashed. Over 28,000 voters were able to register as a result of the court order.<sup>8</sup>

With our partner civil rights organizations, we have also brought actions to enforce Sections 5 and 7 of the National Voter Registration Act's requirements that states make assistance to register to vote available to people who visit motor vehicle and public assistance agencies. One such case, against North Carolina, settled in 2018 with substantial improvements made at both state department of motor vehicles and social service agencies in how voter registration applications are offered and processed.<sup>9</sup>

In 2017, the Lawyers' Committee successfully challenged Georgia's runoff election voter registration scheme, which violated Section 8 of the National Voter Registration Act, because it required Georgians to register to vote approximately three months before a federal runoff election, while the NVRA set the deadline at 30 days.<sup>10</sup>

In addition to NVRA violations, a number of jurisdictions continue to impose a proof of citizenship requirement during voter registration, which not only weighs disproportionately and heavily on persons of color, but also violates federal law. The Lawyers' Committee has twice sued to stop such practices, first intervening on behalf of the Inter Tribal Council of Arizona, Inc. to successfully defeat an attempt by the states of Arizona and Kansas to modify the state-specific instructions of the federal mail voter registration form to require applicants residing in Kansas and Arizona to submit proof-of-citizenship documents in accordance with state law,<sup>11</sup> and, second, obtaining a preliminary injunction against a decision of the Election Assistance Commission's Executive Director to include a proof of citizenship requirement on federal form instructions used by Alabama, Georgia, and Kansas.<sup>12</sup>

<sup>7</sup> *Georgia Coalition for the Peoples' Agenda, et al., v. John Nathan Deal, et al.* (S.D. Ga., No. 4:16-cv-0269-WTM-GRS, October 12, 2016).

<sup>8</sup> *New Virginia Majority Education Fund, et al. v. Virginia Department of Elections, et al.*, No. 1:16-cv-01319 (E.D.Va. 2016), .

<sup>9</sup> *Action NC, et al. v. Kim Westbrook Strach, et al.*, No. 1:15-cv-01063 (M.D.N.C. 2018).

<sup>10</sup> *Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397 (N.D. Ga. May 4, 2017).

<sup>11</sup> *Kobach v. U.S. Election Assistance Commission*, 772 F. 3d 1183 (10th Cir. 2015).

<sup>12</sup> *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).



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Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*,<sup>13</sup> a case the Lawyers' Committee successfully litigated, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. The Lawyers' Committee and other civil rights organizations sued, alleging that the state's two-tier registration process constituted an unconstitutional burden on the right to vote, and obtained a settlement that allows the state to continue to require proof of citizenship to register to vote in state, but requires the state to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections.<sup>14</sup>

Later, the Lawyers' Committee again intervened on behalf of the Inter Tribal Council of Arizona, Inc. to successfully defeat an attempt by the states of Arizona and Kansas to modify the state-specific instructions of the federal mail voter registration form to require applicants residing in Kansas and Arizona to submit proof-of-citizenship documents in accordance with state law.<sup>15</sup>

In January 2016, then-U.S. Election Assistance Commission Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs, represented by a number of civil rights organizations, including the Lawyers' Committee, filed suit to enjoin Newby's action and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District of Columbia denied Plaintiffs' motion for a preliminary injunction.<sup>16</sup> The case is pending final decision.

The Lawyers' Committee, working with partner civil rights organizations, has also sued the State of Georgia three times to stop its "exact match" practice in voter registration, which required information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state's Department of Driver's Services (DDS) databases. Ultimately, the Georgia legislature amended the "exact match" law in 2019 to permit applicants who fail the "exact match" process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the "exact match" process that continues to inaccurately flag United States citizens as non-citizens.<sup>17</sup>

<sup>13</sup> 570 U.S. 1 (2013).

<sup>14</sup> *League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018).

<sup>15</sup> *Kobach v. U.S. Election Assistance Commission*, 772 F.3d 1183 (10th Cir. 2015).

<sup>16</sup> *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

<sup>17</sup> *Third Sector Development, et al. v. Kemp, et al.*, No. 2014CV252546, 2014 WL 5113630 (Fulton Cty. Super. Ct. Ga. Oct. 10, 2014); *Georgia State Conference of NAACP, et al., v. Brian Kemp, et al.*, No. 2:16-cv-00219 (N.D. Ga. Sept. 14, 2016); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018).



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In addition to burdens placed on individuals registering to vote, just this spring the State of Tennessee passed a law that imposes severe restrictions on voter registration activity by community groups and third parties—including criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. Last month, the court issued a preliminary injunction, at the request of the Lawyers' Committee, representing several civil rights organizations who work to register voters, which stayed implementation of the law, on the basis that we had proved a probability of success on our claims that the law violated the First Amendment and the right to vote.<sup>18</sup>

#### **Obstacles to Remaining on the Voter Rolls: Voter Purges**

Once an eligible voter is registered, we work to ensure that they stay on the rolls. We have been forced to sue jurisdictions large and small to combat unlawful voter purges.

In 2015, the Board of Elections and Registration in Hancock County, Georgia, changed its process to initiate a series of "challenge proceedings" to voters, all but two of whom were African American, that resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the VRA and the National Voter Registration Act (NVRA), and obtained a preliminary injunction, which resulted in the ordering of the wrongly-removed voters back on the register. Ultimately plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree to remedy the violations, and subject the County to monitoring its compliance with federal law for five years.<sup>19</sup> But the damage of denying African Americans an equal voice and fair chance at representation was already done: after the purge and prior to the court order, Sparta, a predominantly African American city in Hancock County, elected its first white mayor in four decades, and at least one illegally removed voter died while the litigation was pending, and before she could exercise her franchise.

On November 3, 2016, the Lawyers' Committee and another civil rights organization filed suit alleging that the New York City Board of Elections (NYCBOE) had purged voters from the rolls in violation of the NVRA. Earlier in the year, the NYCBOE had confirmed that more than 126,000 Brooklyn voters were removed from the rolls between the summer of 2015 and the April 2016 primary election. After entry of the State of New York and the U.S. Department of Justice in the case, the NYCBOE agreed to place persons who were on inactive status or removed from the rolls back on the rolls if they lived at the address listed in their voter registration file and/or if they had voted in at least one election in New York City since November 1, 2012 and still lived in the city. Subsequently, the parties negotiated a Consent Decree, under which the NYCBOE agreed

<sup>18</sup> *Tennessee State Conference of the N.A.A.C.P. v. Hargett*, No. 3:19-cv-00365 (M.D. Tenn. 2019).

<sup>19</sup> *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015).



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to comply with the NVRA before removing anyone from the rolls, and to subject itself to a four-year auditing and monitoring regimen.<sup>20</sup>

More recently, in January 2019, David Whitley, then-Secretary of State of Texas, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data that the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers' license. Voting rights advocates, including the Lawyers' Committee, filed lawsuits challenging the purge and obtained a preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process. The case settled immediately thereafter, with Texas abandoning the process.<sup>21</sup>

#### **Obstacles to Voting: Unduly Restrictive Voter ID**

On June 25, 2013, the day *Shelby County* was decided, Texas announced it was going to immediately implement its photo ID law, known as SB 14, which had failed to obtain pre-clearance from the Attorney General or the federal court in accordance with Section 5 of the Voting Rights Act. Several civil rights organizations, including the Lawyers' Committee, and the Department of Justice, challenged the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution.

After years of litigation, the Fifth Circuit Court of Appeals, sitting *en banc*, affirmed the district court's finding that SB 14 had a discriminatory effect on the voting rights of African-American and Latino voters, because they were two to three times less likely to possess the required ID than were white voters, and that it was two to three times more difficult for them to get the ID than it was for white voters.<sup>22</sup> The Fifth Circuit also ruled that there were sufficient facts in the record to support the district court's finding that SB 14 had been passed with discriminatory intent, remanding that issue for further fact-finding.

The district court then reconfirmed its finding of discriminatory intent, and the Texas Legislature passed a new law that substantially incorporated the terms of an interim remedial order agreed to by the parties and approved by the Court, which allowed any eligible voter who did not possess the required ID to cast a regular ballot upon execution of a declaration of reasonable impediment. Ultimately, the Fifth Circuit ordered the case dismissed on the basis that the new law provided all the relief to which plaintiffs were entitled.<sup>23</sup>

#### **Obstacles to Casting the Vote: Polling Place Locations**

Of course, getting and keeping voters on the rolls does not end the story. Voters must be able to get to the polls, and, when at the polls, must be able to vote. In recent years, we have

<sup>20</sup> *Common Cause/New York v. Board of Elections in City of New York*, No. 1:16-cv-06122 (E.D.N.Y. 2017).

<sup>21</sup> *Texas League of United Latino American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. Feb. 27, 2019).

<sup>22</sup> *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (*en banc*).

<sup>23</sup> *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).





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witnessed the erection of obstacles by closing polling places that are more easily accessible to minority communities, and the prevalence of technological and other malfunctions that lead to long lines, discouraging voters from casting their ballots.

Some of these problems have been resolved without litigation, such as in 2016 when Macon-Bibb County, Georgia attempted to shift a polling place from a location accessible to the African-American community to the Sheriff's office. Because of fears that this decision would reduce turnout among African-American voters, the Lawyers' Committee worked with the Georgia State Conference of NAACP Branches, the Georgia Coalition for the People's Agenda, and New Georgia Project, to organize a successful petition drive that required the Board of Elections to reverse the relocation decision under Georgia law.<sup>24</sup> Just this month, the Lawyers' Committee, working with these same organizations, have put Jonesboro, Georgia, on notice that the city's decision to move its only polling place to the police station will have an intimidating effect on African-American voters, and violate their rights under the Voting Rights Act.

Other situations have required litigation, such as the 2014 decision by San Juan County, Utah, to switch to all-mail balloting, but allowing in-person early voting at a single location only, easily accessible to the white population, but three times less accessible to the sizable Navajo population, who had to drive on average three hours to get to the polling place. The matter settled with the establishment of three polling locations on land of the Navajo Nation.<sup>25</sup>

#### **Obstacles to Casting the Vote: Ineffective Language Assistance**

Section 203 of the Voting Rights Act requires jurisdictions with at least five percent of its citizens as members of a single-language minority group to provide effective language assistance at the polls.<sup>26</sup> In the San Juan County, Utah, case described above, plaintiffs also alleged that the County failed to meet this standard as to its Navajo language speakers. The settlement we and our partner organizations achieved requires the County to provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election, and to take additional action to ensure quality interpretation of election information and materials in the Navajo language.<sup>27</sup>

#### **Obstacles to Casting the Vote: Long Lines**

Long lines on election day also pose a barrier to voting, which disproportionately impacts people of color and low-income voters. Casting a ballot necessitates arranging for transportation to the polling place, and often taking time off from work, which can be challenging even when the polling place is nearby and adequately staffed. However, waiting in long lines—often for hours—

<sup>24</sup> Stanley Dunlap, *Macon-Bibb Polling Location OK'd After Sheriff's Precinct Nixed*, The Telegraph (May 16, 2016), <http://www.macon.com/news/local/article77929442.html>.

<sup>25</sup> *Navajo Nation Human Rights Comm'n v. San Juan County*, 216CV00154, 2017 WL 3976564, at \*1 (D. Utah Sept. 7, 2017).

<sup>26</sup> 52 U.S.C. § 10503(b)(2).

<sup>27</sup> *Navajo Nation Human Rights Comm'n v. San Juan County*, 216CV00154, 2017 WL 3976564, at \*1 (D. Utah Sept. 7, 2017).



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at polling places can result in people being forced to leave before they are able to vote, denying them the exercise of the franchise. Long lines can result from the closure of polling places, particularly in communities of color, as well as having inadequate staffing and too few machines at the polls.

For instance, the Lawyers' Committee sued Maricopa County in 2016, after the County slashed the number of polling places from 211 in 2012 to 60 "mega-centers" in 2016, resulting in one polling place for every 21,000 voters, compared to one for every 1,500 elsewhere in the state. Sixty percent of Arizona's minority voters reside in the County. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes.<sup>28</sup>

On Election Day 2018, technology failures in precincts with large African-American populations in Fulton County, Georgia, caused extraordinary long lines. Plaintiffs, working with the Lawyers' Committee's Election Protection program, obtained hours' long extensions at two of these precincts in order to enable more people to vote that day.<sup>29</sup>

#### **Obstacles to Casting the Vote: Improper Handling of Absentee Ballots**

On October 23, 2018, the Lawyers' Committee joined lawsuits challenging Georgia's practices of 1) rejecting absentee ballots based upon election officials' untrained conclusion that the voter's signature on the absentee ballot envelope did not match the voter's signature on file with the registrar's office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019.<sup>30</sup>

#### **Obstacles to the Vote Counting: Faulty Technology**

The Lawyers' Committee and co-counsel represented the Coalition for Good Governance and individual plaintiffs in a suit challenging Georgia's use of electronic ballot machines system, alleging that the vulnerability of the machines to tampering and their failure to have a paper back-up so voters can verify their votes violate the constitutional right to vote. Part of plaintiffs' proofs were an unexplained disparity in the votes by African Americans, when using the electronic ballot system, compared to their use of paper absentee ballots.

<sup>28</sup> *Huerena v. Reagan, Superior Court of Arizona, Maricopa County, CV2016-07890* (D. Ariz. July 7, 2016).

<sup>29</sup> *Georgia State Conference of NAACP, et al. v. Fulton County Bd. of Reg. & Elections* (Fulton Cty. Super. Ct. Ga. Nov. 6, 2018).

<sup>30</sup> *Martin v. Kemp*, No. 18-14503-GG (N.D. Ga. 2018).



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On August 9, 2019, the district court preliminarily enjoined the state's use of its direct-recording electronic voting machines for all elections after December 31, 2019. The court further directed that, if the state is unable to implement completely a new system beginning January 2020, it must be ready to use paper ballots. The court also ordered that the state ensure that all polling places have paper back-ups for their electronic polling books.<sup>31</sup>

#### **Obstacles to a Vote Counting Equally: Vote Dilution**

Section 2 of the Voting Rights Act prohibits not only the discriminatory denial of vote, as in the Texas Photo ID case, but also the discriminatory dilution of votes, such as where they way election district lines are drawn curtail the ability of voters of color to elect candidates of their preference. The Lawyers' Committee has brought several successful suits challenging such practices.

In Emanuel County, Georgia, the Lawyers' Committee represented plaintiffs who alleged that the district boundaries for seven School Board districts impermissibly diluted the voting strength of African American voters by "packing" them into one district. African Americans comprise 81 percent of the voting-age population in one of the districts and a minority in all of the other six. Although African Americans made up one-third of the county's voting-age population and close to half of the students in Emanuel County, and although African American candidates had run in other districts, there had never been more than one African American member on the School Board at one time. After suit was filed, the parties negotiated a settlement, resulting in the creation of two majority-minority single-member districts.<sup>32</sup>

Similarly, in Jones County, North Carolina, plaintiffs, represented by the Lawyers' Committee, challenged the at-large scheme of electing members to the Jones County, NC Board of Commissioners, to which no African American had ever been elected since 1998, despite African Americans comprising 30 percent of the population. The parties settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African American voters constitute a majority of the voting-age population.<sup>33</sup>

Most recently, Black Mississippi voters filed a challenging the districting plan for Mississippi State Senate District 22 under Section 2 of the Voting Rights Act. Plaintiffs, represented by the Lawyers' Committee and Mississippi Center for Justice contended that the plan diluted the voting strength of Black voters and, combined with racially polarized voting, prevented them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and the trial court gave the Legislature an opportunity to re-draw the district to comply with the court's decision. After failing to obtain a stay of the court's order, the Legislature redrew the district to create a district with a sufficiently large Black voting population to give Black voters an equal opportunity to elect candidates of their preference. The Fifth Circuit affirmed the district

<sup>31</sup> *Donna Curling, et al. v. Brian Kemp, et al.* No. 1:17-cv-02989-AT (N.D. Ga. Aug. 8, 2017).

<sup>32</sup> *Georgia State Conference of NAACP, et al., v. Emanuel County Board of Commissioners, et al.*, No. 6:16-cv-021 (S.D. Ga. Feb. 23, 2016).

<sup>33</sup> *Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017).



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court's decision.<sup>34</sup> Last month, the Fifth Circuit issued an order, *sua sponte*, accepting the matter for review before the Fifth Circuit, sitting *en banc*.<sup>35</sup>

#### **Proactively Protecting the Vote Through Election Protection**

In our role as leader of Election Protection, the Lawyers' Committee convenes a growing network of more than 200 national, state and local coalition partners, over 100 law firms and thousands of trained legal volunteers to provide front-line assistance to an average of over a hundred thousand voters each election year. This support is provided through the 866-OUR-VOTE hotline which operates year-round, the deployment of grassroots organizers and volunteers to hot spots across the country, and legal advocacy, intervention and litigation to help disrupt the most significant voting barriers that emerge across the country. Without question, this work has intensified and increased.

In coordination with coalition partners, we recruit, train and deploy thousands of volunteer poll monitors around the country each year. Examples of large entities that promote and rely on and partner with Election Protection include the ACLU, the NAACP, Common Cause, AAJC, Rock the Vote, and many others. However, we also have great resonance with local grassroots organizations as well such as Democracy North Carolina, the Arizona Advocacy Network, the Milwaukee Area Labor Council, Georgia Coalition for the People's Agenda, One Voice—Mississippi, the Virginia Civic Engagement Table, Philadelphia Public Interest Law Center and more.

Our program has a track record of proven success and impact, staffed by well-trained individuals and anchored by a strong infrastructure. We work year-round to remove barriers to voting through voter education, advocacy, and, when necessary, litigation.

In 2018, our Election Protection call center fielded traffic mirroring the 2016 presidential election cycle. Our data show that our national, nonpartisan assistance to voters helped hundreds of thousands of voters cast a ballot that count in 2018. On Election Day 2018, the Election Protection hotlines received around 31,000 calls, and in the three days after the midterms, the 866-OUR-VOTE hotline continued to receive several thousand calls from voters who had short time lines to cure issues with affidavit ballots, had concerns with run-off elections and more. Overall, we received more than 78,000 calls to the hotlines (and texts) in 2018. While some calls reflected individualized problems, many reflected problems that were systemic in scope and dimension—giving us the opportunity to address problems impacting voters in entire cities, counties, and states.

Since the Election Protection program is housed within the Lawyers' Committee, we use rapid response litigation and maintain an active docket of cases that are responsive to voter suppression efforts uncovered through our vast Election Protection network. Without the full protections of the Voting Rights Act, we expect that the strains and burdens placed on our Election Protection program will increase in the road ahead.

<sup>34</sup> *Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019).

<sup>35</sup> *Joseph Thomas, et al. v. Phil Bryant, et al.*, No. 19-60133 (5th Cir. Sept. 23, 2019).



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### **Conclusion**

Our nation is at a critical juncture in the battle—as long as the history of this nation—to ensure true equality of voting rights for all. People of color continue to be disproportionately targeted by voter suppression tactics, some of which are modern and more subtle forms of discrimination, but no less effective in denying access to the franchise or diminishing the electoral power of communities of color. Restoring the full protections of the Voting Rights Act and reinvigorating its enforcement by the Department of Justice is essential to achievement of equal access to the ballot and equal representation. As long as access to the ballot continues to be contested, vigilance is required, and I urge this Committee and this Congress to act with increased rigor to fulfill the promises of our Constitution and protect the equal opportunity to cast a vote and participate in our democracy.

Chairwoman FUDGE. Thank you.  
Mr. Ho, you are now recognized for 5 minutes.

#### STATEMENT OF DALE HO

Mr. Ho. Chairwoman Fudge, Ranking Member Davis, and Members of the Committee, thank you for the opportunity to testify. My name is Dale Ho, and I am the Director of the ACLU Voting Rights Project. My testimony today will focus on restrictions on voting based on false or exaggerated assertions about noncitizens registering to vote.

Time and again, such claims have evaporated under minimal scrutiny. Take Kansas. In 2011, Kansas passed a law requiring voter registration applicants to submit a citizenship document, like a birth certificate or a passport. It sounds innocuous, but the effects were devastating.

Over three years, more than 30,000 voter registration applicants were denied, about 12 percent of all applications during that period. One was our client Donna Bucci, who did not possess a copy of her birth certificate and couldn't afford one. Another was our client Wayne Fish, who was born on a decommissioned Air Force Base in Illinois and spent two years searching for his birth certificate. Two others were our clients Tad Stricker and T.J. Boynton, who actually showed their birth certificates at the DMV, which then failed to forward them along with their voter registration applications. All four were disenfranchised in the 2014 midterms.

We challenged the law, and at trial, then Kansas Secretary of State Kris Kobach claimed that there were more than 18,000 noncitizens registered to vote in Kansas. But his own expert witness at the trial estimated that of the 30,000 people whose registration applications were blocked under the law, more than 99 percent were actually United States citizens. The court found that the number of noncitizens on the list was, in fact, statistically indistinguishable from zero.

It took four separate lawsuits to block this law, which we did in 2018, but in his zeal to defend it, Kobach engaged in a disturbing pattern of evasion and lawlessness. He was sanctioned for concealing relevant documents. Kansas taxpayers paid a thousand dollar fine for that. The court found that he willfully disobeyed a preliminary injunction, and Kansas taxpayers paid approximately \$26,000 for that. And the court found a, quote, pattern of flaunting disclosure and discovery rules, and ordered him to take 6 hours of continuing legal education.

There is a similar story in Texas. In January, Texas Attorney General Ken Paxton tweeted, in capital letters, "voter fraud alert," claiming that almost 100,000 registrants in Texas were noncitizens. But that was false. Within a week, it came out that many of these voters were naturalized citizens who had already confirmed their citizenship. In Harris County alone, this translated to about 60 percent of 30,000 voters flagged there. And as to the remaining 12,000, an audit of 150 names chosen at random yielded no noncitizens.

Civil rights organizations, including MALDEF, the ACLU, and the Texas Civil Rights Project, sued to stop Texas from purging these voters. The court found that Texas "created [a] mess," which

“exemplifie[d] the power of the government to strike fear and intimidate the least powerful among us.” The case was settled with Texas taxpayers on the hook for \$450,000 in costs and attorney fees. Texas’ Secretary of State David Whitley departed from office in disgrace.

There are similar stories of inaccurate purges in Florida, Iowa, and Virginia detailed in my written testimony.

But the administration now seems intent on repeating these mistakes. In a case that I argued in the Supreme Court earlier this year, the Court blocked the administration’s effort to add a citizenship question to the 2020 Census, finding that the administration’s publicly stated purpose of Voting Rights Act enforcement was, quote, contrived. Indeed, the first person to suggest adding a citizenship question to the Census was the recently deceased Thomas Hofeller, known as the “Michelangelo of gerrymandering,” who conceived of it as the first step in a gerrymandering scheme that would be, in his words, “advantageous to Republicans and non-Hispanic Whites.” In other words, the Administration’s actual purpose was not to protect voting rights, but the opposite, to dilute the political influence of communities of color.

Despite the Court’s ruling, the Administration is still planning to produce citizenship data to facilitate gerrymandering. The Census Bureau is now asking States for driver’s license records that include citizenship data. Now, leaving aside the illicit discriminatory purpose, there are serious questions about the accuracy of such data, as demonstrated by the experiences in Texas, Kansas, and other States described in my written testimony.

In some, claims about widespread noncitizen registration have been used to justify restrictions that have prevented tens of thousands of Americans from voting, have often proved to be grossly exaggerated or downright false, and have undermined the public’s confidence in our elections. That is the opposite of election integrity.

Thank you. I look forward to answering any questions that you might have.

[The statement of Mr. Ho follows:]



WRITTEN STATEMENT OF  
DALE HO  
DIRECTOR, VOTING RIGHTS PROJECT  
AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

Voting Rights and Election Administration in America

Committee on House Administration

Hearing on October 17, 2019

Submitted on October 16, 2019



### 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 that capacity, I recently argued before the Supreme Court in *Department of Commerce v. State of New York*,<sup>1</sup> a case in which we successfully challenged the Administration's effort to add a citizenship question to the 2020 Census questionnaire, a move that would have had devastating consequences for the representation of communities of color across the United States. 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*.

As I explained last month in testimony before the House Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties,<sup>2</sup> the Supreme Court's decision in *Shelby County v. Holder*<sup>3</sup> unleashed a wave of voter suppression and other discriminatory voting laws unlike anything the country had seen in a generation.<sup>4</sup> Since *Shelby County* was decided, the ACLU has opened more than 60 new voting rights matters—including cases filed, amicus briefs, and investigations—and we currently have more than 30 active matters.<sup>5</sup> 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

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<sup>1</sup> 139 S. Ct. 2551 (2019).

<sup>2</sup> See Written Statement Before the House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, September 10, 2019, *available at* <https://docs.house.gov/meetings/JU/JU10/20190910/109895/HHRG-116-JU10-Wstate-HoD-20190910.pdf>.

<sup>3</sup> 570 U.S. 529 (2013).

<sup>4</sup> 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).

<sup>5</sup> These numbers are based on a recent review of the ACLU's internal case management system.

collectively are home to 161 members of the House of Representatives and wield 185 votes in the Electoral College.<sup>6</sup>

Although the ACLU has been very successful in blocking discriminatory voting changes (with an overall success rate of more than 80% in cases brought under Section 2 of the Voting Rights Act (VRA) since *Shelby County*<sup>7</sup>), we currently lack the tools needed to stop discriminatory changes to voting laws *before* they taint an election. In ten recent ACLU Section 2 cases that resulted in favorable outcomes for our clients, **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.<sup>8</sup> Our experience underscores the need for stronger voting rights protections that can address racial discrimination in voting before it happens.

**I. Restrictions on Voting Justified By False or Exaggerated Claims Concerning Non-Citizen Registration**

My testimony today will focus on one category of voter suppression tactics: unnecessary restrictions on registration and purges of eligible voters based on false or exaggerated assertions regarding noncitizens registering to vote.

As I explain below, some states have put obstacles directly in front of voter registration applicants by making the registration process itself more difficult, through onerous and unnecessary documentation requirements, creating a bureaucratic nightmare that has disenfranchised tens of thousands of voters in one state—Kansas—alone. Other states have attempted to identify noncitizens on their voter rolls, an unobjectionable goal, but one that is not served by using faulty database matching techniques and stale citizenship data. Such efforts have routinely produced false positives to the tune of tens of thousands of U.S. citizens misidentified as noncitizens and threatened with removal from the rolls. The disenfranchised are often voters of color. Meanwhile, from Kansas, to Florida, to Texas, to the Election Assistance Commission, elections officials who have pursued such policies have seen their claims about a purportedly widespread problem of noncitizen registration evaporate under the slightest scrutiny; and, more often than not, their efforts have resulted in professional embarrassment, often at considerable damage to their careers.

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<sup>6</sup> 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>.

<sup>7</sup> See Ho, *supra* note 2.

<sup>8</sup> See *id.*

## A. Onerous and Unnecessary Citizenship Documentation Requirements

### 1. Kansas

All states require voters to be citizens and require proof of citizenship to register to vote (for example, an attestation under penalty of perjury<sup>9</sup>), but in 2011, Kansas went further than that, enacting a requirement that voter registration applicants submit a copy of a legal document establishing U.S. citizenship, such as a birth certificate or a passport. In so doing, Kansas became the only state requiring a copy of a physical citizenship document in order to register to vote.<sup>10</sup>

Kansas's law went into effect in 2013, and the effects were devastating for voter registration in the state. By March 2016, after the law had been in effect for a little more than three years, a total of 30,732 voter registration applicants had been denied registration, representing "approximately 12% of the total voter registration applications submitted since the law was implemented."<sup>11</sup> It was as if one out of every eight voter registration applications were thrown in the trash. An analysis by political scientist Michael McDonald from the University of Florida determined that affected voters were disproportionately under the age of 30 (43.2% of rejected registration applicants) and unaffiliated with a political party (53.4% of rejected applicants).<sup>12</sup> And voter registration drives ground to a halt, as the League of Women Voters reported that, after the law went into effect, the number of completed registrations it collected from drives fell by 90%.<sup>13</sup>

The law affected a wide swath of voters, in varying ways. For some voters, the law was simply too onerous, as several of our clients either could not afford or could not locate their birth certificates in time to register before the 2014 midterm. One of our clients was Donna Bucci,

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<sup>9</sup> As the Tenth Circuit has noted, *see, Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016), Congress chose to rely on an attestation to establish eligibility for a wide range of federal programs. *See, e.g.,* 7 U.S.C. § 2020(e)(2)(B)(v) (requiring state applications for Supplemental Nutrition Assistance Program aid be signed under penalty of perjury as to the truth of the information contained in the application and the citizenship or immigration status of household members); 26 U.S.C. § 6065 (requiring that any tax "return, declaration, statement, or other document" be "verified by a written declaration that it is made under the penalties of perjury"); 42 U.S.C. § 1395w-114(a)(3)(E)(iii)(I) (requiring "an attestation under penalty of perjury" as to assets for receipt of prescription drug plan subsidies); 42 U.S.C. § 1436a(d)(1)(a) (requiring an attestation of citizenship or "satisfactory immigration status" for the receipt of housing assistance).

<sup>10</sup> Three states have similar laws: Alabama, Arizona, and Georgia. Alabama and Georgia have never enforced their respective documentary proof-of-citizenship laws and have indicated no definitive plans to do so; Arizona's law is less stringent, and can be satisfied with a driver's license *number*, in lieu of a copy of a *document*. *See* A.R.S. § 16-166(F)(1).

<sup>11</sup> *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1068 (D. Kan. 2018).

<sup>12</sup> *Id.* at 1069.

<sup>13</sup> *Id.* at 1071.

who works a low-wage job as “a cook in [a] prison kitchen on the 3:00 a.m. to 12:00 p.m. shift,” does “not possess a copy of her birth certificate or a passport,” and “cannot afford the cost of a replacement birth certificate from Maryland,” which “would impact whether she could pay rent.”<sup>14</sup> She was unable to vote in the 2014 midterm. Another was Wayne Fish, who “works the overnight shift at an American Eagle distributor,” “was born on a decommissioned Air Force base in Illinois,” and who spent two years searching for his birth certificate until he found it in his deceased mother’s safe; he was unable to vote in the 2014 midterm.<sup>15</sup>

Others were disenfranchised because the law was a confusing, bureaucratic mess. Several of our other clients, including Tad Stricker and T.J. Boynton, actually showed documentary proof of citizenship at the time that they obtained their driver’s licenses and applied to register to vote, but were never registered because the state motor vehicle offices did not send elections officials their proof of citizenship documents along with their voter registration applications. Neither Mr. Stricker nor Boynton were told that their registrations had been rejected until they went to vote on Election Day in the 2014 midterm, and by then it was too late.<sup>16</sup>

The ACLU challenged the law on several dimensions in a series of four different lawsuits. In the lead case, the U.S. Court of Appeals for the Tenth Circuit, in a 2016 preliminary injunction opinion by Judge Jerome Holmes, an appointee of George W. Bush, found that the law had caused a “mass denial of a fundamental constitutional right,” and partially blocked the law for the 2016 election.<sup>17</sup>

The case was then sent back to the district court so that then-Kansas Secretary of State Kris Kobach could mount a defense of the law, which he asserted was necessary to prevent noncitizens from registering to vote. Kobach—who famously and falsely claimed that Donald Trump had won the popular vote in 2016 (once all of the supposedly illegal votes were subtracted, of course<sup>18</sup>)—had championed the law to address what he claimed was an epidemic of noncitizen registration in Kansas numbering in the thousands. But when the case eventually went to trial in 2018, the evidence presented by Kansas showed that the law prevented more than 30,000 eligible Kansans from voting while doing nothing to promote election integrity. At the trial, Kansas’s own expert witness estimated that “more than 99% of the [30,000] individuals” whose registration applications were suspended for failure to provide DPOC “are United States citizens,” and the District Court found that his estimate as to the number of noncitizens on the suspense list was “statistically indistinguishable from zero.”<sup>19</sup>

<sup>14</sup> *Id.* at 1075

<sup>15</sup> *Id.* at 1074-75.

<sup>16</sup> *Id.* at 1075-78.

<sup>17</sup> *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016).

<sup>18</sup> See Hunter Woodall, “Kris Kobach agrees with Donald Trump that ‘millions’ voted illegally but offers no evidence,” *Kansas City Star*, Nov. 30, 2016, available at <https://www.kansascity.com/news/politics-government/article117957143.html>.

<sup>19</sup> *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1092 (D. Kan. 2018).

Kansas also presented evidence from its own investigations showing that, “[a]t most,” a total of only 39 non-citizens became registered to vote in Kansas over the last 19 years—about two per year, or a total of approximately 0.002% of the registered voters in Kansas. And the state’s own records indicated that even this paltry handful of registrations could be “largely explained by administrative error, confusion, or mistake,” with noncitizens sometimes becoming inadvertently registered even when they affirmatively stated that they were noncitizens on their DMV applications (for example, by checking the Box “No” in response to the question “Are you a citizen?”).<sup>20</sup> While errors in a voter registration system should always be addressed, some mistakes are inevitable. To put these numbers in perspective, evidence at trial showed that the number of noncitizens registered to vote in Kansas was about one-tenth the number of registrants in Kansas who have dates of registration that precede their dates of birth (approximately 400 people total)—but no one has expressed concern about an epidemic of illegal registration by the unborn. Rather, everyone recognizes that in a state with 1.8 million voters, some administrative errors are inevitable.

U.S. District Judge Julie Robinson, another George W. Bush appointee and Chief Judge for the District of Kansas, ultimately issued a decision permanently blocking the law in its entirety prior to the 2018 midterm elections. But the trial revealed a disturbing pattern of lawlessness by then-Kansas Secretary of State Kris Kobach that merits briefly mentioning here. First, the court sanctioned Kobach for failing to disclose the existence of a relevant document in the litigation; Kansas taxpayers paid a \$1,000 fine for that omission.<sup>21</sup> Second, the court found that Kobach willfully “disobeyed th[e] Court’s preliminary injunction order,” by “fail[ing] to ensure that voter registration applicants covered by the preliminary injunction order became fully registered,” and “willfully failed to make sure that the county election officials were clearly and effectively trained to enforce this Court’s orders.”<sup>22</sup> The State of Kansas declined to appeal that ruling, and was forced to pay over \$26,000 in attorney’s fees for Kobach’s willful defiance of the law.<sup>23</sup>

Second, the court also found that, at trial, Kobach engaged in “a pattern and practice ... of flaunting disclosure and discovery rules that are designed to prevent prejudice and surprise at trial,” noting that “[i]t [wa]s not clear to the Court whether [Kobach] repeatedly failed to meet his disclosure obligations intentionally or due to his unfamiliarity with the federal rules,” and thus “impose[d] a CLE requirement of 6 hours for the 2018–2019 reporting year in addition to any other CLE education required by his law license.”<sup>24</sup> In my career, I have never in any other case witnessed conduct by opposing counsel that was so outrageous as to warrant imposition of continuing legal education courses.

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<sup>20</sup> *Id.* at 1102.

<sup>21</sup> See *Fish v. Kobach*, 267 F. Supp. 3d 1297, 1301 (D. Kan. 2017), *appeal dismissed*, No. 17-3161, 2017 WL 7065741 (10th Cir. Aug. 30, 2017).

<sup>22</sup> *Fish*, 309 F. Supp. 3d at 1168.

<sup>23</sup> *Fish v. Kobach*, No. 16-2105-JAR, 2018 WL 3647132, at \*8 (D. Kan. Aug. 1, 2018).

<sup>24</sup> *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1118–19 (D. Kan. 2018).

The case is now back on appeal in the Tenth Circuit, where I argued it last April. A final decision from the court is pending.

## 2. *The Election Assistance Commission*

Around the same time of the Kansas case, we also litigated a related case in the D.C. Circuit, *League of Women Voters v. Newby*.<sup>25</sup> The case grew out of the Supreme Court's decision in *Arizona v. Inter-Tribal Council of Arizona* ("ITCA"),<sup>26</sup> which held that Arizona was prohibited from requiring individuals to submit documentary proof of citizenship when they apply to register to vote using the federal voter registration form unless approved by the U.S. Election Assistance Commission ("EAC"). After the Supreme Court's decision in *ITCA* Arizona and Kansas submitted requests to the EAC to include an instruction to the federal voter registration form indicating that documentary proof of citizenship would be required to register to vote in those states. The EAC rejected those requests, in a formal decision finding that documentary proof of citizenship requirements were inconsistent with the purposes of the NVRA, and were not shown to be necessary by any evidence provided by the States.<sup>27</sup> Arizona and Kansas then filed a lawsuit seeking to direct the EAC to include the documentary proof of citizenship requirement in the federal form instructions for their states, but lost in the Tenth Circuit.<sup>28</sup>

Nevertheless, in 2016, then-new EAC Executive Director, Brian Newby—acting unilaterally and unlawfully without the approval of a majority of the EAC—sent letters to the secretaries of state of Alabama, Georgia, and Kansas stating, without explanation, that he would allow them to require documentary proof of citizenship.<sup>29</sup> Newby was a former local election official in Kansas and had been appointed to his local position by and had ties with then-Kansas Secretary of State, Kris Kobach; Newby had also publicly supported Kansas' efforts to achieve a documentary proof of citizenship requirement.<sup>30</sup> The ACLU, representing private plaintiffs, along with the Lawyers' Committee for Civil Rights Under Law, the Brennan Center for Justice, and Project Vote, filed suit against the EAC, arguing that Newby's action was a violation of Administrative Procedure Act. The U.S. Court of Appeals for the D.C. Circuit agreed, finding that there was "a substantial risk that citizens will be disenfranchised in the present federal

<sup>25</sup> 838 F.3d 1 (D.C. Cir. 2016).

<sup>26</sup> 570 U.S. 1 (2013).

<sup>27</sup> *League of Women Voters v. Newby*, Case No. 1:16-cv-00236, ECF No. 1, Complaint, at 2-3 (D.D.C. Feb. 12, 2016).

<sup>28</sup> See *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2891 (2015).

<sup>29</sup> *League of Women Voters of the United States v. Newby*, 195 F. Supp. 3d 80 (D.D.C.).

<sup>30</sup> *League of Women Voters v. Newby*, Case No. 1:16-cv-00236, ECF No. 1, Complaint, at 3 (D.D.C. Feb. 12, 2016).

election cycle,” and preliminarily blocked the new documentary proof-of-citizenship registration instructions from coming into effect.<sup>31</sup>

Fortunately, Mr. Newby’s tenure as Executive Director of the EAC recently ended, amid reports of mismanagement, an “alienated and confused ... workforce,” “a staff exodus that included nine office directors,” and “concerns about self-dealing” over a proposed succession plan that would have given him a new role at the commission.<sup>32</sup>

## **B. Inaccurate Purges of Purported Non-Citizens**

It is often suggested that states should compare their voter lists to other databases containing information on citizenship to identify registrants who are noncitizens, and who should be removed from the rolls. In theory, such efforts could provide states with a means of identifying ineligible noncitizens who should never have been registered in the first place. In practice, however, such efforts have often resulted in the inaccurate flagging of legitimate voters due to incomplete, erroneous, or out-of-date data, and poor database matching techniques. All too often, the result has been the production of false positives that misidentify registrants as noncitizens, ginning up inaccurate or exaggerated fears of noncitizen registration.

### *1. The Department of Homeland Security Systematic Alien Verification for Entitlements (SAVE) Database*<sup>33</sup>

One federal database sometimes referenced as a source of citizenship information is the Department of Homeland Security’s Systematic Alien Verification for Entitlements (“SAVE”) database. The SAVE system is used to verify immigration status when an individual interacts with the state, for example, while applying for a driver’s license.<sup>34</sup> SAVE relies on records from various agency databases, all of which feed into a central system run by the United States Citizenship and Immigration Services (USCIS),<sup>35</sup> to confirm that immigration information provided by an individual is correct at the time it is provided.

<sup>31</sup> *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12-13 (D.C. Cir. 2016).

<sup>32</sup> Eric Geller, “Key federal election agency parting ways with embattled top staffer,” *Politico*, Sept. 18, 2019, available at <https://www.politico.com/story/2019/09/18/election-assistance-commission-brian-newby-1501884>.

<sup>33</sup> The following description of inaccurate purges based on the SAVE database in Florida and Iowa is derived from previous testimony that I submitted to this Committee. See Dale Ho, Written Statement before the House Committee on Administration, Oct. 25, 2017, available at <https://www.aclu.org/other/written-statement-dale-ho-house-committee-administration-hearing-state-voter-registration-list>.

<sup>34</sup> Office of Inspector Gen., Dep’t of Homeland Sec., OIG-12-125, U.S. Citizenship and Immigration Services Systematic Alien Verification for Entitlements Program Issues 4 (Sept. 2012), [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-125\\_Sep12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-125_Sep12.pdf).

<sup>35</sup> See *id.*

It is critically important to recognize what SAVE is *not*. SAVE “does not include a comprehensive and definitive listing of U.S. citizens.”<sup>36</sup> Moreover, even for those noncitizens that are listed in the SAVE database, the program’s data are not systematically updated to reflect changes in immigration status.<sup>37</sup> Consequently, SAVE offers nothing more than a collection of snapshots of various individual’s respective statuses in the US immigration system at certain moments in time—and those statuses can, and often do, change.

For this reason, DHS has cautioned against relying heavily on SAVE data to verify citizenship and confirm voter eligibility.<sup>38</sup> Improper use of SAVE data for voter list maintenance could, for example, disenfranchise eligible citizens<sup>39</sup> who have become naturalized citizens since their entry in the SAVE database. Individuals with the same birthdate and name as non-citizens in the SAVE system are also vulnerable to wrongful removal<sup>40</sup> from voter registration lists. In other words, using the SAVE database for voter registration may result in the purging of legitimate voters due to out-of-date information or mistaken identity. Indeed, several states that have attempted to use SAVE for voter registration purposes have seen those efforts declared unlawful by courts.

<sup>36</sup> See Letter from Thomas E. Perez to Ken Detzner, Fla. Sec. of State, dated June 11, 2012 at 3, <https://assets.documentcloud.org/documents/805150/us-dep-of-justice-save-letter-1.pdf>.

<sup>37</sup> Immigration Policy Council, Fact Sheet, *Using the Systematic Alien Verification for Entitlements (SAVE) Program for Voter Eligibility Verification* at 3, Am. Immigration Council (Aug. 2012), <https://www.americanimmigrationcouncil.org/sites/default/files/research/usingthesaveprogramsforvotereligibilityverification.pdf>.

<sup>38</sup> Amy Sherman, *Trump's Commission vice chair Kris Kobach says Immigration data not bounced against voter rolls*, PolitiFact, May 23, 2017, <http://www.politifact.com/florida/statements/2017/may/23/kris-kobach/trumps-election-commission-chair-kris-kobach-says-/>. See also Memorandum, Dep’t of Homeland Security, Agreement Between the Dep’t of Homeland Security, U.S. Citizenship and Immigration Services, and Fla. Dep’t of State/Division of Elections State or Local Government Agency, 12 (Aug. 14, 2012), <https://www.documentcloud.org/documents/805148-moa-dhs-fl-1.html>.

<sup>39</sup> In 2015, over 730,000 people became naturalized U.S. citizens. See Dep’t of Homeland Security Office of Immigration Statistics, *Table 20. Petitions for Naturalized Filed, Persons Naturalized, And Petitions For Naturalization Denied: Fiscal Years 1907-2015* (Dec. 15, 2016), <https://www.dhs.gov/immigration-statistics/yearbook/2015/table20>.

<sup>40</sup> When Colorado used SAVE data to identify noncitizen voters in 2012, the State sent citizenship confirmation letters to 3,903 registered voters confirming immigration status. Further checks found that 141 of the 3,903 individuals were noncitizens – or .004 percent of all Colorado voters – and 35 of those 141 had voted. However, the number may be fewer than 35, as the Denver Clerk’s Office subsequently found documentation validating the citizenship of 8 of the 35 individuals in question. *Voter fraud probe fizzles*, The Associated Press, Tampa Bay Online, Sep. 25, 2012, <http://www.tbo.com/news/voter-fraud-probe-fizzles-511998>.



*a. Florida*

Florida's experience provides a cautionary tale. In 2012, Florida officials launched an aggressive campaign to remove purported noncitizens from the state's voter rolls. As part of these efforts, the state filed a lawsuit against the federal government to obtain access to the SAVE database. That effort was met with serious objections from the Department of Justice, which, among other things warned that information in the SAVE database was often out-of-date, and would often not account for the fact that many individuals listed as noncitizens in SAVE have since that time naturalized.<sup>41</sup> In ultimately agreeing to grant Florida access to SAVE, DHS warned about potential inaccuracies in SAVE, and attached a Fact Sheet stating that "[t]he inability of the SAVE Program to verify [an individual's] citizenship does not necessarily mean that [the individual is] not a citizen of the United States and [is] ineligible to vote."<sup>42</sup>

In its efforts to identify noncitizens, Florida officials initially stated that "nearly 200,000 registered voters may not be U.S. citizens."<sup>43</sup> Upon review, however, that numbers shrunk dramatically, with the Secretary of State's office sending a list of 2,700 possible non-citizens on the voter rolls to county election supervisors for verification,<sup>44</sup> instructing local officials to notify all individuals identified by the State as possible noncitizens, and to require them to provide proof of citizenship within 30 days or be removed from the voting rolls.

But even the 2,700 figure quickly collapsed under scrutiny. After diverting resources away from improving election administration and lawful voter registration, officials determined the number of ineligible voters was not 2,700, but actually less than one-tenth of that number (or fewer than 200 people<sup>45</sup>). Reports vary, but PolitiFact was ultimately able to confirm that a total of only 85 noncitizens were removed from the rolls as a result of these efforts,<sup>46</sup> in a state of

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<sup>41</sup> See *United States v. Florida*, 870 F. Supp. 2d 1346, 1347-8 (N.D. Fla. 2012). (Noting the state's original plan to use DHS data to remove noncitizens from voter rolls had "major flaws," including wrongful purging of voters due to a "lag between naturalization" and updated individual immigration status in the database.)

<sup>42</sup> See DHS Memorandum of Agreement, *supra* note 38.

<sup>43</sup> Gary Fineout, *Nearly 200,000 Florida Voters May Not be Citizens*, NBC Miami, May 11, 2012, <http://www.nbcmiami.com/news/local/Nearly-200000-Florida-Voters-May-Not-Be-Citizens-151212725.html>

<sup>44</sup> See Rachel Weiner, *Florida's voter purge explained*, Wash. Post, June 18, 2012, [https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNIV\\_blog.html?utm\\_term=.f9e1842173a2](https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNIV_blog.html?utm_term=.f9e1842173a2).

<sup>45</sup> See *id.*

<sup>46</sup> See Amy Sherman, *Homeland Security warned that the SAVE database is not foolproof way to verify the voter rolls, LWV says*, PolitiFact: Florida, Oct. 30, 2013, <http://www.politifact.com/florida/statements/2013/oct/30/league-women-voters-florida/league-women-voters-says-homeland-security-warned-/>.

more than 11 million voters at the time<sup>47</sup> (or about 0.00077% of the registered voters in the State). The upshot is that thousands of U.S. citizens were wrongfully designated as noncitizens and threatened with removal from the rolls. One such voter was Brooklyn-born Bill Internicola, a World War II veteran who fought at the Battle of the Bulge.<sup>48</sup> An analysis conducted by the Miami Herald indicated that 87% of those identified by the state as noncitizens on the rolls were minorities and 58% were Hispanic.<sup>49</sup>

Litigation ensued over Florida's attempts to use SAVE. The U.S. Court of Appeals for the Eleventh Circuit,<sup>50</sup> after noting that the SAVE database matching results were "far from perfect,"<sup>51</sup> held that voters in Florida "face a realistic danger of being [wrongfully] identified in the Secretary's removal programs because of their names or status as naturalized citizens," given the "foreseeable risk of false positives and mismatches based on user errors, problems with the data-matching process, flaws in the underlying databases, and similarities in names and birthdates."<sup>52</sup> The State was ultimately ordered to discontinue its purge based on the use of SAVE data.

*b. Iowa*

Iowa's experience was similar. In 2013, then-Iowa Secretary of State Matt Schultz announced that his office had reached an agreement with DHS to access the SAVE database, with the intention of comparing SAVE information to Iowa voting registration records.<sup>53</sup> Secretary of State Schultz's plans for a voter purge based on SAVE data were challenged by the ACLU of Iowa and the League of United Latin American Citizens in Iowa state court, arguing that the purge "exceeded his statutory authority" and created "a substantial risk of erroneously depriving qualified voters in Iowa [of] their fundamental right to vote."<sup>54</sup> The court ultimately agreed, blocking the purge, and finding that it "would chill the right to vote and cause irreparable

<sup>47</sup> See Weiner, *supra* note 44.

<sup>48</sup> Marc Caputo, *How Rick Scott's noncitizen voter purge started small and then blew up*, Miami Herald, June 12, 2012, <http://www.miamiherald.com/news/politics-government/article1940542.html>.

<sup>49</sup> *58 percent of voters targeted in noncitizen hunt are Hispanic. Whites, GOP least likely to face purge*, Miami Herald (May 13, 2012), <http://miamiherald.typepad.com/nakedpolitics/2012/05/58-percent-of-voters-targeted-in-noncitizen-hunt-are-hispanic-whites-gop-least-likely-to-face-purge.html>.

<sup>50</sup> *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

<sup>51</sup> *Id.* at 1339.

<sup>52</sup> *Id.* at 1342.

<sup>53</sup> *Iowa voting records to be compared to federal database*, KCCI Des Moines, Aug. 14, 2013, <http://www.kcci.com/article/iowa-voting-records-to-be-compared-to-federal-database/6882792>.

<sup>54</sup> First Am. Pet. ¶¶ 22-23, *ACLU of Iowa v. Schultz*, Case No. CV 9311, (Dist. Ct. Polk Cty. Aug. 8, 2012), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/2012-08-08firstamendedpetitionforjudicialreview.pdf>.

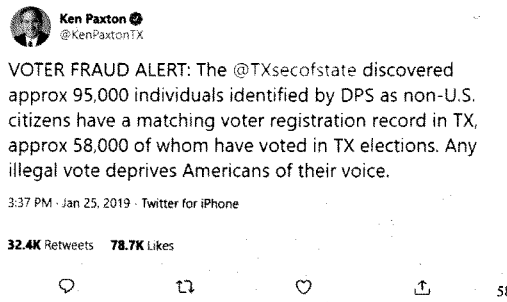
harm.”<sup>55</sup> The office of the Iowa Secretary of State eventually abandoned an appeal of that ruling,<sup>56</sup> effectively conceding that Iowa’s efforts to use SAVE data to purge the voter rolls were unlawful and ending those efforts.

## 2. Driver’s License Databases

Another potential source of information about citizenship status can be found in state department of motor vehicle records, as driver’s license applicants frequently submit legal documents that indicate their citizenship status. In theory, accurate matching techniques that compare such driver’s license records to voter files could be used to identify noncitizens who have become registered to vote, and the ACLU has so noted in our Kansas litigation.<sup>57</sup> In practice, however, our experience has been that comparisons between DMV data and voter registration lists have produced more far more false positives than actual evidence of noncitizen registration, due to poor matching techniques and out-of-date information.

### a. Texas

In January of this year, the Attorney of General of Texas, Ken Paxton, tweeted alarming news: a “VOTER FRAUD ALERT,” claiming that nearly 100,000 registered voters in Texas had supposedly been identified as noncitizens, via a comparison to data held by the Texas Department of Public Safety, which maintains the state’s driver’s license records:



<sup>55</sup> *Id.*, Ord. on Mot. for Review on the Merits at 5 (Dist. Ct. Polk County Nov. 12, 2013), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/RulingforMotionforReview11-12-13.pdf>.

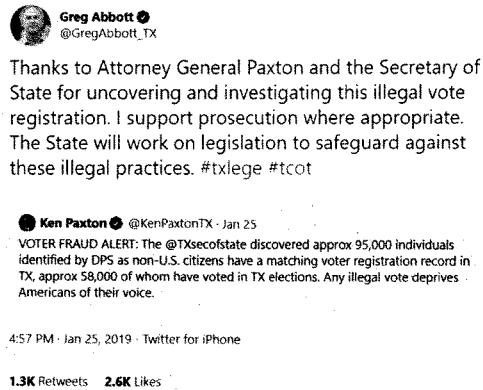
<sup>56</sup> Jason Noble, *Controversial Iowa voter rules will not take effect*, Des Moines Register, Mar. 13, 2015, <http://www.desmoinesregister.com/story/news/politics/2015/03/13/voter-registration-lawsuit-resolved-rules-invalidated/70280104/>.

<sup>57</sup> See *Fish*, 309 F. Supp. 3d at 1105.

<sup>58</sup> Ken Paxton, Twitter, Jan. 25, 2019, available at <https://twitter.com/kenpaxtonTX/status/1088898595653386240?lang=en>.

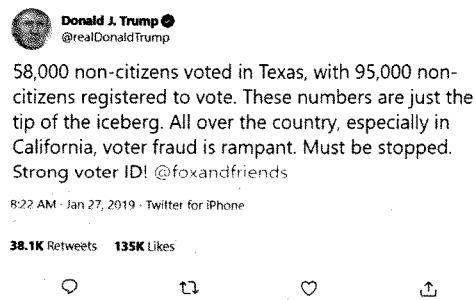
More than 78,000 people liked Paxton's tweet.

Texas Governor Greg Abbott followed up by thanking Attorney General Paxton and the Texas Secretary of State for "uncovering and investigating this illegal vote registration":



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Not to be outdone, the President was soon in on the act, claiming that 58,000 noncitizens had voted in Texas:



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About 135,000 people liked the President's tweet.

<sup>59</sup> Greg Abbott, Twitter, Jan. 25, 2019, available at [https://twitter.com/gregabbott\\_tx/status/1088918898643271680?lang=en](https://twitter.com/gregabbott_tx/status/1088918898643271680?lang=en).

<sup>60</sup> Donald J. Trump, Twitter, Jan. 27, 2019, available at <https://twitter.com/realDonaldTrump/status/1089513936435716096>.

But there was one problem: all of this was false. As reported by the Texas Tribune, within a week, after the list of supposed noncitizens who had registered to vote was disseminated to Texas counties, “the number of registered voters flagged by the state began to plummet” on just a cursory inspection, as many of the flagged registrants were *naturalized citizens* who had *already* confirmed their citizenship: “[i]n Harris County alone, the state’s flub translated to about 18,000 voters [out of approximately 30,000 flagged in the county] — about 60 percent of the original list — whose citizenship status shouldn’t have been questioned.”<sup>61</sup> After culling hundreds of duplicates from its list, Harris County was left with about 12,000 potential noncitizen registrants, but “[a]n audit of 150 names chosen at random yielded no noncitizens, so officials there declined to take further action.”<sup>62</sup>

A coalition of civil rights organizations, including MALDEF, the ACLU of Texas, the ACLU, and the Texas Civil Rights Project filed various lawsuits to stop the purging of voters based on the inaccurate match process, and just “[t]hree months after first questioning the citizenship status of almost 100,000 registered voters, the Texas Secretary of State has agreed to end a review of the voter rolls for supposed noncitizens that was flawed from the start.”<sup>63</sup> The settlement came only after a federal district court found that the Secretary of State had “created [a] mess,” and that Texas had engaged in “ham-handed and threatening correspondence” with voters who had been flagged, which, in the court’s view, “exemplifie[d] the power of government to strike fear and anxiety and to intimidate the least powerful among us.”<sup>64</sup> “The state [ended up] on the hook for \$450,000 in costs and attorney fees for the plaintiffs’ lawyers.”<sup>65</sup>

Secretary of State David Whitley ended up departing from office in disgrace.<sup>66</sup> But Texas Attorney General Paxton, Governor Abbott, or President Trump have never retracted their false statements on Twitter about a supposed epidemic of noncitizen voter registration in Texas.

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<sup>61</sup> Alex Ura, “‘Someone did not do their due diligence’: How an attempt to review Texas’ voter rolls turned into a debacle,” *Texas Tribune*, Feb. 1, 2019, available at <https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/>.

<sup>62</sup> Niraj Chokshi, “Federal Judge Halts ‘Ham-Handed’ Texas Voter Purge,” *New York Times*, Feb. 28, 2019, available at <https://www.nytimes.com/2019/02/28/us/texas-voter-rolls.html>.

<sup>63</sup> Alex Ura, “Texas will end its botched voter citizenship review and rescind its list of flagged voters,” *Texas Tribune*, April 26, 2019, available at <https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/>.

<sup>64</sup> *Texas League of United Latin American Citizens v. Whitley*, Case No. 5:19-cv-00074-FB, ECF No. 61 at 1, 4 (W.D. Tex. Feb. 27, 2019).

<sup>65</sup> Ura, *supra* note 63.

<sup>66</sup> Alex Ura, “Texas Secretary of State David Whitley departs as legislative session ends,” *Texas Tribune*, May 27, 2019, available at <https://www.texastribune.org/2019/05/27/texas-secretary-state-david-whitley-forced-leave-office/>.

*b. Kansas, Again*

In our Kansas documentary proof of citizenship litigation described above, then-Kansas Secretary of State Kobach similarly relied on evidence of supposed noncitizen registration developed from driver's license data (while, bizarrely, simultaneously claiming that he could not use such data to ferret out noncitizen registration).

First, Kobach's office compared the Kansas voter rolls to a list of holders of temporary driver's licenses ("TDLs"), a type of license only available in Kansas to individuals who, at the time of their initial application, are temporary visitors from other countries. Kobach claimed to have identified 79 individuals who had either registered or who attempted to register to vote, who were TDL holders, but that number collapsed under scrutiny. As noted above, the court found that "many confirmed instances of noncitizen registration or attempted registration in Kansas were due to either applicant confusion or mistake."<sup>67</sup> Moreover, of the 79 TDL holders flagged by Kobach, only 14 of those individuals had actually registered to vote; the vast majority had submitted some type of application but were identified and rejected.<sup>68</sup> In a state of approximately 1.8 million registrants, only one of these 14 individuals had ever actually voted.<sup>69</sup> And the state's own expert witness at trial conceded that it was possible that some of these individuals may have naturalized before registering to vote, and "that a person is not necessarily a noncitizen simply by virtue of appearing in the TDL file."<sup>70</sup>

Next Kobach's expert witness conducted a telephone survey of 37 TDL holders—6 of whom stated that they were registered or had attempted to register to vote.<sup>71</sup> From that fraction—6 out of 37—Kobach's expert estimated that 16.5% of noncitizens in Kansas are registered to vote, a total of 18,000 noncitizens registered in the state.<sup>72</sup> Kobach described that number in his opening statement at the trial as the best estimate of noncitizen registration in Kansas. But that number also collapsed under minimal scrutiny. Besides the absurdly small sample size, which is obviously too small to draw scientifically valid statistical inferences, Kobach's own expert admitted that his sample of TDL holders may have included citizens. Moreover, a search in Kansas voter file—which includes every person who has submitted a registration form in the state, even those who apply but fail to become registered—revealed that none of these individuals had ever actually even applied to register to vote.<sup>73</sup> If anything, Kobach's survey of TDL holders suggested that there were *zero* noncitizens in Kansas who had even attempted to register to vote.

<sup>67</sup> See *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1103 (D. Kan. 2018)

<sup>68</sup> See *id.* at 1081.

<sup>69</sup> See *id.*

<sup>70</sup> *Id.*

<sup>71</sup> See *id.* at 1089-90.

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

c. *Virginia*

In 2016 and 2017, the Public Interest Legal Foundation (“PILF”) published a pair of reports titled “Alien Invasion,” featuring a UFO on the cover, and hyping a problem of supposedly widespread noncitizen registration in Pennsylvania and Virginia. The reports “included names, phone numbers, addresses and Social Security numbers of individuals removed from voter rolls allegedly because they were noncitizens.”<sup>74</sup> Many of named individuals, however, turned out to be U.S. citizens. PILF was sued for defamation and voter intimidation, and discovery revealed that PILF “had in its possession internal emails among ... election officials raising concerns about how the records were being misrepresented,” as well as “other warnings about citizens being mislabeled as noncitizens.”<sup>75</sup> According to Protect Democracy and other groups who represented the plaintiffs, PILF was “aware th[at] people they identified in their report might be citizens,” but “ignored red flags,” including “warnings [that] came from Virginia election officials.”<sup>76</sup>

PILF ultimately settled the case. Under the terms of the settlement, PILF lawyer J. Christian Adams was required to “offer[] a written apology to ... four Virginia voters” whom PILF had falsely identified as noncitizens, and “also agreed to remove the personal information of the accused from the reports and add a statement to the front of them acknowledging that they falsely accused people of being noncitizens.”<sup>77</sup>

d. *The Administration's Plans for the 2020 Census*

As we all know, the Supreme Court blocked the Trump Administration from adding a citizenship question to the 2020 Census questionnaire, concluding in an opinion by Chief Justice John Roberts that the Administration’s publicly-stated purpose of Voting Rights Act enforcement was a “contrived” “distraction.”<sup>78</sup> But it was worse than that. In fact, Commerce Secretary Wilbur Ross’s chief advisor on Census issues testified that the “first person” to suggest adding a citizenship question to the 2020 Census to the incoming Administration was the

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<sup>74</sup> Tierney Sneed, “Ex-Trump Voter Fraud Commissioner Settles Lawsuit Over ‘Alien Invasion’ Reports *Talking Points Memo*, July 17, 2019, available at <https://talkingpointsmemo.com/muckraker/trump-voter-fraud-comissioner-defamation-lawsuit-settled>.

<sup>75</sup> *Id.*

<sup>76</sup> Sam Levine, “Voter Fraud Activist Will Apologize To Citizens He Accused Of Being Illegal Voters,” *Huffington Post*, July 18, 2019, available at [https://www.huffpost.com/entry/j-christian-adams-pilf-settlement\\_n\\_5d309002e4b0419fd3298ee6](https://www.huffpost.com/entry/j-christian-adams-pilf-settlement_n_5d309002e4b0419fd3298ee6).

<sup>77</sup> *Id.*

<sup>78</sup> *Department of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

recently-deceased Dr. Thomas Hofeller,<sup>79</sup> widely known as the “the Michelangelo of gerrymandering,”<sup>80</sup> who had described adding the question as the first step in a redistricting strategy that would be “advantageous to Republicans and Non-Hispanic Whites.”<sup>81</sup> In other words, the Administration’s actual purpose in adding a citizenship question to the Census was the diametric opposite of their stated reason: not to protect minority voting rights through better enforcement of the Voting Rights Act, but to dilute the political influence of voters of color.

Although the Court has blocked the question for the 2020 Census questionnaire, the Administration is moving forward with its plan to produce citizenship data that would facilitate gerrymandering efforts, collected through various administrative sources. Earlier this week, the AP reported that, as part of this effort, “[t]he U.S. Census Bureau is asking states for drivers’ license records that typically include citizenship data.”<sup>82</sup> Leaving aside the illicit—and apparently unconstitutional—discriminatory purpose behind this effort, there are serious questions about the accuracy of citizenship data culled from state motor vehicle records, as evidenced by the experiences in Texas, Kansas, and Virginia.

### Conclusion

In sum, claims about widespread noncitizen registration and voting have proven time and again to be largely unsubstantiated, grossly exaggerated, or sometimes downright false. Yet these claims have been used repeatedly to justify restrictions on registration and voting. There should be no doubt: election integrity is not served by these measures. To the contrary, such efforts have prevented tens of thousands from voting, threatened many more with removal from the rolls, and have undermined the American public’s confidence in our elections.

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

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<sup>79</sup> *New York v. Department of Commerce*, No. 18-CV-2921, ECF No. 595, NYIC Pls.’ Letter Mot. for an Order to Show Cause (“Show Cause Mot.”) at 1, No. 18-CV-2921 (S.D.N.Y. May 30, 2019).

<sup>80</sup> Michael Wines, “Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question,” *N.Y. Times*, May 30, 2019, *available at* <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

<sup>81</sup> *New York v. Department of Commerce*, No. 18-CV-2921, ECF No. 595-1, App. to NYIC Pls.’ Letter Mot. for an Order to Show Cause (“Show Cause App.”) Ex. D at 9 (PDF p. 63), (S.D.N.Y. May 30, 2019).

<sup>82</sup> “Census Bureau asks states for licenses that typically include citizenship data,” *Associated Press*, October 14, 2019, *available at* <https://www.cbsnews.com/news/census-bureau-asks-states-for-licenses-that-typically-include-citizenship-data/>.



Chairwoman FUDGE. Thank you.  
Mr. Ross, you are recognized for five minutes.

#### STATEMENT OF DEUEL ROSS

Mr. ROSS. Thank you.

Good morning, Chairwoman Fudge, Ranking Member Davis, and the Committee. My name is Deuel Ross. I am a senior counsel at the NAACP Legal Defense Fund, or LDF. Thank you for the opportunity to testify about voting rights in the United States today.

Since its founding in 1940 by Thurgood Marshall, LDF has led the fight to protect and advance the voting rights for Black Americans and others. LDF's efforts, however, have gotten much more difficult since 2013 when the U.S. Supreme Court decided *Shelby County v. Holder*. LDF attorneys argued Shelby County in the Supreme Court in defense of Section 5 of the Voting Rights Act.

As you know, Section 5 required covered States or jurisdictions with histories of discrimination to seek preclearance from the U.S. Department of Justice or a D.C. Federal court before implementing change related to voting. The States had the burden of proving that a change was nondiscriminatory. The Supreme Court, however, held that Congress had not sufficiently justified the coverage formula when it reauthorized the Voting Rights Act in 2006.

By ending preclearance, however, the Supreme Court let States with a consistent record of voting discrimination act without any scrutiny. The results have been predictable and devastating. Within hours of the decision, Texas revived its previously blocked photo ID law. Within days, Alabama announced that it would enforce an unprecleared photo ID law. Within months, New York declined to hold elections to fill 12 legislative vacancies, denying representation to 800,000 voters of color in New York City.

Of course, LDF and others have continued to use the U.S. Constitution and Section 2 of the Voting Rights Act which apply nationwide to challenge discriminatory voting changes, but Section 2 in the Constitution placed the burden on voters to prove that the changes are discriminatory. For example, in 2014, LDF won a case in which Fayette County, Georgia, tried to change its method of election from single-member districts to at-large voting after a black commissioner died and they needed to hold special elections. Section 2 was able to block that change.

In 2018, LDF convinced the 11th Circuit to block the largely white city of Gardendale, Alabama's intentionally discriminatory attempt to secede from the more racially diverse Jefferson County School Board. The secession would have transferred black voters from the county board, in which those black voters had representation, to the Gardendale City Council in which Black voters had no representation.

On the eve of the 2018 election, LDF represented black college students in Prairie View, Texas, a place with a long history of discrimination, where the county tried to cut on-campus early voting. Counting officials responded to LDF's lawsuit by adding weekend and evening hours.

In Florida, voting rights for people with felonies were restored in 2018 by a ballot referendum but later—earlier this year, excuse me, the Florida legislature responded by essentially imposing a poll

tax requiring voters who have otherwise served their sentence to pay all fines and fees before they can register to vote.

Last week, LDF, the ACLU, and others presented evidence at a hearing to try to stop this change before the 2019 elections. And in a pending challenge to Alabama's photo ID law, LDF has demonstrated that discrimination is not a thing of the past. A prominent State senator who supported the voter ID law for 10 years stated that his purpose was to undermine the black power structure in Alabama, and other supporters have been caught on tape calling black voters aborigines and plotting their efforts to suppress the black vote. Black voters in Alabama were four times more likely to have their provisional ballots rejected because they lacked photo ID. All these changes would have been subjected to Section 5.

LDF has also continued to use Section 2 of the Voting Rights Act to challenge at-large elections. For example, in 2017, a Federal court ruled that Louisiana had intentionally discriminated when it maintained at-large elections in Terrebonne Parish, Louisiana.

Unfortunately, this Voting Rights Act litigation, even when successful, is slow and can cost millions of dollars. On average, it takes 2 to 5 years for a Voting Rights Act case to be completed. For example, in Texas, in 2016, the 5th Circuit Court of Appeals found that Texas' photo ID law violated Section 2, but during the 3 years of litigation, hundreds of elected officials were voted into office, and for the 500,000 voters who lacked ID, that win came too late.

LDF has tried to work to address these discriminatory changes before they happen, but often, we have been stymied by the cost and time that it takes to litigate these matters.

Given the myriad issues, Congress must act, first, through bills like the Voting Rights Advancement Act or the Voting Rights Amendment Act. Congress should restore preclearance. Congress should also strengthen Section 2 of the Voting Rights Act by making it easier for plaintiffs to block discriminatory voting changes before an election.

As we prepare for the 2020 elections, we need to fix our democracy, and it should not be up for debate. It is critical that Congress make voting easier, not harder. It is time for bipartisan unity. It is time to act.

Thank you.

[The statement of Mr. Ross follows:]



Testimony of Deuel Ross  
Senior Counsel  
NAACP Legal Defense and Educational Fund, Inc.

Before the United States House of Representatives  
Committee on House Administration  
Subcommittee on Elections (116th Congress)

Hearing on  
Voting Rights And Election Administration In America

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## I. INTRODUCTION

Good morning, Chair Fudge, Ranking Member Davis, Representative Butterfield and Representative Aguilar. My name is Deuel Ross, and I am a Senior Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF).<sup>1</sup> Thank you for the opportunity to testify on the state of voting rights litigation and other election administration issues cross our country.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. Through litigation, public policy, and public education, LDF's mission is to expand democracy, eliminate racial disparities, and fulfill the U.S. Constitution's promise of equal justice for all. From LDF's earliest days, protecting the right to vote for Black people has been at the epicenter of our work. Beginning with Smith v. Allwright,<sup>2</sup> LDF's successful U.S. Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome a myriad of obstacles to ensure the full, equal, and active participation of Black voters.

LDF's mission to protect voting rights, however, has gotten much more difficult in the years since the U.S. Supreme Court's 2013 decision in Shelby County, Alabama v. Holder.<sup>3</sup> LDF attorneys argued the Shelby County case in the Supreme Court and defended Congress's reauthorization of preclearance review under Section 5 of the Voting Rights Act (Section 5). The Shelby County decision, however, held that Congress had not sufficiently updated the "coverage formula"—which identifies those places subject to preclearance—when Congress last reauthorized Section 5 in 2006.<sup>4</sup>

The Shelby County decision has had a devastating effect on citizens of color's right to vote. It effectively ended preclearance review, making it extremely difficult to stop discriminatory voting changes before they occur. Since that decision in 2013, LDF has had to make innovative use of the U.S. Constitution, the Voting Rights Act (VRA), and lesser known mechanisms to defend voting rights and to replicate what we all lost. LDF has continued to challenge numerous changes related to voting in places formerly covered by Section 5. Each of these changes were or would have been subject to preclearance review. Often LDF has proven or offered substantial evidence that these changes were the product of unconstitutional intentional discrimination.

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

<sup>2</sup> 321 U.S. 649 (1944).

<sup>3</sup> 570 U.S. 529 (2013).

<sup>4</sup> Congress most recently reauthorized the VRA in 2006. Between October 2005 and July 2006, the House Judiciary Committee had 12 hearings, called 46 witnesses, and compiled more than 12,000 pages of evidence from over 60 groups and individuals. The Senate had 9 hearings and called 46 witnesses between May and July 2006. See Shelby Cnty., Ala. v. Holder, 811 F. Supp. 2d 424, 435 (D.D.C. 2011) (describing the 2006 reauthorization record and acknowledging that it was "one of the most extensive legislative records in the Committee on the Judiciary's history.").

In a regularly updated report entitled “Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder,” LDF also continues to track and monitor various discriminatory voting changes employed across America.<sup>5</sup>

In addition, in States in the Deep South and elsewhere, LDF has used litigation and advocacy to address issues like discriminatory methods of election, barriers to registration, untrained poll workers, polling place closures, and voting machine problems.

Beyond litigation, LDF has a “Prepared to Vote” program, which is designed to work with local partners to educate voters before Election Day about their rights at the polls, and to be on the ground with trained volunteers to assist voters with problems on Election Day. A new LDF report entitled “Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections” describes the many issues that voters encountered in the 2018 election.<sup>6</sup> Copies of both the “Democracy Diminished” and “Democracy Defended” reports have been submitted to the Committee.

Based on our ongoing efforts to expand voting rights and strike down barriers to voting, LDF is well-qualified to state that there is an urgent need for Congress to act now to strengthen the Voting Rights Act and improve election administration.

## II. VOTING RIGHTS LITIGATION

### A. Background

The VRA is “the crown jewel” of civil rights laws. It is one of our Nation’s most successful pieces of legislation ever. For nearly a century before enactment of the VRA in 1965, States and the federal government had used the law and extra-judicial violence to thwart voting rights for people of color. From 1876 to 1965, the Fifteenth Amendment to the U.S. Constitution, which prohibits racial discrimination in voting, was a dead letter law.<sup>7</sup> Since 1965, however, the efforts and votes of bipartisan Congresses to first enact and then to periodically renew Section 5 and, where needed, improve the VRA have made real the promises of non-discrimination in voting. Today, the VRA rightfully remains the centerpiece of ongoing congressional efforts to enforce the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

<sup>5</sup> Leah Aden, “Democracy Diminished,” NAACP LDF Thurgood Marshall Institute (last updated Aug. 30, 2019), <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-8.30.19-1.pdf>.

<sup>6</sup> *Democracy Defended*, NAACP LDF Thurgood Marshall Institute, (Sept. 6, 2019) [https://www.naacpldf.org/wp-content/uploads/Democracy\\_Defended\\_\\_9\\_6\\_19\\_final.pdf](https://www.naacpldf.org/wp-content/uploads/Democracy_Defended__9_6_19_final.pdf)

<sup>7</sup> See generally Deuel Ross, Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests, 45 COLUM. HUM. RTS. L. REV. 362, 368-73 (2014)

But the VRA of 1965, or even 2005, is not the VRA we have today.<sup>8</sup> In 2013, the Shelby County decision gave States and municipalities carte blanche to unleash discriminatory voter suppression schemes. The Supreme Court's decision effectively ended Section 5 preclearance review, which had required jurisdictions across the country, though primarily in the South, to (a) provide notice of every proposed change related to voting and to (b) demonstrate to the federal government that any proposed change was non-discriminatory before the jurisdiction could implement that change.<sup>9</sup>

By ending preclearance review, the Shelby County decision let jurisdictions with a consistent record of voting discrimination change their laws without any scrutiny. The result was predictable. For example, within hours of the decision, Texas revived a voter photo identification (ID) law that had previously been blocked under Section 5.<sup>10</sup> Within days of the decision, Alabama announced that it would move to enforce a photo ID law that it had refused to submit to preclearance.<sup>11</sup> And within months, New York departed from past practices and declined to hold special elections to fill 12 legislative vacancies, denying representation to 800,000 voters of color.<sup>12</sup>

Even more alarming, voter suppression has spread to locations that were not covered by Section 5 preclearance review. In the six years since the Shelby County decision, places like Arkansas,<sup>13</sup> Pennsylvania,<sup>14</sup> Kansas,<sup>15</sup> North Dakota,<sup>16</sup> and Wisconsin<sup>17</sup> have adopted the types of voter suppression practices that are more closely associated with states with much longer histories of overt discrimination.

Moreover, decades old election administration problems like at-large methods of election, closing of polling places, and limits on voter registration opportunities still act as barriers to voting in Alabama, Arkansas, Louisiana, Georgia, and elsewhere.

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<sup>8</sup> The Department of Justice reports that in just the three years before the Shelby decision, between 2010-2013, it considered 44,790 voting changes under Section 5. Section 5 Changes By Type and Year, Total Section 5 Changes Received By The Attorney General 1965 Through 2013, <https://www.justice.gov/crt/section-5-changes-type-and-year-2> (last visited June 24, 2019).

<sup>9</sup> Between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109-478, at 21.

<sup>10</sup> Ed Pilkington, Texas rushes ahead with voter ID law after Supreme Court decision, *The Guardian* (June 25 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-idsupreme-court-decision>.

<sup>11</sup> Kim Changler, "Alabama photo voter ID law to be used in 2014, state officials say," *Alabama Media Group* (June 25, 2013), [https://www.al.com/wire/2013/06/alabama\\_photo\\_voter\\_id\\_law\\_to.html](https://www.al.com/wire/2013/06/alabama_photo_voter_id_law_to.html).

<sup>12</sup> *Democracy Diminished* at 36.

<sup>13</sup> *Martin v. Kohls* 444 SW 3d 844 (Ark. 2014).

<sup>14</sup> *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa.Comm. Ct. Jan. 17, 2014) (unreported).

<sup>15</sup> *Fish v. Kobach*, 309 F. Supp. 3d 1048 (D. Kan. 2018).

<sup>16</sup> *Brakebill v. Jaeger* 905 F. 3d 553 (8th Cir. 2018).

<sup>17</sup> *Frank v. Walker* 819 F. 3d 384 (7th Cir. 2016); *One Wisconsin Institute, Inc. v. Thomsen* 198 F. Supp. 3d 896 (WD Wis. 2016).

## B. Post-Shelby LDF Litigation

Despite the Shelby County decision, we still have Section 2 of the VRA, the provision that authorizes private actors and the U.S. Department of Justice to challenge discriminatory voting practices in federal court.<sup>18</sup> Section 2 applies nationwide, but it places the burden on voters harmed by discrimination to bring litigation to prove that a law has a discriminatory result or purpose. Section 2 is the main protection available to people of color after the Shelby County decision in 2013.<sup>19</sup>

As a result of litigation brought under Section 2 or the U.S. Constitution, LDF has convinced numerous federal judges—appointed by Democratic and Republican Presidents alike—to act as our democracy’s checkpoint or to expand voting rights.

In formerly covered jurisdictions, LDF has successfully challenged voting changes that would have been blocked by Section 5. In Texas, the Fifth Circuit U.S. Court of Appeals held in 2016 that Texas’s ID law violated Section 2.<sup>20</sup> The same law was previously blocked by Section 5 in 2012.<sup>21</sup> On remand, the trial court found that Texas had enacted the law for the purpose of discriminating against voters of color.<sup>22</sup>

In 2016, the largely white City of Gardendale, Alabama attempted to secede from the more diverse Jefferson County School Board. The Gardendale secession would have effectively transferred Black voters from the County School Board’s election system—in which Black voters have some representation—to the jurisdiction of Gardendale city council’s at-large election system in which Black voters have no representation at all.<sup>23</sup> In 2018, the Eleventh Circuit U.S. Court of Appeals blocked the secession after LDF successfully proved that Gardendale was motivated by racial discrimination.<sup>24</sup> Before Shelby County, the Department of Justice had used Section 2 to block similar discriminatory school district secessions in Alabama and elsewhere.<sup>25</sup>

In 2015 in Fayette County, Georgia, the County Commission tried to revert to an at-large voting system in a special election to replace a Black Commissioner who had died unexpectedly. LDF won a Section 2 ruling that stopped this change and

<sup>18</sup> 52 U.S.C. § 10301.

<sup>19</sup> Shelby Cty., 570 U.S. at 536-37.

<sup>20</sup> Veasey v. Abbott 830 F. 3d 216 (5th Cir. 2016) (en banc).

<sup>21</sup> Texas v. Holder, 888 F.Supp.2d 113, 144-45 (D.D.C. 2012), vacated and remanded, \_\_\_ U.S. \_\_\_, 133 S.Ct. 2886 (2013).

<sup>22</sup> Veasey v. Abbott, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

<sup>23</sup> Stout v. Jefferson County Bd. of Educ., 250 F. Supp. 3d 1092, 1142, 1183 (N.D. Ala. 2017) (finding that the all-white Gardendale city council had declined to appoint a Black person with more experience to the proposed city board of education and ordering the appointment of a Black member).

<sup>24</sup> Stout v. Jefferson County Bd. of Educ. 882 F. 3d 988 (11th Cir. 2018).

<sup>25</sup> See, e.g., Lee v. Chambers County Bd. of Educ. 849 F. Supp. 1474, 1479 (M.D. Ala. 1994); Robinson v. Alabama State Dept. of Educ., 652 F.Supp. 484, 485-86 (M.D.Ala.1987) (three judge court).

required the election to use single-member districts, which allowed Black voters to again elect their preferred candidate.<sup>26</sup>

LDF also has several pending cases in formerly covered states opposing voting changes under Section 2 or the U.S. Constitution. For instance, on the eve of the 2018 election, LDF filed a motion for a temporary restraining order on behalf of Black students at the historically Black Prairie View A&M University in Waller County, Texas. County officials have long discriminated against Black students in Prairie View. In 2018, the students sought to stop cuts to early voting hours, which would have left Prairie View without any early voting opportunities on weekends, evenings, or during the first week of early voting. In response to LDF's ongoing case, however, county officials agreed in 2018 to add several hours of early voting in Prairie View.<sup>27</sup>

In June 2019, LDF and others filed a lawsuit to stop Florida from effectively imposing a poll tax on people with felony convictions attempting to register to vote. The rights of many people who have served their time were restored in 2018 when Florida voters' overwhelming passed Amendment 4. Earlier this year, however, the Florida Legislature enacted a law that, amongst other requirements, mandates that people with past felony convictions pay all of their civil or other fees before being able to register. LDF attorneys recently presented evidence at a hearing seeking a preliminary injunction to stop this discriminatory change before the 2019 elections.<sup>28</sup>

And, in 2015, LDF brought a lawsuit challenging Alabama's discriminatory photo voter ID law.<sup>29</sup> Among other evidence, LDF showed that a state senator who had for over a decade led the effort to enact a strict photo ID law had promised that it would undermine Alabama's "black power structure" and that other legislative sponsors had been recorded planning ways to discourage Black people from voting.<sup>30</sup> A study by Dr. Zoltan Hajnal at the University of California, San Diego, comparing the 2012 and 2016 presidential elections, found that, after Alabama implemented its ID law, turnout in its most racially diverse counties declined by almost 5 percentage points, which is even more than the drop in similarly diverse counties in other states.<sup>31</sup> This case is currently pending on appeal before the Eleventh Circuit.

<sup>26</sup> Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs, 118 F.Supp.3d 1338 (ND Ga. 2015).

<sup>27</sup> NAACP LDF Press Release, Waller County Modestly Expands Early Voting in Prairie View, LDF's Suit Still Pending (Oct. 25, 2018), <https://www.naacpldf.org/press-release/waller-county-modestly-expands-early-voting-prairie-view-ldfs-suit-still-pending-2/>.

<sup>28</sup> NAACP LDF Press Release, Groups File Motion for Preliminary Injunction to Block SB7066 (Aug. 8, 2019), <https://www.naacpldf.org/press-release/groups-file-motion-for-preliminary-injunction-to-block-sb7066/>.

<sup>29</sup> Greater Birmingham Ministries v. Merrill, 250 F. Supp. 3d 1238 (N.D. Ala. 2017).

<sup>30</sup> Scott Douglas, "The Alabama Senate Race May Have Already Been Decided," N.Y. Times (Dec. 11, 2017), <https://www.nytimes.com/2017/12/11/opinion/roy-moore-alabama-senate-voter-suppression.html>

<sup>31</sup> Zoltan Hajnal, The Effect of Alabama's Strict Voter ID Law on Racial and Ethnic Minority Turnout (April 12, 2017), <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A852c0485-70a3-4aa7-b4ec-3c0137037522>.



Further, LDF has used Section 2 to expand democracy by attacking existing at-large voting systems that would not have been subject to Section 5 review. These Section 2 cases seek to integrate state courts and other localities across the country. In 2017, LDF proved that the Louisiana Legislature had intentionally maintained at-large elections for the state courts in Terrebonne Parish to prevent the election of a Black judge in violation of Section 2 and the U.S. Constitution.<sup>32</sup> Last week, in Section 2 litigation brought by LDF, a federal court ordered the City of Pleasant Grove, Alabama to change from at-large elections to a cumulative voting system.<sup>33</sup> And, earlier this year, LDF filed an ongoing Section 2 case challenging the Arkansas Court of Appeals' electoral districts and the at-large system for the State Supreme Court.<sup>34</sup>

Finally, beyond Section 2, LDF continues to use other federal laws like the National Voter Registration Act (NVRA) or state constitutions to improve election administration and challenge voter suppression tactics. In 2014, for example, LDF won an NVRA case, in which the Fifth Circuit ruled that the Louisiana Secretary of State is responsible for enforcing compliance with the NVRA across all relevant state agencies.<sup>35</sup> The NVRA requires states to offer voter registration opportunities at drivers' license and welfare benefits offices. And, in 2014, LDF filed an amicus brief in the Arkansas Supreme Court in a successful challenge to a voter ID law.<sup>36</sup> LDF offered unique evidence that over 1,000 ballots were rejected because of this law.<sup>37</sup>

### C. The Limits of Litigation

Unfortunately, voting rights litigation is slow and expensive. The parties often spend millions litigating these cases.<sup>38</sup> The cases take up significant judicial resources.<sup>39</sup> And the average length of Section 2 cases is two to five years.<sup>40</sup> But, in the years during a case's pendency, thousands and, in some cases, millions of voters are effectively disenfranchised. In Texas, for example, the Fifth Circuit affirmed the finding that over half a million registered voters and up to a million eligible voters

<sup>32</sup> *Terrebone Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395, 462 (MD La. 2017).

<sup>33</sup> Anna Beahm, "Pleasant Grove voting method changed to cumulative voting, according to approved settlement," Alabama Media Group (Oct. 13, 2019), <https://www.al.com/news/2019/10/pleasant-grove-voting-method-changed-to-cumulative-voting-according-to-approved-settlement.html>.

<sup>34</sup> NAACP LDF Press Release, LDF Files Lawsuit to Ensure Black Voters Have Voice in Electing Judges to Highest State Courts in Arkansas (June 10, 2019), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-to-ensure-black-voters-have-voice-in-electing-judges-to-highest-state-courts-in-arkansas/>

<sup>35</sup> *Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014).

<sup>36</sup> *Martin v. Kohls* 444 SW 3d 844 (Ark. 2014).

<sup>37</sup> Amicus Curiae Brief by NAACP LDF, et al., *Martin v. Kohls*, 2014 WL 4950020 (Aug. 11, 2014).

<sup>38</sup> NAACP LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* (Feb. 14, 2019), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs02.14.19.pdf>.

<sup>39</sup> Federal Judicial Center, 2003-2004 District Court Case-Weighting Study, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed).

<sup>40</sup> Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).

were negatively impacted by the state's voter ID law. But during the three years of litigation in which Texas was free to use its law, Texans elected dozens of members of Congress, the Governor, Attorney General, and over a hundred state legislators, trial judges, and district attorneys. For the 500,000 Texans disenfranchised by the discriminatory ID law the remedy we won in 2016 came too late for these elections.

The beauty and innovative genius of Section 5 preclearance review was that it allowed federal authorities to stop voting discrimination before it inevitably harmed voters in a variety of federal, state or local elections. That is why voters of color in states with a demonstrated pattern of discrimination needed—and still need—laws to safeguard their fundamental right to vote. For nearly 50 years, members of Congress and Presidents from both parties have supported Section 5 and other legislation to address discrimination in voting before it can affect voters in elections. This Congress must again take up the mantle to fight racial discrimination in voting.

### III. ELECTION ADMINISTRATION ADVOCACY

In many ways, 2018 was a good year for our democracy. Millions of voters turned out<sup>41</sup> and we saw many historic many firsts, including the first ever election of Native American women<sup>42</sup> and Muslim-American women<sup>43</sup> to Congress.

Although voter turnout was at an all-time high, many more people would have voted in the absence of under-resourced poll workers or under-serviced election machinery. Unfortunately, while the harms of election administration problems like poorly trained poll workers and outdated machines are obvious, these problems are jeopardizing and creating barriers to the basic right to vote. After-the-fact litigation offers too few remedies, for too few voters, and too often those remedies come too late.

For that reason, LDF has developed its Prepared to Vote advocacy program. Every year LDF creates, prints, and distributes thousands of palm cards, flyers, and other informational material to educate voters about their rights before, during, and after an election. LDF also sends dozens of well-trained volunteers to states like Louisiana, Mississippi, Missouri, and South Carolina on Election Day to help voters in real-time at the polls.<sup>44</sup> The “Democracy Defended” report summarizes the many issues that LDF confronted and tried to resolve for voters on Election Day in 2018.

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<sup>41</sup> Camila Domonoske, A Boatload Of Ballots: Midterm Voter Turnout Hit 50-Year High (Nov. 8, 2018), <https://www.npr.org/2018/11/08/665197690/a-boatload-of-ballots-midterm-voter-turnout-hit-50-year-high>

<sup>42</sup> Eli Watkins, First Native American women elected to Congress, CNN (Nov. 7, 2018), <https://www.cnn.com/2018/11/06/politics/sharice-davids-and-deb-haaland-native-american-women/index.html>

<sup>43</sup> Tara Isabella Burton, Tlaib and Omar are the first Muslim women elected to Congress. They're also so much more, Vox (Nov. 8, 2018), <https://www.vox.com/2018/11/8/18072610/rashida-tlaib-ilhan-omar-congress-election-muslim-women>

<sup>44</sup> Prepared to Vote, NAACP LDF, <https://www.naacpldf.org/case-issue/prepared-to-vote/>

In Richland County, South Carolina, voters reported that machines were changing their selections.<sup>45</sup> Officials worked to address the issue, but the county elections director told LDF that he only had one technician for every five polling sites. In Charleston County, LDF observed over three hour wait-times at predominately Black polling sites. These long waits were caused by insufficient numbers of voting machines, computer malfunctions, and ill-trained poll workers enforcing the state voter photo ID law.<sup>46</sup>

In Missouri, LDF volunteers contacted local officials about touchscreen voting machines that were incorrectly switching votes. LDF began recommending that people use paper ballots until election officials corrected the problem. LDF had a private citizen removed from outside a polling place because she was providing false information about the forms of photo ID required to vote. Because of a lack of Spanish-language ballots, LDF volunteers had to assist Spanish speaking voters with casting ballots. LDF also helped a Black voter who was turned away after he tried to vote with an expired ID. Although the voter was able to return with a different form of ID to vote, the ID law caused an extra unnecessary hurdle to vote.<sup>47</sup>

In Madison County, Mississippi, LDF witnessed a number of voters who were either turned away or required to cast provisional ballots because poll workers could not find these voters' names in the electronic poll book. In fact, however, most of these voters were registered to vote. Poll workers had simply failed to check the printed supplement to the electronic poll book to find voters' names. Following the election, LDF, One Voice, and the Mississippi Center for Justice filed a public records request with the Madison County Election Commission inquiring about the voter roll purges that took place prior to the election.<sup>48</sup>

In Louisiana, at precincts in Orleans Parish, LDF found polling places inaccessible because they lacked handicap accessible entrances and ramps, adequate parking, and even adequate lighting. At one polling place, LDF volunteers saw a poll worker using a cell phone flashlight to direct voters because of poor lighting. Although state law permits voters who lack acceptable ID to sign an affidavit to verify their identity before casting a ballot, voters without ID are often turned away because poll workers make the discretionary decision not to inform voters of the affidavit option.<sup>49</sup>

And, in Alabama, many voters who were listed as "inactive" were told they must cast provisional ballots, even though state law allows inactive voters to cast

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<sup>45</sup> <https://thehill.com/homenews/campaign/415152-voters-in-south-carolina-say-voting-machines-are-changing-their-choices>

<sup>46</sup> Democracy Defended at 21-24.

<sup>47</sup> Id. at 19-20.

<sup>48</sup> Id. at 15-18.

<sup>49</sup> Id. at 13-14.

regular ballots if they fill out a new registration form. LDF has repeatedly written letters to Alabama’s Secretary of State to ask him to address this training issue.<sup>50</sup>

#### IV. CONGRESS MUST ACT TO DEFEND VOTING RIGHTS

We should not be surprised by problems like discrimination in voting and election administration issues that disproportionately affect voters of color. But, we should be ashamed if Congress does not urgently act to restore the VRA to full strength and to pass other reforms to relieve the burden on voters and local officials.

LDF and others have long warned that increased voter suppression would be the consequence of the Shelby County decision. Despite our vigorous litigation and advocacy efforts to fend off voter suppression, the current VRA can only get us so far. The evidence of widespread discrimination against Black voters is overwhelming.

Therefore, Congress must not only restore Section 5 preclearance review, it should also strengthen Section 2 and other provisions. Congress may, for example, lessen the burden on plaintiffs to achieve preliminary relief against discriminatory voting laws. Plaintiffs should not have to wait up to five years or spend millions to win a Section 2 case. By strengthening Section 2, Congress can again “shift the advantage of time and inertia from the perpetrators of the evil to its victims.”<sup>51</sup>

Likewise, state and local election officials are well-aware of the problem of old voting machines and ill-equipped poll workers. Many officials, however, simply lack the funds needed to buy new equipment or adequately train poll workers. A 2014 report from the Brennan Center for Justice, for example, found that the majority of America’s voting machines are obsolete.<sup>52</sup>

Congress should give states the necessary funds to purchase new, secure voting technology, and to properly train poll workers. Congress can also lessen the burden on voters and poll workers by enacting reforms like automatic voter registration and early voting for federal elections. If we are serious about the well-being of our democracy, Congress must ensure that poorer jurisdictions and communities of color are not stuck with long lines and old equipment staffed by untrained poll workers.

Moreover, as our democracy faces new and pervasive threats, Congress must act to ensure the actual integrity of our elections. Digital platforms are being used to discourage Black voters from voting and to sow racial division. It is critical therefore that Congress act to investigate and regulate these activities. Congress must reframe

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<sup>50</sup> Id. at 3-6.

<sup>51</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

<sup>52</sup> Lawrence Nordin, *America’s Voting Machines at Risk*, Brennan Center for Justice (Sept. 15, 2014), <https://www.brennancenter.org/publication/americas-voting-machines-risk#Executive%20Summary>.

the conversation from important, but narrow issues like privacy, to a conversation that examines racial injustice and voter suppression in digital social media.

## V. CONCLUSION

The undermining of the VRA by the Shelby County decision has made our democracy vulnerable and allowed for voter suppression to go unchecked. One election in which the fundamental right to vote is restricted is one election too many. Prior to that decision, Section 5 would have prevented many of the discriminatory voting changes at the local and statewide level that LDF is challenging in court. But, it would not have reached other issues like long lines and faulty voting machines.

As we prepare for state, federal and local elections in 2020, it is critical that Congress act to restore federal preclearance, using provisions such as those proposed in the Voting Rights Advancement Act or Voting Rights Amendment Act, support funding for local officials, and enact laws that make voting easier rather than harder.

The need to fix our democracy should not be up for debate. It's time for unity. It is time to act. Thank you.

Chairwoman FUDGE. Thank you.

And I thank you all for your testimony.

We will now begin questioning. Each member of the panel will have five minutes. I am going to kind of try to hold them to that if we can. We have a couple more panels.

So I would now yield to Chairperson Lofgren for your five minutes. You are recognized for five minutes.

The CHAIRPERSON. Well, thank you very much, Chairwoman Fudge.

You know, when Chief Justice Roberts wrote the *Shelby* decision striking down the Voting Rights Act, he said—and this is a quote—“voting discrimination still exists, no one doubts that.” So, clearly, the record is ample that discrimination continues to occur across the United States, and a compelling case has been made why we need to revitalize the Voting Rights Act. And I appreciate the testimony you have given today along those lines. That is a critical solution.

Having said that, there are some States that were never covered under preclearance, some that bailed out. So I am wondering, in addition to the Voting Rights Act, which we are committed to, are there other changes or laws that the Congress should enact to alleviate the continued effects of racial discrimination?

Ms. CLARKE. Thank you for that question. I will observe that there are some States, like Tennessee and Kentucky, that just barely escape coverage under Section 5, where we are seeing extensive voter suppression efforts today. One stark example arises out of Tennessee, where after groups on the ground made extraordinary efforts to reach almost 90,000 not yet registered people, State lawmakers put a new law on the book that imposes draconian, burdensome, and costly requirements, including criminal penalties on groups that are working to register people to vote. No doubt this is a textbook example of voter suppression and the kind of tactic that would be blocked if we had a Section 5 review process that applied to the State of Tennessee.

As Chairwoman Fudge indicated, we should follow the truth. And it is my firm belief that Congress should respond to the record that you amassed, indicating where the problems lie, and apply a remedy that is responsive to those issues.

Mr. HO. Chairperson Lofgren, I thank you for that question. There are elements of H.R. 1 that I think would be very positive in terms of protecting voting rights. And I just want to focus on one, that is the provision of H.R. 1 that provides for election day registration. About 20 States have election day registration, including the Ranking Member's home State of Illinois and your home State of California. The States that have election day registration tend to have turnout that is about 5 to 10 percentage points higher than the States that don't. It is the single reform that there is a—has the broadest consensus among political scientists that it facilitates participation, particularly among young people, mobile voters who have moved recently, African Americans, historically disadvantaged groups.

We have heard a little bit about purges, erroneous removals of voters from the rolls. Election Day registration can be a valuable

safety net in making sure that any voters who are purged erroneously do end up getting to participate on Election Day.

The CHAIRPERSON. Thank you for that.

I know my time is almost up, but it also helps if the Russians hijack the registration rolls. It is actually protection against that kind of cyber mischief, that with same-day registration, we would prevent them from ruining our elections, but—the final comment.

Mr. ROSS. Thank you, Madam Chairperson. In addition to the other provisions of H.R. 1, LDF supports early voting in Federal elections. Obviously, it offers the opportunity to cut down on some of the election administration issues that we have seen, like long lines, voters having to wait three or four hours in order to vote. If voters have multiple days on which to vote and ample opportunity to do so, then those kinds of issues will be cut down.

I also wanted to briefly comment on a State that was not covered by Section 5, which is Arkansas which is the ACLU and LDF and others were involved in litigation there to challenge a photo ID law, which was successful initially, only for the State to turn around and pass a new photo ID law shortly thereafter. LDF is currently in court now challenging the way in which the Court of Appeals of Arkansas and the Arkansas Supreme Court are elected, and the function is that the Court of Appeals in particular is elected in such a way that keeps black voters from having an opportunity to elect a candidate of their choice.

The CHAIRPERSON. Thank you very much. I see my time has expired, Madam Chairwoman.

Chairwoman FUDGE. Thank you very much.

Ranking Member Davis, you are recognized for five minutes.

Mr. DAVIS of Illinois. Thank you, Madam Chairwoman. And thanks again to our witnesses. I appreciate the opportunity and I appreciated your testimony.

I will start with you, Mr. Ho. Do you agree that accurate voter rolls are a critical part of our election administration and required by the NVRA?

Mr. HO. Of course, I do. And part of maintaining accurate rolls, I think, is making sure that voters are not purged inaccurately.

Mr. DAVIS of Illinois. What are the best practices, then, for maintaining timely voter roll hygiene?

Mr. HO. Well, I think about 19 States in recent years have adopted a form of automatic voter registration, which ensures that when voters move, for example, their registrations are automatically updated with the State. It is a way, I think, of both facilitating participation and also making sure that there isn't so-called dead wood on the rolls of voters who have moved but their registration information remains out of date.

Mr. DAVIS of Illinois. So give me an example of a couple of States that have done that and that you support. So you are saying once they move, it is automatically updated, and you are fine with that, versus other practices that exist in States like Ohio, for example, where we did one of our hearings?

Mr. HO. Yes. I think it is much better when a voter updates their information with the State, whether it is with the DMV or a social service agency or something like that, to automatically update their registration in accordance with that address change, rather than

relying on a kind of archaic system of sending the voter a card and asking them to write their new information on it, or treating the failure to return a piece of what looks like junk mail to a lot of people, as evidence of the fact that they have moved or are no longer eligible.

So I think I mentioned, I believe, 19 States have adopted some form of automatic registration. This includes States like Oregon, Alaska—I don't have the complete list, but the National Conference of State Legislatures maintains a very comprehensive and up-to-date list of practices like that.

Mr. DAVIS of Illinois. Okay. What has the ACLU's interaction with the Election Assistance Commission been in trying to address the ballot access concerns that you raise in your testimony?

Mr. HO. In my role at the ACLU, my primary job is to oversee our litigation. So I don't have, myself, direct contact with the EAC.

Mr. DAVIS of Illinois. You haven't sued the EAC?

Mr. HO. I am sorry?

Mr. DAVIS of Illinois. You have not filed a lawsuit against the EAC, right?

Mr. HO. Well, I was about to say, my one interaction has been litigation against the EAC over—and I detail this in my written testimony—over a unilateral, and what the D.C. circuit found, unlawful move by former executive director Brian Newby to add documentary proof of citizenship instructions to the Federal voter registration form.

Mr. DAVIS of Illinois. So you are not aware of any ACLU interaction to try and work with EAC to ensure that we address some of your concerns?

Mr. HO. I am not, but I think the appropriate person in my office to talk to would be a member of our Washington legislative office, and I am happy to follow up with them to see—

Mr. DAVIS of Illinois. Please do. Please do.

Mr. HO [continuing]. What contacts there have been.

Mr. DAVIS of Illinois. I appreciate it.

Ms. Clarke, you mentioned long lines at polling places, ineffective language assistance, and faulty technology as types of current voter suppression. In your opinion, can we leverage 21st century technology to address these concerns?

Ms. CLARKE. We absolutely can. And I do think that better machines that are not hackable, that provide a paper trail, audit system, so that we can ensure public confidence to voters when they cast their ballots, that the ballot is indeed being handled and the vote is being cast for the person that they wanted is incredibly important.

Georgia is probably exhibit A when it comes to the work that must be done to update our voting machines and voting technology. In a lawsuit that we brought with the Coalition for Good Governance, we got a Federal court to, for the very first time in our country's history, overturn and reject the entire State system. Georgia is working right now to put in place new machines, new technology, and we do think that this will produce better outcomes for voters in the State of Georgia going forward.

Mr. DAVIS of Illinois. Great.



Mr. Ross, it was great talking with you before the hearing. I am proud to represent what many consider to be the birthplace of the NAACP in Springfield, Illinois. We have got great opportunities to highlight some of the artifacts from the 1908 race riots that are being uncovered, and the archaeology is happening right now. So I look forward to working with the NAACP in the future to get those on display. It is an important message to send in the land of Lincoln.

But one of the areas under the Committee's jurisdiction that most concerns me is the ability of those with disabilities to vote. With your experience in the election arena, what can we do as Congress to help facilitate a better voting experience for the disabled?

Mr. ROSS. So I will say that, you know, LDF's work is not primarily in the disability rights arena, but we have done—we have a Prepared to Vote program, which is focused on election day assistance for voters, and one of the things that we often see are issues like access to the polls for handicapped voters or issues with access for voters who may be undereducated or have disabilities like blindness and things like that.

And so I think one of the things that Congress can and should do is to offer more funding for local jurisdictions, for updated voting machines, for training of poll workers so that they can address these kinds of access issues, and, you know, allow for people who want to vote to be able to do so.

Mr. DAVIS of Illinois. Great. Thank you.

I yield back.

Chairwoman FUDGE. Thank you.

Mr. Aguilar, you are recognized for 5 minutes.

Mr. AGUILAR. Thank you, Madam Chairwoman. I appreciate the panel and their testimony.

Ms. Clarke, I will start with you. In your testimony, I want to make sure I understood this, how many Section 2 lawsuits has the current administration filed?

Ms. CLARKE. Zero.

Mr. AGUILAR. We have been in a couple of these hearings around the country, and our colleague, Mr. Butterfield, always does a very good job, and since he is not here, I will ask his question. How much does a Section 2 lawsuit typically cost, and what are the resources? And if you could chime in here too afterwards, Mr. Ross, what are the resources that go into filing a Section 2 lawsuit?

Ms. CLARKE. Thank you for that question. These lawsuits can run in the ballpark of hundreds of thousands of dollars. Studies have shown that voting rights cases are among the most complex cases that are heard by Federal courts. Often, these cases require that civil rights groups, like ours, retain experts to conduct extensive demographic analyses, produce maps, and so forth. This is not a sustainable way to deal with the crisis of voter suppression and widespread rampant voting discrimination that we face in our country. These cases are not just costly, but they are long and protracted and can take several years to bring to final resolution, meaning that voters on the ground are literally experiencing and living the effects of having a discriminatory law or practice on the books in their community each and every single day.

I started off my career in the Justice Department enforcing the Voting Rights Act. Section 5 was a part of that work. It is a preemptive strike to discrimination. It means that officials in Texas and Georgia and all the places that we have been talking about today would never have been allowed to put these discriminatory tactics on the books if we had Section 5 in place.

I think the work that this Committee is doing is critical to the fate of American democracy, and I hope that it yields to a place where we can have Section 5 restored and its prophylactic protections back on the books.

Mr. AGUILAR. Mr. Ross.

Mr. ROSS. Sure. So just to follow up on what Ms. Clarke said, is that one of the things that have been found is that voting rights cases take up the sixth most judicial resources in terms of cases. So it is not only money and time of the parties who are litigating it, but also the Federal courts. One of the reports that I cite too in my written testimony that LDF created shows, not only the cost for the plaintiffs, but also the cost for these jurisdictions to litigate Section 2 cases and then lose them. This is a cost to taxpayers, to both black and white voters for these discriminatory changes and jurisdictions being, for lack of a better word, hard-headed in not recognizing that they have violated Federal law.

Also, it will take, as I said in my testimony, somewhere between 3 and 5 years for these litigations to obviously be resolved. And for States like Alabama and Texas and other places that enact discriminatory photo ID laws or other barriers that affect hundreds of thousands of voters, these people have to wait years and years for any kind of relief to finally happen. And it is important that we think about the costs of not having Section 5, of not having an administrative process that is less costly, less burdensome, and protects voters beforehand.

Mr. AGUILAR. Mr. Ho, if you want to respond to that, I will let you, but I did want to ask you if the loss of proactive Federal protections has made it more difficult to track changes to voting laws that could have a discriminatory impact and so—and how we categorize and track them in the future. But if you also want to chime in on the cost for Section 2.

Mr. HO. Sure. Thank you for those questions. Section 2 cases are quite expensive. I detailed in written testimony to the Judiciary Committee earlier this year one case in North Carolina which cost, I think, around \$5 million to litigate over a 3-year period. That testimony also described 10 ACLU Section 2 cases, which were ultimately successful in the sense that we either got a ruling in our favor or a settlement for our clients. While those cases were pending, a total of 350 local, State, and Federal officials were elected under laws that were later determined to be discriminatory. So we have lost a lot without the preclearance regime in place.

I think about half of successful Section 2 cases nationally, since *Shelby County*, were brought at the local level, were changes to voting laws are much more difficult to keep track of and I think underscores precisely what we have lost.

Mr. AGUILAR. Thank you so much.

Thank you, Madam Chairwoman.

Chairwoman FUDGE. Thank you.

Let me just wrap up. I am from Ohio which I do believe should be a preclearance State. For the last four—or five elections actually, the rules have changed every single election, either the number of days that are allowed for early vote, what you need to bring to vote.

I live in a county of more than a million people. We have one early voting site. One. So the State would say that we want uniformity, we want all 88 counties to be exactly the same. But we have counties that have 5,000 people and we have counties that have over a million people. Uniformity is not really fairness or equity. So I think Ohio should be in that number.

I also think that as we sit here as members, we have to have a desire to do the right thing. In Ohio, for the first time, we have been able to work with our secretary of state, who, by the way, is a Republican, because he believes that everyone should have the right to vote. And so instead of purging 230,000 people, which is what he thought he was required to do, he decided we are going to cross-check with the DMV. We are going to let the League of Women Voters look at the list. We are going to let the NAACP look at the list. Within weeks, automatically, 40,000 had been removed from that number, and the number continues to grow. So it can be done if we want to do the right thing.

And I would just ask my colleagues that the next time we open up a Congress and we start to read the Constitution, let's just be clear that that is something that we want to follow. When we disenfranchise people who have paid their debt to society, we have violated the Constitution. It says every citizen, every American. We don't take away a citizenship when we incarcerate you, and especially when you have paid your debt.

So I want to thank you all for the work that you do. We need more people doing this kind of work and raising awareness of what is happening in our communities, because there are many people, like some of my colleagues, who do not believe that anything is wrong with our system, that believe it is okay to have these strict voter ID laws. And I would suggest to them when they come up with examples like, well, you know, you have to have a certain ID to get on a plane or you have to have one to get a movie, those are not rights. Voting is a right. And so we need to be encouraging people to vote and not trying to discourage them.

So I thank you so much for your testimony today, and I just appreciate your being here. Thank you so much.

And we would—our next panel, we are going to call our next panel. Thank you very, very much.

Chairwoman FUDGE. Thank you very much. We have a lot going on this morning, so people are all over the place. The Ranking Member has an Agriculture hearing. The Chairperson has a Science hearing. I am actually supposed to be in another one as well. So people will come and go. So forgive us for that.

Welcome.

For our second panel, we have—Catherine Lhamon is the Chair of the U.S. Commission on Civil Rights. President Obama appointed Ms. Lhamon to a 6-year term on the Commission on December 15, 2016, and the Commission unanimously confirmed the

President's designation of Ms. Lhamon to chair the Commission on December 28, 2016.

Ms. Lhamon also serves in the cabinet of California Governor Gavin Newsom, where she has been Legal Affairs Secretary since January 2019, and has served as an Assistant Secretary for Civil Rights at the U.S. Department of Education until 2017.

Welcome.

Michael Waldman is President of the Brennan Center for Justice at the NYU School of Law, a nonpartisan law and policy institute that focuses on improving systems of democracy and justice. The Brennan Center is a leading national voice on voting rights, money in politics, criminal justice reform, and constitutional law.

Mr. Waldman, a constitutional lawyer and writer, who is an expert on the Presidency and American democracy, has led the Center since 2005. Mr. Waldman was Director of Speechwriting for President Bill Clinton from 1995 through 1999, serving as an Assistant to the President.

Welcome, sir.

Brenda Wright is the Senior Advisor for the Legal Strategies at Demos. Ms. Wright has led many progressive legal and policy initiatives on voting rights, campaign finance reform, redistricting, election administration, and other democracy and electoral reform issues and is a nationally known expert in these areas. Ms. Wright has argued two cases before the Supreme Court on campaign finance and voting rights and has written extensively on democracy and voting rights issues.

Welcome.

Elena Nunez serves as Director of State Operations and Ballot Measure Strategies at Common Cause. Ms. Nunez joined Common Cause in 2006, managing a successful drive to win voter approval for the State's ethics law which limits the influence of lobbying money in State politics. She previously was campaign manager for Amendment 27, Common Cause's successful 2002 statewide campaign finance reform initiative.

I thank you all.

And the same will apply. You will all be recognized for 5 minutes. The light will turn green when you begin. It will turn yellow whether you have 1 minute left and red when it is time for you to wrap up.

You are recognized for 5 minutes.

**STATEMENTS OF THE HONORABLE CATHERINE E. LHAMON, CHAIR, U.S. COMMISSION ON CIVIL RIGHTS; BRENDA WRIGHT, SENIOR ADVISOR FOR LEGAL STRATEGIES, DEMOS; MICHAEL WALDMAN, PRESIDENT, BRENNAN CENTER FOR JUSTICE; AND ELENA NUNEZ, DIRECTOR OF STATE OPERATIONS AND BALLOT MEASURE STRATEGIES, COMMON CAUSE**

**STATEMENT OF THE HONORABLE CATHERINE E. LHAMON**

Ms. LHAMON. Thank you.

Chairwoman Fudge, Ranking Member Davis, members, thank you very much for inviting me to testify this morning.

I chair the United States Commission on Civil Rights, and I come before you today to speak about the Commission's current work evaluating voter access and voting rights, as described in our report, released in September 2018, titled "An Assessment of Minority Voting Rights Access in the United States."

Drawing from Commission research and investigations and memoranda from 13 of the Commission's State advisory committees who analyzed voting discrimination in Alabama, Alaska, Arizona, California, Illinois, Indiana, Kansas, Louisiana, Maine, New Hampshire, Ohio, Rhode Island, and Texas, this report documents current conditions evidencing ongoing discrimination in voting. On every measure the Commission evaluated, the information the Commission received underscores that discrimination in voting persists.

Our report found that, at the time we issued the report, at least 23 States have enacted newly restrictive statewide voter laws since the *Shelby County* decision in 2013. These statewide voter laws range from strict voter identification laws, to voter registration barriers such as requiring documentary proof of citizenship, allowing challenges of voters on the rolls, and unfairly purging voters from rolls, to cuts to early voting, to moving or eliminating polling places.

The conclusions the report draws are bleak, leading to unanimous Commission findings that, for example, during the time period studied, race discrimination in voting endures today. Likewise, voter access issues and discrimination continue today for voters with disabilities and limited English proficient voters.

Following the Supreme Court's decision in *Shelby County*, in the absence of the preclearance provisions of Section 5 of the Voting Rights Act, voters in jurisdictions with long histories of voting discrimination have faced discriminatory voting measures that could not be stopped prior to elections because of the cost, complexity, and time limitations of the remaining statutory tools.

As a result, the Commission recommends that Congress should amend the Voting Rights Act to restore and/or expand protections against voting discrimination that are more streamlined and efficient than existing provisions of the act.

This new coverage provision should take into account the reality that, one, voting discrimination tends recur in certain parts of the country; and, two, voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination.

Because this committee has visited and heard testimony from voters and experts in several States, I will focus my attention on issues of voter access that the Commission and our advisory committees found in other States. Here are just some examples of what voters experienced, raising concerns of discrimination based on race and disability status.

With respect to strict voter identification laws, in Kansas, our advisory committee received testimony from a Native American voter who reported being denied the right to use her Tribal ID as acceptable identification when voting, even though Tribal ID is acceptable under State law. She testified she was so flustered when she was denied that right that she did not ask for a provisional ballot and she did not vote that day.

With respect to inappropriate purging, our Indiana advisory committee found, quote, certain racial and ethnic minorities may be disproportionately susceptible to a false hit in Crosscheck, which is a program widely used to identify voters who may be registered in more than one State.

With respect to scarce and difficult-to-access polling places, our Louisiana advisory committee received testimony that demonstrated that the racial makeup of an area is a predictor of the number of polling locations in that area and that there are fewer polling locations per voter in a geographical area if it has more black residents.

In one notable instance in Alaska, a polling place was moved away from a village, and, thereafter, Native Alaskan voters could only access their polling place by plane.

With respect to inaccessible polling locations for voters with disabilities, in New Hampshire, 100 percent of voters with disabilities were unable to vote privately and independently in municipal elections in 2013 because none of the polling places had set up an accessible voting system.

With respect to voter intimidation, in Illinois, a county clerk reported that in Cicero, Illinois, police officers have harassed voters and asked people for voting permits, which don't exist, and testified that between 60 and 70 off-duty Chicago police officers were armed and present at the polls, intimidating Cicero residents, who were predominantly Latino, and it took the county clerk's office between four and five hours to clear the police officers from the polling place.

These distressing data and information regarding ongoing voter discrimination form a basis for our call to Congress to improve our voting protections to ensure that ours is a real democracy.

On this difficult day of Congressman Elijah Cummings' passing, I want to close by reminding us all of what he has said about voting. Quote, "On my mother's dying bed, 92 years old, former sharecropper, her last words were, 'Do not let them take our votes away from us.' She had fought and seen people harmed, beaten, trying to vote. Talk about inalienable rights. Voting is crucial. And I don't give a damn how you look at it; there are efforts to stop people from voting. That is not right. This is not Russia. This is the United States of America."

Rest in peace, Congressman Cummings.

[The statement of Ms. Lhamon follows:]

**STATEMENT OF**  
**CATHERINE E. LHAMON**  
**CHAIR**  
**U.S. COMMISSION ON CIVIL RIGHTS**  
**ON THE COMMISSION'S REPORT**  
**AN ASSESSMENT OF MINORITY VOTING RIGHTS IN THE UNITED STATES**  
**BEFORE THE**  
**COMMITTEE ON HOUSE ADMINISTRATION, SUBCOMMITTEE ON ELECTIONS**  
**THURSDAY OCTOBER 17, 2019**

STATEMENT OF  
CATHERINE E. LHAMON  
CHAIR, U.S. COMMISSION ON CIVIL RIGHTS  
BEFORE THE  
COMMITTEE ON HOUSE ADMINISTRATION, SUBCOMMITTEE ON ELECTIONS

THURSDAY OCTOBER 17, 2019

Chair Fudge, Chair Lofgren, Ranking Member Davis, and Members, thank you for inviting me to testify. I chair the United States Commission on Civil Rights, and I come before you today to speak about the Commission's current work on studying voter access and voting rights, including our report released in September 2018, *An Assessment of Minority Voting Rights Access in the United States*.<sup>1</sup>

With that report, the Commission returned to a topic that was a core basis for Congress' creation of our Commission now 62 years ago: advising the U.S. Congress, the President, and the American public about the status of voting rights, among other civil rights, and making recommendations for improved federal policy. We at the Commission are proud to have supported the basis for the 1965 Voting Rights Act ("VRA"), to have provided evidence on which the Supreme Court relied to approve its constitutionality, and to have issued 20 previous reports over our 62 years specifically focused on voting rights.

This report offers an independent, comprehensive, detailed analysis of the current status of voter access and voting discrimination in the United States and of the efficacy of United States Department of Justice ("DOJ") enforcement of the Voting Rights Act since Congress' 2006 Reauthorization and in particular, since the Supreme Court's June 2013 decision in *Shelby v. Holder*.

The conclusions the report draws are bleak, leading to unanimous Commission findings, including that, during the time period studied:

- Race discrimination in voting has been pernicious and endures today.
- Likewise, voter access issues and discrimination continue today for voters with disabilities and limited English proficient voters.
- The right to vote, which is a bedrock of American democracy, has proven fragile and to need robust statutory protection in addition to Constitutional protection.

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<sup>1</sup> U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, Sept. 2018, [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf) [hereinafter "Report"]. The Commission produced this report under the direction of Katherine Culliton-Gonzalez, Esq., Director of Office of Civil Rights Evaluation, who performed principal research and writing with Dr. LaShonda Brenson, Civil Rights Analyst.



- Following the Supreme Court’s decision in *Shelby County*, in the absence of the preclearance protections of Section 5 of the Voting Rights Act, voters in jurisdictions with long histories of voting discrimination have faced discriminatory voting measures that could not be stopped prior to elections because of the cost, complexity and time limitations of the remaining statutory tools.<sup>2</sup>
- The *Shelby County* decision had the practical effect of signaling a loss of federal supervision in voting rights enforcement to states and local jurisdictions.<sup>3</sup>

The report summarizes the current status of voting rights: “the umbrella of protection has been taken down, and voters are being drenched in jurisdictions that have attempted (and temporarily succeeded) to discriminate in their election procedures.”<sup>4</sup>

As a result, the Commission recommends:

- Congress should amend the VRA to restore and/or expand protections against voting discrimination that are more streamlined and efficient than existing provisions of the Act.
- This new coverage provision should take account of the reality that (1) voting discrimination tends to recur in certain parts of the country and (2) voting discrimination may arise in jurisdictions that do not have extensive histories of discrimination.
- The DOJ should pursue more VRA enforcement, recognizing that VRA litigation requires significant resources that only the federal government is able to expend.<sup>5</sup>

These findings and recommendations, and the report itself, are also informed by investigations and memoranda from 13 State Advisory Committees (“SACs”) to the Commission, each of whom analyzed voting discrimination in their states: Alabama, Alaska, Arizona, California, Illinois, Indiana, Kansas, Louisiana, Maine, New Hampshire, Ohio, Rhode Island, and Texas.<sup>6</sup>

#### Current Condition of Voter Access

Drawing from Commission research and the work of the SACs, the Commission’s 2018 report documents current conditions evidencing ongoing discrimination in voting. On every measure

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<sup>2</sup> Report at 12-13.

<sup>3</sup> Report at 12, 279.

<sup>4</sup> Report at 235.

<sup>5</sup> Report at 13-14.

<sup>6</sup> Each of the Commission’s Advisory Committee reports, advisory memoranda, and briefing transcripts are available on the Commission’s website at <https://www.usccr.gov/pubs/sac.php>. A compendium of the reports and memoranda published at the time of the Commission’s report release is available at [https://www.usccr.gov/pubs/2018\\_20181031-Notice-SAC-Compendium.pdf](https://www.usccr.gov/pubs/2018_20181031-Notice-SAC-Compendium.pdf).

The bipartisan expert volunteers who are SAC members, and the Commission regional staff who support these committees’ work, performed invaluable service to their states and to the Commission in excavating voting rights challenges specific to their states.

the Commission evaluated – litigation success, data regarding discrimination incidents, investigations from SACs, Commission testimony from 23 bipartisan voting rights experts and advocates, and in-person and written public comment – the information the Commission received underscores that discrimination in voting persists.

Our report found that at least 23 states have enacted newly restrictive statewide voter laws since the *Shelby County* decision in 2013.<sup>7</sup> These statewide voter laws range from strict voter identification laws; voter registration barriers such as requiring documentary proof of citizenship, allowing challenges of voters on the rolls, and unfairly purging voters from rolls; cuts to early voting; to moving or eliminating polling places.<sup>8</sup>

Because the Committee has visited and heard testimony from voters and experts in several states,<sup>9</sup> including testimony from the Commission's Vice Chair, Patricia Timmons Goodson in North Carolina, and the Commission's Advisory Committees in Alabama and Arizona,<sup>10</sup> I will focus my attention on issues of voter access that the Commission and our Advisory Committees found in other states.

Some examples from the extensive information and testimony the Commission and our Advisory Committees received:

- The report documents ongoing, repetitive voting discrimination in states such as Alaska, Florida, Georgia, North Carolina, and Texas.<sup>11</sup>
- The Commission received testimony from multiple states about restrictive voter identification laws, ranging from prohibitive costs to obtaining the necessary paperwork, to a failure of poll workers to recognize appropriate identification under the state law. For instance, in Kansas, our Advisory Committee received testimony about a Native American voter who reported being denied the right to use her tribal ID as acceptable identification when voting – even though tribal ID is acceptable under state law.<sup>12</sup> Our

<sup>7</sup> Report at 82.

<sup>8</sup> Report at 83-183.

<sup>9</sup> See Committee on House Administration, Subcommittee on Elections, <https://cha.house.gov/subcommittees/elections-116th-congress> (last visited Oct. 15, 2019) (listing field hearings in Alabama, Arizona, Florida, Georgia, North Carolina, North Dakota, Ohio, South Dakota, and Texas).

<sup>10</sup> Committee on House Administration, Voting Rights and Election Administration in Alabama, <https://cha.house.gov/committee-activity/hearings/voting-rights-and-election-administration-alabama> (including testimony of Ms. Jenny Carroll, Chair of Alabama Advisory Committee to the U.S. Commission on Civil Rights); Committee on House Administration, Voting Rights and Election Administration in North Carolina, <https://cha.house.gov/committee-activity/hearings/voting-rights-and-election-administration-north-carolina> (including testimony of Ms. Patricia Timmons-Goodson, Vice Chair of the U.S. Commission on Civil Rights); Committee on House Administration, Voting Rights and Elections Administration in Arizona, <https://cha.house.gov/committee-activity/hearings/voting-rights-and-elections-administration-arizona> (including testimony of Ms. Lorena C. Van Assche, Chair of Arizona Advisory Committee to the U.S. Commission on Civil Rights).

<sup>11</sup> Report at 234.

<sup>12</sup> Kansas Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights and the Kansas Secure and Fair Elections Act*, Mar. 2017, <https://www.usccr.gov/pubs/docs/KS-Voting-Rights-Report.pdf> at 12.

Indiana Advisory Committee found that “certain racial and ethnic minorities may be disproportionately susceptible to” a “false hit” in Crosscheck, a program widely used to identify voters who may be registered in more than one state.<sup>13</sup>

- The Commission received testimony about racial disparities in the number of polling locations in particular communities. For instance, our Louisiana Advisory Committee received testimony that demonstrated that “a statistical analysis of the data from Louisiana shows that the racial make-up of an area is a predictor of the number of polling locations in that area . . . [t]his [analysis] indicates that there are fewer polling locations per voter in a geographical area if that area has more black residents.”<sup>14</sup>
- The Commission received significant testimony regarding voting rights challenges specific to Native American voters and communities, including long distances to travel to polling places<sup>15</sup> and lack of access to ballots resulting from rural residences without physically deliverable mailing addresses.<sup>16</sup> In one notable instance in Alaska, a polling place was moved away from a village, and thereafter, Native Alaskan voters could only access their polling place by plane.<sup>17</sup> A Department of Justice investigation found that Native Americans had to travel farther distances compared to white voters in a number of states.<sup>18</sup>
- The Commission received testimony – at our own briefing as well as from our State Advisory Committees – of really disturbing instances of voter suppression. For example, in Illinois, “Cook County Clerk David Orr reported that in Cicero, Illinois, police officers have harassed voters and asked people for voting ‘permits’” & testified that “between 60 and 70 off-duty Chicago police officers were armed and present at the polls, intimidating Cicero residents” who are predominately Latino/a and “It took the County Clerk’s office between 4 and 5 hours to clear the police officers from the polling place.”<sup>19</sup> In Maine in 2012, the then-chair of the Maine Republican party made explicit racialized allegations of voter fraud: he claimed on TV that “there were dozens, dozens of black people who came in and voted on Election Day.”<sup>20</sup> He later apologized for that statement and recanted it.
- In New York State in 2015, 30 Chinese American voters, many of whom were college students, suffered baseless citizenship and voter registration challenges, impeding their

<sup>13</sup> Indiana Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Voting Rights in Indiana*, May 2018, <https://www.usccr.gov/pubs/2018/07-25-IN-Voting-Rights.pdf> at 6.

<sup>14</sup> Louisiana Advisory Committee to the U.S. Commission on Civil Rights, *Barriers to Voting in Louisiana*, Jun. 2018, <https://www.usccr.gov/pubs/2018/08-20-LA-Voting-Barriers.pdf> at 12.

<sup>15</sup> Report at 178-179.

<sup>16</sup> Report at 182.

<sup>17</sup> Report at 178-79.

<sup>18</sup> Report at 179.

<sup>19</sup> Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Civil Rights and Voting in Illinois*, Feb. 2018, <https://www.usccr.gov/pubs/2018/IL-Voting-Rights.pdf> at 20.

<sup>20</sup> Maine Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights in Maine*, Apr. 2018, <https://www.usccr.gov/pubs/2018/06-29-ME-Voting-Rights.pdf> at 10.

right to vote.<sup>21</sup> As Jerry Vattamala from the Asian American Legal Defense and Education Fund told the Commission: “Racist sentiment towards Asian Americans is not a passing adversity but a continuing reality” necessitating strong voting rights protection.<sup>22</sup>

- The report documents widespread problems with inaccessibility for voters with disabilities, including for example that 100% of voters with disabilities were unable to vote privately and independently in municipal elections in New Hampshire in 2013 because none of the polling locations had set up an accessible voting system.<sup>23</sup> In California, voters with disabilities frequently experience inaccessible polling locations including “long walks after parking, obstructions, and inadequate lighting.”<sup>24</sup>

The Commission’s report, as well as news reports<sup>25</sup> leading up to and following the 2018 midterm elections that problematic practices identified by the Commission – including strict voter identification laws, unfair purging, cuts to early voting, and eliminating polling places – were in use in many states and jurisdictions throughout the country, prompted the Commission to reiterate some of its most urgent recommendations regarding voting rights to the 116th Congress.<sup>26</sup> The Commission’s North Dakota State Advisory Committee also issued a statement in light of a Supreme Court decision allowing a new voter ID requirement to take effect, even though it had the potential to particularly adversely affect Native American voters living on reservations, as many do not have residential addresses.<sup>27</sup> The Committee expressed its concern that the restrictive voter ID law targeted Native American voters, and also pointed out that the change in law for the general election, from the law in place for the primary election, would likely result in confusion and “serious risk of large-scale disenfranchisement.”<sup>28</sup>

#### DOJ Enforcement Efforts

<sup>21</sup> Report at 140-41.

<sup>22</sup> Report at 191-192.

<sup>23</sup> Report at 195.

<sup>24</sup> California Advisory Committee to the U.S. Commission on Civil Rights, *Voting Integrity in California: Issues and Concerns in the 21<sup>st</sup> Century*, Jun. 2017, <https://www.usccr.gov/pubs/docs/07-24-Voting-Integrity-in-CA.pdf> at 38.

<sup>25</sup> See, e.g., Amy Gardner and Beth Reinhard, *Voting problems emerge across the country on Election Day*, Washington Post, Nov. 6, 2018, <https://www.mercurynews.com/2018/11/06/as-country-goes-to-the-polls-voting-problems-emerge/>; Peggy Lowe, *Missouri Voters Report Long Lines, Broken Machines and Confusion Over Photo ID Law*, KCUR 89.3, Nov. 6, 2018, <https://www.kcur.org/post/missouri-voters-report-long-lines-broken-machines-and-confusion-over-photo-id-law/#stream:0>; Mark Nichols, *Closed voting sites hit minority counties harder for busy midterm elections*, USA TODAY, Oct. 30, 2018, <https://www.usatoday.com/story/news/2018/10/30/midterm-elections-closed-voting-sites-impact-minority-voter-turnout/1774221002/>; Johnny Kauffman, *6 Takeaways From Georgia’s ‘Use It Or Lose It’ Voter Purge Investigation*, NPR, Oct. 22, 2018, <https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation>.

<sup>26</sup> U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation*, Dec. 7, 2018, <https://www.usccr.gov/press/2018/12-07-Priorities-for-116th-Congress.pdf> at 3.

<sup>27</sup> North Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Statement of the North Dakota Advisory Committee Concerned by Potential for Voter Suppression*, Oct. 26, 2018, <https://www.usccr.gov/press/2018/20181026-North-Dakota-Voting-Rights.pdf>.

<sup>28</sup> *Id.*

Notwithstanding the recurrence of this ongoing discrimination in voting, the report shows that DOJ enforcement lags behind even available tools. Whereas the DOJ has statutory authority to enforce VRA and congressional appropriations annually to staff such enforcement, the DOJ's actual enforcement work in this area well lags private enforcement that is much more expensive and onerous to mount.<sup>29</sup>

Our September 2018 report found that since the *Shelby County* decision in 2013, the DOJ had filed four of the 61 Section 2 cases filed, one language access case, and zero cases about the right to assistance in voting.<sup>30</sup> The ACLU alone has brought more Section 2 cases than the DOJ;<sup>31</sup> so has the Lawyers' Committee for Civil Rights Under Law.<sup>32</sup> The DOJ has shown a sharp decline in the number of language access cases it has filed, filing only one such case since the *Shelby County* decision, in contrast to an ongoing need for language access protections.<sup>33</sup> The DOJ has not filed any cases to enforce Section 208 of the VRA, which provides for voters' rights to assistance, including for voters with disabilities and limited-English proficiency, since 2009.<sup>34</sup>

These distressing data and information regarding ongoing voting discrimination form the basis for my fellow Commissioners' and my unanimous call for Congress to improve our voting protections and for the DOJ to increase its enforcement to ensure that ours is a real democracy.

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<sup>29</sup> Report at 254-56.

<sup>30</sup> Report at 10. The Section 2 cases were filed in 2013 and 2017 and the language access case in 2016. Report at 253, 259.

<sup>31</sup> Report at 80, 265.

<sup>32</sup> Report at 265.

<sup>33</sup> Report at 259.

<sup>34</sup> Report at 260-62.

Chairwoman FUDGE. Thank you very much.  
Ms. Wright, you are recognized for 5 minutes.

#### **STATEMENT OF BRENDA WRIGHT**

Ms. WRIGHT. Thank you, Chairwoman Fudge and Ranking Member Davis, for the opportunity to testify today.

It is a privilege to be testifying before this Subcommittee at a time when it is doing such important work at this critical moment in our democracy. And I believe it is fitting in these times to start out with a big-picture reflection on the history of the right to vote in America because of the light it sheds on what is needed to make that right real today, given the threats it is facing today.

One starting point to notice is that, when people recount the story of the evolution of the right to vote in the United States, you often hear a narrative of how it has enjoyed basically just a steady expansion, from exclusion to inclusion, since our Nation's founding.

So the narrative starts with how the right to vote initially was reserved only to white men who owned property, and then it went on to include formerly enslaved men through the 15th Amendment; then the 19th Amendment that gave women the right to vote; then the Voting Rights Act that gave crucial protections against racial discrimination; then 18-year-olds through the 26th Amendment, et cetera. And so the narrative that you hear suggests that we have finally reached the point where everyone can register and vote.

Now, all of those advances have been critically important, and I am not dismissive of them at all, but I think that the work that this committee has done over the past many months shows us that that is not a correct picture of our history.

Instead, as many advocates and historians have lifted up, the right to vote in America has always been contested. It has achieved gains, and it has suffered setbacks. Progress has been met with pushback. And each generation has had to fight and struggle to achieve or expand or defend the right to vote. Each generation has had to do that in its own way and under its own circumstances.

Now, that leads us to today. As we have already heard through the witnesses today and as you have heard in your previous hearings, the right to vote today is under attack, and it is under attack in numerous ways.

And to avoid repeating what has already been said, I would like to focus on an issue of enforcement of an existing law that we do have which has been seriously neglected by the current Department of Justice, and that is the National Voter Registration Act of 1993.

That Act requires States to provide voter registration through public assistance agencies when people are applying for benefits, and it requires States to provide voter registration when people engage in driver's license transactions.

Demos has spent a number of years now investigating the extent to which States are complying with those laws, and we have found in State after State that, through neglect, through bad administration, those opportunities for voter registration have often been neglected.

We have worked in over 20 States, and they are red States and blue States. It is not just concentrated in one region of the country.

One of our first cases was in Ohio. And we have worked, over the years, both cooperatively with States and in litigating against them, to raise up the level of compliance with those very important voter registration opportunities.

One of the things that really concerns us is that, under the current Department of Justice, there have been no enforcement actions to enforce either Section 5 or Section 7 of the National Voter Registration Act. And that is a big problem. We can't cover the entire country on our own.

I want to also focus on one group of U.S. citizens that remains formally locked out of the vote at some point in their lives across almost the entire United States, and that is people with felony convictions. This is a stain on our democracy, and it formally disenfranchises more than 5 million Americans who are denied the right to vote because of criminal convictions.

And because our criminal legal system disproportionately targets, arrests, sentences, and locks up people of color, communities of color are represented among disenfranchised Americans far beyond their representation in the population. For example, a national survey on drug use reported that African-Americans and whites use drugs at similar rates but the imprisonment rate of African-Americans for drug charges is almost six times that of whites.

So to achieve the goal of a full enfranchisement that is central to democracy, we must reform our current laws that disenfranchise persons with felony convictions. Such laws are not required by the U.S. Constitution, and they have not been the law forever. In fact, in Maine and Vermont and in many other countries, including most of Europe, all people who are incarcerated can vote. There is simply nothing inevitable about vote stripping.

And, certainly, the practice in some States of permanently disenfranchising people even years after they have completed their sentences is indefensible.

I want to just touch on one other issue in the time remaining, because the issue of criminal disenfranchisement is compounded by the practice of prison-based gerrymandering. Prison-based gerrymandering happens because the United States Census counts incarcerated persons as residents of the prison where they are incarcerated rather than as residents of their home community. And because prisons are often located far away from the home community of incarcerated persons, counting them in that manner awards disproportionate representation to rural or semi-rural communities containing prisons at the expense of representation for the home communities of incarcerated persons.

Chairwoman FUDGE. Thank—

Ms. WRIGHT. Thank you. Sorry to go over my time just a little bit.

Chairwoman FUDGE. Thank you very much.

Ms. WRIGHT. Thank you for allowing me to testify here.

[The statement of Ms. Wright follows:]

# Dēmos

Written Testimony of

Brenda Wright  
Senior Advisor for Legal Strategies  
Dēmos

Hearing: “Voting Rights and Election Administration in America”

Subcommittee on Elections of the Committee on House Administration  
U.S. House of Representatives

Longworth House Office Building  
Room 1310

October 17, 2019

## I. INTRODUCTION

Thank you, Chairperson Fudge, Ranking Member Davis, and all members of the Committee, for the opportunity to testify on “Voting Rights and Election Administration in America,” a topic of critical importance in these times when our democracy is being severely tested. The right to register and vote is fundamental to preserving our democracy, and the Committee’s focus on these rights could not come at a better time.

My name is Brenda Wright, and I am Senior Advisor for Legal Strategies at Dēmos. Dēmos is a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy. Our name—meaning “the people”—is the root word of democracy, and it reminds us that, in America, we are strongest when everyone’s voice is heard.

But today, this ideal is under attack. Voter suppression—sometimes through blatantly racist maneuvers, sometimes through sophisticated, ostensibly race-neutral tactics—poses an existential threat to our democracy. Dēmos is deeply involved in responding to these substantial and complicated challenges. We are fighting against obstacles to the right to register and vote through engagement with state and local elections officials when possible, and litigation when necessary. We are working to secure voting access for currently and formerly incarcerated persons; ensuring access to voter registration through state public assistance agencies and drivers’ license agencies; litigating against efforts to deter voter registration by threats related to citizenship status; and fighting overly aggressive voter purge efforts, among other initiatives.



Dēmos is encouraged that, to address these challenges, the House passed, as its first priority, H.R. 1, the For the People Act, which has the range and depth to help us build the multiracial, inclusive democracy that Americans deserve. Dēmos testified before the Committee on House Administration in support of the For the People Act earlier this year.<sup>1</sup> It is a visionary bill that can transform our democracy by addressing the deep political, racial, and economic inequalities that hold us back. We very much hope that the Senate will take up the For the People Act now that it has passed the House.

Dēmos also very much appreciates that this Committee continues to prioritize investigating how to best protect the right to register and vote, and how election administration can be supported and improved to safeguard those rights.

## II. VOTING RIGHTS

### A. Voting rights are under attack, and we must fully restore the Voting Rights Act.

When it passed the Voting Rights Act (VRA) in 1965, Congress took a major step toward fulfilling the promise of the Fifteenth Amendment that no citizen would be denied the right to vote “on account of race, color, or previous condition of servitude.”<sup>2</sup> The centerpiece of the Act was a provision requiring certain states and local jurisdictions to obtain approval from the federal government before making any changes to their voting practices and procedures.<sup>3</sup> This “preclearance” protection applied to jurisdictions with a history of voting discrimination and helped to protect the right to vote for persons long excluded from equal access to the franchise.

Six years ago, in *Shelby County v. Holder*, the Supreme Court struck down the formula used to determine what jurisdictions were subject to preclearance, declaring that “[o]ur country has changed” and voting discrimination was no longer a major concern. In a 5-4 decision split along ideological lines, the Court stripped voters in nine states and dozens of counties and municipalities of the protection Congress had put in place.<sup>4</sup>

Shelby County’s successful challenge to the VRA’s preclearance provisions relied in part on the argument that victims of discrimination in voting would still have adequate recourse through enforcement of Section 2 of the VRA.<sup>5</sup> That Section protects against voting practices and procedures that have the effect of denying protected groups an equal opportunity to participate in the political process and elect candidates of choice to office.<sup>6</sup>

The reality since the *Shelby County* decision, however, has belied the doubtful prediction that the remedies available under Section 2 of the VRA would be sufficient to protect voting rights in the absence of the preclearance provisions of Section 5. In contrast to the pre-emptive protections of

<sup>1</sup> Chiraag Bains, Written Testimony, “For the People: Our American Democracy,” Hearing of the House Committee on Administration, U.S. House of Representatives, February 14, 2019.

<sup>2</sup> U.S. Const. amend. XV.

<sup>3</sup> 52 U.S.C. § 10304.

<sup>4</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>5</sup> Merits Brief of Petitioner, *Shelby County v. Holder*, No. 12-96, at 20.

<sup>6</sup> 52 U.S.C. § 10301(b).

Section 5 of the VRA, the remedies under Section 2 cannot be achieved unless the aggrieved persons successfully pursue laborious and expensive litigation satisfying the burden of proof that the challenged enactment is discriminatory. Such litigation is extraordinarily expensive—prohibitively so for most plaintiffs. The legal organizations capable of undertaking this work are few; and we must constantly engage in triage because of the limitations of their resources.

The record of the Department of Justice (“DOJ”) since 2016 also belies the argument that enforcement of Section 2 of the VRA, and other remaining voting rights protections, would make up for the removal of the VRA’s preclearance requirements. According to information on the DOJ website, the current Administration has yet to file a single lawsuit to enforce Section 2 of the VRA.<sup>7</sup> Nor has DOJ filed any actions to protect language access or disability access in voting.<sup>8</sup> The sole enforcement action taken by DOJ’s Voting Section under the current Administration was to demand that Kentucky conduct more aggressive purges of voters from the voting rolls.<sup>9</sup>

The DOJ’s current enforcement vacuum is particularly harmful given how eager many states have been to implement new restrictions on registration and voting in the wake of *Shelby*. Since the *Shelby County* decision, at least 23 states have implemented new restrictions on voting, including onerous photo ID measures, cuts to early voting, and polling place closures.<sup>10</sup> By 2018, 34 states had some form of voter ID law on their books; 17 of those requested photo IDs,<sup>11</sup> to which roughly 11 percent of the American population does not have access.<sup>12</sup> That 11 percent is disproportionately comprised of voters of color, seniors, and low-income citizens.<sup>13</sup>

Closures of polling places have especially accelerated in the wake of *Shelby County*. A report by the Leadership Conference on Civil and Human Rights found that state and local jurisdictions

<sup>7</sup> The DOJ’s Voting Section lists all of its litigation since at least 1993 on its website: <https://www.justice.gov/crt/voting-section-litigation>. The information cited is current as of October 14, 2019.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Eric Badner, *Discriminatory Voter Laws Have Surged in Last 5 Years, Federal Commission Finds*, CNN POLITICS, September 12, 2018, available at <https://www.cnn.com/2018/09/12/politics/voting-rights-federal-commission-election/index.html>.

<sup>11</sup> National Conference of State Legislatures, *Voter Identification Requirements – Voter ID Laws*, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>. Of the 17 states requesting photo ID to vote, 7 of those have strict requirements, meaning that, unless a voter produces ID at the polls or at an elections office within a prescribed period of time post-election, that vote will not be counted. Additionally, one of the biggest problems with voter photo ID laws is that, even if they are not strict, they often produce much confusion. For example, even though Texas’s strict voter photo ID law was not in place for the 2016 or 2018 elections, many would-be voters reported confusion as to what documentation they needed to vote. Many stayed home. Poll workers too were confused about the requirements, leading to long lines and disenfranchisement. See Jessica Huseman, *Texas Voter ID Law Led to Fears and Failures in 2016 Election*, PROPUBLICA, May 2, 2017, available at <https://www.propublica.org/article/texas-voter-id-law-led-to-fears-and-failures-in-2016-election>.

<sup>12</sup> See Keesha Gaskins and Sundee Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (July 18, 2012), available at <https://www.brennancenter.org/publication/challenge-obtaining-voter-identification>; Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly*, WASH. POST, May 23, 2016, available at [https://www.washingtonpost.com/politics/courts\\_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972\\_story.html?utm\\_term=.9911008ca3b1](https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html?utm_term=.9911008ca3b1).

<sup>13</sup> ACLU, *Oppose Voter ID Legislation – Fact Sheet*, n.1, available at <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet>.

previously covered by Section 5 of the VRA had closed almost 1700 polling places between 2012 and 2018.<sup>14</sup>

We know these restrictive actions keep voters of color from full participation in our democracy. Recent survey research shows that black and Latino voters are three times as likely as white voters to encounter hurdles when trying to vote. They are more likely to be unable to take time off from work to go to the polls, be told that they do not have a proper form of ID, discover that their name is not on the list of registered voters, and be harassed or bothered at the polls.<sup>15</sup>

Because of these ongoing attempts to suppress the vote, particularly for voters of color, Dēmos calls for full restoration of the Voting Rights Act’s protections, and we urge Congress to approve H.R. 4, the Voting Rights Advancement Act.

**B. Voter purges and intimidation are, increasingly, used as suppressive tactics against voters of color.**

**1. Voter purges**

Over the past several years, many states have made voter registration—already a burdensome requirement—even more restrictive through voter purges that too often remove eligible persons from the voting rolls. And states that already have reasonable list maintenance procedures are increasingly targeted by self-proclaimed “voter integrity” groups seeking to force indiscriminate removals from the voting rolls. Examples from Dēmos’ recent litigation in Ohio, Indiana, Texas, and Florida show how ill-considered purges can exclude eligible persons from the political process.

*Ohio*

Last year, the U.S. Supreme Court considered *Husted v. A. Philip Randolph Institute*, a case challenging Ohio’s practice of using non-voting to initiate a voter purge process. Overturning the Sixth Circuit’s decision, a narrow 5-4 majority of the Court held that Ohio’s practice did not violate the National Voter Registration Act’s (NVRA) prohibition on roll-maintenance programs or activities that “result in the removal of the name of any person” from the registration rolls “by reason of the person’s failure to vote.”<sup>16</sup>

Members of Congress made clear during Supreme Court briefing that Section 8 of the NVRA was designed to prevent purge practices like Ohio’s.<sup>17</sup> H.R. 1 would amend Section 8 of the NVRA to address the *Husted* decision and prohibit states from initiating a purge procedure based on non-voting—a metric that simply does not reliably indicate that a voter has moved, and the

<sup>14</sup> Leadership Conference on Civil and Human Rights, *Democracy Diverted: Polling Place Closures and the Right to Vote*, 12 (September 2019), available at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

<sup>15</sup> Alex Vandermaas-Peeler et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PUBLIC RELIGION RESEARCH INSTITUTE (July 17, 2018), <https://www.prr.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

<sup>16</sup> *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1841-46 (2018); see also 52 U.S.C. § 20507(b)(2).

<sup>17</sup> Brief of Certain Members of the Congressional Black Caucus as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017).

use of which disproportionately targets, removes, and disenfranchises traditionally marginalized persons from the registration rolls.

As numerous amici in *Husted* explained, barriers to voting such as transportation issues, inflexible work schedules, care-giving responsibilities, illnesses, inaccessible polling locations, and language access problems can disproportionately prevent persons of color, housing-insecure individuals, persons with disabilities, low-income individuals, older voters, and persons with limited English proficiency from making it to the polls to vote.<sup>18</sup> Using a person's failure to vote to initiate a removal process will therefore disproportionately target such groups and result in their subsequent removal from the registration rolls. This was borne out in an analysis of the number of infrequent voters purged in Hamilton County, Ohio, from 2012 through 2015, which found that "African-American-majority neighborhoods in downtown Cincinnati had 10 percent of their voters removed due to inactivity, compared to only four percent of voters in a suburban, majority-white neighborhood."<sup>19</sup>

Demos is glad to report that, even after the Supreme Court's decision in *Husted v. APRI*, we have continued to win significant relief on behalf of purged voters in Ohio. We obtained relief to protect improperly purged voters in the 2018 elections, and have now secured a final settlement that will continue to protect improperly purged voters through the 2022 elections. The settlement, reached in August 2019, locks in relief through the 2022 election cycle for voters improperly purged for non-voting under Ohio's Supplemental Process prior to 2016, ensuring that their votes will count. The relief also mandates several reforms to Ohio's voter list maintenance program to minimize the number of eligible voters inadvertently removed.<sup>20</sup>

### *Indiana*

In 2017, Indiana adopted a law requiring elections officials to purge voters on Crosscheck's list of "Potential Double Registrants" without first notifying them or offering a chance to correct or verify Crosscheck's information. Crosscheck, the brainchild of former Kansas Secretary of State Kris Kobach, purports to identify people who register and vote in multiple states. But its formula for matching voter registration records across more than half the states is fundamentally flawed, resulting in millions of people being falsely flagged as double registrants. According to a 2008

<sup>18</sup> See generally Brief of Amici Curiae National Association for the Advancement of Colored People and the Ohio State Conference of the NAACP in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017) ("NAACP Br."); Brief of National Disability Rights Network, Disability Rights Ohio, AARP, AFL-CIO, SEIU, Democracy Initiative, National Coalition for the Homeless, Columbus Coalition for the Homeless, and Miami Valley Voter Protection Coalition as Amici Curiae in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); Brief of Asian Americans Advancing Justice I AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as Amici Curiae in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); see also Brief of Current and Former Ohio Elections Officials as Amici Curiae in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980, at 5-6 (U.S. Supreme Court Sept. 22, 2017) ("Election Official Br.").

<sup>19</sup> NAACP Br., *supra* note 18, at 18 (referencing Andy Sullivan & Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016), <http://www.reuters.com/article/us-usa-votingrights/ohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-out-in-november-idUSKCN0Y019D>).

<sup>20</sup> Settlement agreement, *Ohio A. Philip Randolph Institute v. LaRose*, August 28, 2019, available at <https://www.demos.org/case/ohio-philip-randolph-institute-v-larose-ohio-philip-randolph-institute-v-husted>.

study,<sup>21</sup> finding different people with identical first names, last names, and date of birth—the only criteria Crosscheck uses to flag duplicate registrations, even when other information conflicts—is surprisingly common. Because of this and other problems, Crosscheck’s “matches” are entirely unreliable.<sup>22</sup> But once voters have been flagged under this flawed formula, they are then subjected to extra scrutiny and can be purged from the voter rolls.

In a major win for Indiana voters, U.S. District Judge Tanya Walton Pratt granted motions filed by Dēmos and other partners for a preliminary injunction, and blocked the law. Had the law gone into effect, many voters would not have learned that they had been purged until they showed up at the polls. In August 2019, the U.S. Court of Appeals for the Seventh Circuit unanimously affirmed this ruling, finding that our claims were likely to succeed on the merits. The Seventh Circuit’s ruling in *Common Cause v. Lawson* ensures that Indiana must refrain from implementing its flawed legislation while the case remains in litigation toward a final judgment.

### *Texas*

In February 2019, Dēmos and its partners filed a lawsuit and an emergency motion to stop Texas from discriminating against voters of color and purging naturalized citizens who are eligible to vote from the voter rolls. David Whitley, who was then Texas’s Secretary of State, made highly publicized accusations that 98,000 non-citizens might be on the voter rolls and that 58,000 may have actually voted in the state’s elections, based on DMV records. That claim was false. It was based on data the state knew was flawed, and it ignored the reality that many people who were lawfully in the country when they applied for a driver’s license or state ID, before attaining citizenship, had later become naturalized citizens—entitled to full voting rights under our Constitution.

That did not stop Texas Attorney General Ken Paxton from issuing a reckless “VOTER FRAUD ALERT”, which President Donald Trump amplified by tweeting about voter fraud and calling it “just the tip of the iceberg.” Then-Secretary Whitley also encouraged county election officials to send notices to these individuals and, if they didn’t respond with documentary proof of citizenship within 30 days, purge them from the voting rolls.

These unsupported accusations left thousands of naturalized citizens outraged and fearful that their hard-won right to vote was in jeopardy. Nivien Saleh, a Harris County voter and one of our clients, gained her citizenship in January 2018, after living lawfully in the U.S. under a student visa and then an H1B visa since 1997. In a declaration filed with the court, Ms. Saleh described her experience voting for the first time in the March 2018 Texas primaries as “the culmination of many years of hard work” and “an experience I will always remember.” Finding herself wrongly accused of unlawfully registering to vote left Ms. Saleh “apprehensive, insulted and angry.” She explained, “I have worked hard to be a productive, law-abiding citizen,” and said that the Secretary’s false accusation “disturbs me deeply.”

<sup>21</sup> Michael P. McDonald and Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 ELECTION L.J. 111 (2008), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=997888](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888).

<sup>22</sup> Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* (Oct. 24, 2017), available at <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.

Dēmos and its partners won a preliminary injunction in February 2019, and a final settlement in April 2019 that prevented Texas from carrying out the threatened purge. Under the settlement, the state rescinded its original advisory and informed targeted voters that their voting rights are no longer subject to scrutiny. In addition, Texas Secretary of State David Whitley ultimately was forced to step down from his position in large part because of his missteps in pursuing this indefensible voter suppression effort.

### ***Broward County, Florida***

After the 2016 election, so-called “voting integrity” groups such as the Public Interest Legal Foundation (PILF) and the American Civil Rights Union (ACRU) have been increasingly emboldened to push states and localities to promote overly aggressive purges of registered voters from the voting rolls, and are filing increasing numbers of lawsuits to demand such purges. In one such lawsuit, the ACRU sued Broward County to demand aggressive purges of the voter rolls. Dēmos intervened on behalf of 32BJ-SEIU to assist in defending against this unwarranted lawsuit. After a full trial in July 2018, the district court ruled in our favor, holding that the plaintiffs had relied on flawed data for their allegation that the voter rolls in Broward County were inflated. In August 2019, the 11<sup>th</sup> Circuit Court of Appeals unanimously affirmed our lower-court victory.

Attempts to purge eligible voters from the rolls—as we’ve seen recently in Ohio, Indiana, Texas, and Florida—threaten to undo the work that goes into registering eligible citizens. If Congress is committed to voter registration reform, then it must also ensure that we preserve those registrations through protections against aggressive attempts to remove voters from the rolls. We strongly endorse the approach taken by H.R. 1 to protect and expand voter registration and protect voters from overbroad purges.

### **C. Registration continues to be a barrier to participation.**

The requirement of pre-registration to exercise the right to vote is still the number-one barrier to participation in our democracy. Fifty to 60 million eligible voters, disproportionately people of color, young people, and low-income people, remain unregistered.

The National Voter Registration Act of 1993 (NVRA) is an important tool for facilitating voter registration. The NVRA requires 44 states and the District of Columbia to actively offer voter registration through government agencies like motor vehicle bureaus and departments of health and human services; bans certain onerous state voter-registration policies; and mandates the development and acceptance of mail-in voter registration applications. The NVRA also increases the ability of citizens to remain registered and to update their voter registration records. When implemented properly, the NVRA can benefit millions of voters each election cycle.<sup>23</sup>

However, achieving the NVRA’s full potential remains an unfinished project. Many states do not fully comply with the NVRA’s requirements, resulting at best in missed opportunities to bring

<sup>23</sup> LAURA WILLIAMSON, PAMELA CATALDO & BRENDA WRIGHT, DEMOS, TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES (2018), available at <https://www.demos.org/research/toward-more-representative-electorate>.

millions more people into the political process and at worst the active suppression of certain communities' voices. Over the last several years, Demos and partners such as Project Vote, the Lawyers' Committee for Civil Rights Under Law, and others have worked to assess and improve compliance with the NVRA through collaboration with election administrators and state-based partners, advocacy, and, when necessary, litigation.<sup>24</sup>

Demos estimates that our NVRA compliance work across nearly two dozen states has resulted in more than 3 million new voter registration applications being submitted through public assistance agencies under Section 7 of the NVRA alone.<sup>25</sup>

The "Motor-Voter" provisions of the NVRA, established by Section 5 of the Act, also can facilitate voter registration for millions of people when properly implemented. But just as some states have neglected their obligations to provide voter registration through public assistance agencies, some have lagged in providing required voter registration services through drivers' license offices. Here, too, Demos and partner organizations have worked extensively over the past several years to help states improve their voter registration services.<sup>26</sup>

Millions of United States citizens find elections more accessible when the NVRA is adequately enforced, but significant hurdles remain. In the November 2016 general election, nearly 1 in 5 people (18 percent) who were eligible but did not vote cited registration issues as their main reason for not casting a ballot.<sup>27</sup> Ensuring compliance with the NVRA is important, but we know that states can and should do much more when it comes to registering eligible voters.

That is why we have conducted research on and advocated for reforms such as same-day registration (SDR) and automatic voter registration (AVR), both of which increase registration rates and boost participation—particularly among voters of color and youth.<sup>28</sup>

While some states have moved to restrict access to the ballot box, others are taking appropriate steps to adopt measures such as online, same-day, and automatic voter registration. Yet more can and should be done to ensure that all Americans, no matter where they live, have access to these kinds of registration reforms.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* The states in which Demos and partners have worked on Section 7 compliance include Alabama, Arizona, California, Colorado, Georgia, Indiana, Illinois, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, and Washington.

<sup>26</sup> Stuart Naifeh, *Accelerating the Vote: How States Are Improving Motor-Voter Registration Under the National Voter Registration Act* (2017) <https://www.demos.org/research/accelerating-vote>.

<sup>27</sup> CENSUS BUREAU, CURRENT POPULATION SURVEY, NOVEMBER 2016 VOTING AND REGISTRATION SUPPLEMENT. Reasons cited for not voting include "did not meet registration deadlines," "did not know where or how to register," and "did not meet residency requirements/did not live here long enough."

<sup>28</sup> Demos, *Same Day Registration*, [https://www.Demos.org/sites/default/files/publications/Sdr-Factsheet-Final\\_1.pdf](https://www.Demos.org/sites/default/files/publications/Sdr-Factsheet-Final_1.pdf); Sean McElwee, Brian Schaffner, and Jesse Rhodes, *Oregon Automatic Voter Registration*, <https://www.demos.org/policy-briefs/oregon-automatic-voter-registration>.

**D. The exclusion of over 5 million individuals through felony disenfranchisement laws perpetuates a legacy of racial bias and is anti-democratic.**

Despite significant advances in voting rights made possible by the tireless struggle and sacrifice of persons long excluded from the franchise,<sup>29</sup> one group of U.S. citizens remains formally locked out of the vote at some point in their lives across almost the entire United States: people with felony convictions. This stain on our democracy formally disenfranchises more than five million Americans.<sup>30</sup> And because our criminal legal system disproportionately targets, arrests, sentences, and locks up people of color, communities of color are represented among disenfranchised Americans far beyond their representation in the population.<sup>31</sup> For example, a national survey on drug use reported that “African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost *six times that of whites*.”<sup>32</sup> African Americans “represent 12.5 percent of illicit drug users, but 29 percent of those arrested for drug offense and 33 percent of those incarcerated in state facilities for drug offenses.”<sup>33</sup>

<sup>29</sup> Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>. See also See generally W.E.B. Du Bois, *Black Reconstruction in America*, (New York: The Free Press: 1935); Susan Ware, *Why They Marched: Untold Stories of Women Who Fought for the Right to Vote*, (Cambridge: The Belknap Press of Harvard University, 2019); John Lewis and Michael D’Orso, *Walking With the Wind*, (New York: Simon & Schuster, 1998); Reverend Dr. William J. Barber II, *The Third Reconstruction: Moral Mondays, Fusion Politics, and the Rise of a New Justice Movement*, (Boston: Beacon Press, 2016); Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy*, (Durham: Duke University Press, 2015).  
<sup>30</sup> In 2016, the Sentencing Project estimated that felony disenfranchisement laws formally disenfranchised 6.1 million Americans. See Jean Chung, “Felony Disenfranchisement: A Primer,” The Sentencing Project, 2016, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>. In 2018, a supermajority of Floridians passed Amendment 4, which automatically restored the voting rights of 1.4 million Floridians who had served time and completed probation and parole. See Frances Robles, “1.4 Million Floridians With Felonies Win Long-Denied Right to Vote,” *New York Times*, November 7, 2018, <https://www.nytimes.com/2018/11/07/us/florida-felon-voting-rights.html>. However, in 2019, Republican lawmakers in Florida passed a law requiring returning citizens pay all outstanding fines and fees before their voting rights are restored, which has made hundreds of thousands of newly-eligible Floridians again ineligible to register and vote until they pay this modern-day poll tax. See Chiraag Bains, “Florida Prices Hundreds of Thousands of Returning Citizens Out of the Vote in a Stunning and Unconstitutional Move,” *Demos*, June 29, 2019, <https://www.demos.org/press-release/florida-prices-hundreds-thousands-returning-citizens-out-vote-stunning-and-can-t-pay-can-t-vote>. A National Survey of the Modern Poll Tax, Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, July 25, 2019, 23, [https://campaignlegal.org/sites/default/files/2019-07/CLC\\_CPCV\\_Report\\_Final\\_0.pdf](https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf). As a result, new estimates put the total number of disenfranchised people nation-wide between five and six million.

<sup>31</sup> See Dorothy E. Roberts, “Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework Symposium on Pursuing Racial Fairness in Criminal Justice: Twenty Years after McCleskey v. Kemp,” *Columbia Human Rights Law Review* 39 (2007): 261–86; Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012); NAACP Criminal Justice Fact Sheet, <https://www.naacp.org/criminal-justice-fact-sheet/>; and *Everyone’s America: 26 state policies for a race-forward, populist agenda to empower all Americans*, *Demos* 2018: 176. <https://www.demos.org/research/everyones-america>.

<sup>32</sup> *Id.* (emphasis added).

<sup>33</sup> *Id.*



To achieve the goal of full enfranchisement that is central to democracy, we must reform our current laws that disenfranchise persons with felony convictions. Such laws are not required by the U.S. Constitution, and they have not been the law forever. In fact, today, all people who are incarcerated can vote in Maine, Vermont, and Puerto Rico, and in many other countries, including most of Europe; people serving felony prison sentences for certain crimes can also vote in Alabama, Alaska, Arkansas, California, and Mississippi.<sup>34</sup> In short, there's nothing inevitable about these vote-stripping laws.

The proliferation and entrenchment of criminal disenfranchisement laws in the United States, we must acknowledge, is rooted in beliefs about white supremacy. After Reconstruction, states in the South began to tailor their disenfranchisement laws to cover crimes for which black citizens were most frequently prosecuted, "as part of a larger effort to disfranchise African American voters and to restore the Democratic Party to political dominance."<sup>35</sup> Over time, states stopped distinguishing between kinds of crimes, instead imposing blanket disenfranchisement for all felony convictions. It is no accident that, today, the two states that do not disenfranchise any incarcerated persons are Maine and Vermont—states with overwhelmingly white populations.<sup>36</sup>

Because of such disparities in the criminal legal system, felony disenfranchisement laws have formally stripped one in every 13 African Americans of their right to vote, four times the disenfranchisement rate of non-African Americans.<sup>37</sup> In the 2016 elections, approximately 2.5 percent of all Americans who would otherwise be able to vote could not vote due to felony convictions; that number jumps to 7.4 percent for African Americans.<sup>38</sup> Communities of color therefore experience reduced political power and the underrepresentation of their interests in government. Ending felony disenfranchisement would help bring equality and equity to the democratic process. Encouraging voting has also been found to aid with reentry and thus promote public safety.<sup>39</sup>

Felony disenfranchisement laws in the U.S. are a deep stain on our integrity and our morality as a people. They are inconsistent with our values as a democratic society. They are racist in their roots and discriminatory in their impact. And they do nothing to promote community wellness; in fact, they deny directly impacted people and their communities the myriad benefits that come from full civic engagement. We must end this painful and violent practice of excluding people from our democracy by ending felony disenfranchisement laws and expanding voting rights to those whose rights have been taken away.

<sup>34</sup> ACLU, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and other Democracies* (2006) [https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep\\_20060525.pdf](https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf); Chung, *supra* n. 30.

<sup>35</sup> Pippa Holloway, "A Chicken-Stealer Shall Lose His Vote": Disenfranchisement for Larceny in the South, 1874-1890, 75 J. S. HIST. 931, 931 (2009).

<sup>36</sup> Chung, *supra* note 30.

<sup>37</sup> *Id.*

<sup>38</sup> Bernard Fraga, *The Turnout Gap: Race, Ethnicity, and Political Inequality in A Diversifying America*, (Cambridge: Cambridge University Press, 2018), 173.

<sup>39</sup> Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 197 (2004-2005). See also ALEX EWALD, DEMOS, PUNISHING AT THE POLLS, 35 (2003) (describing value of developing greater civic consciousness by encouraging vote) [https://www.demos.org/sites/default/files/publications/FD\\_-\\_Punishing\\_at\\_the\\_Polls.pdf](https://www.demos.org/sites/default/files/publications/FD_-_Punishing_at_the_Polls.pdf).

### **E. Prison-Based Gerrymandering Compounds the Injustices of Criminal Disenfranchisement.**

The practice of prison-based gerrymandering has long distorted our democracy. Prison-based gerrymandering results from the current practice of the U.S. Census Bureau to count incarcerated persons as residents of the prison for purposes when conducting the Census.<sup>40</sup>

Because prisons are often located far from the home residences of incarcerated persons, counting incarcerated persons as residents of the prison for redistricting purposes can award disproportionate representation to rural or semi-rural communities containing prisons, at the expense of representation for the home communities of incarcerated persons, which are disproportionately urban. The practice also defies most state constitutions and statutes, which explicitly state that incarceration does not change a person's legal residence.<sup>41</sup> The injustice of the practice is compounded by the fact that all but two states entirely deny the right to vote to incarcerated persons with felony convictions, even while they treat the incarcerated persons as residents of the prison for Census purposes. And to make the practice even more absurd, even when a state allows incarcerated persons the right to vote, they typically cannot vote as residents of the prison where they are counted for purposes of the Census; instead, they must vote an absentee ballot in the community where they resided before their incarceration.<sup>42</sup>

To date, six states have enacted laws correcting the distortions of representation resulting from the Census Bureau's flawed practice of counting incarcerated persons as residents of the prison rather than as residents of their home community.<sup>43</sup> We applaud the House for including an amendment to end prison-based gerrymandering in its final passage of H.R. 1.<sup>44</sup>

### **CONCLUSION**

The right to register and vote is fundamental to our democracy. Dēmos thanks the Committee for its careful study of the obstacles that too many voters face in exercising that fundamental right. The For the People Act would make voting more accessible and combat voter suppression efforts, blunt the distorting influence of big money in politics, and advance racial equity. Dēmos applauds the House's passage of the For the People Act and looks forward to seeing it signed into law.

<sup>40</sup> Prison Policy Initiative, Prison Gerrymandering Project, Overview, <https://www.prisonersofthecensus.org/impact.html>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> These states are California, Delaware, Maryland, Nevada, New York, and Washington. See Prison Policy Initiative, Prison Gerrymandering Project, What's New <https://www.prisonersofthecensus.org/>.

<sup>44</sup> John Nichols, "Prison Gerrymandering Distorts our Democracy in the Worst Ways," *The Nation*, March 8, 2019 <https://www.thenation.com/article/mark-pocan-gerrymandering-prisons/>.

Chairwoman FUDGE. Mr. Waldman, you are recognized for five minutes.

**STATEMENT OF MICHAEL WALDMAN**

Mr. WALDMAN. Thank you, Madam Chairwoman and Members of the Subcommittee, for this important hearing—for this important series of hearings.

The thing we all share, the premise we all share, is that the vote is the heart of American democracy. In so many ways, the right to vote is sacred. And, as we know, we have had to fight for this right for over two centuries—to expand it, to make it real, to ensure that it is something that all Americans can truly share.

We are now one year out from this very pivotal election, and it is plain that the systems of democracy and our electoral system is under tremendous stress at this moment. As has been described, 25 States in the last decade have enacted new laws to make it harder to vote, for the first time since the Jim Crow era. And those laws have hit hardest communities of color, young people, old people, poor people. Voter suppression unfortunately remains real and remains a real threat to our ideals.

And so the question for all of us and for this committee and this Congress is: What can we do to ensure that the 2020 election will be free and fair and secure? And, going forward, what can we do to modernize and improve our election systems so they truly represent all Americans?

Our belief, strongly, is that the best way to respond to attacks on democracy is to strengthen democracy. As we have looked—and I describe this in our testimony from the Brennan Center for Justice—as we have looked at the landscape of the current election, I want to identify three particular challenges, three particular threats, among many, to be concerned about.

The first is the prospect of abusive voter purges. And we have heard some things about that today. We all care about having accurate and complete voter rolls. Seventeen million people were removed from the voter rolls over the last two-year period we studied. And the rate of purging was far higher in the States that had previously been covered by Section 5 of the Voting Rights Act than in the rest of the country. And that has remained true over two election cycles. That is a concerning and a, frankly, suspicious fact that should make us be troubled, that these removals are not merely hygiene but something more pernicious than that.

The second concern that we have relates to election security, something that Members of Congress of both parties have worked on this year. We all know that in 2016 Russia attacked our democracy. As Director Coats testified, the lights are blinking red for not only Russia but other potential hostile actors trying to take advantage of the holes and risks in our system.

There has been progress. In 2016, 20 percent of people voted on machines without paper backup records. By 2020, there is a good chance that, in at least the hotly contested States in the Presidential election, that number could be down to zero. But more must be done.

And the third considerable threat that I want to point to is, following on what my colleague has said, the denial of the right to

vote to many, many people, especially in the State of Florida, who have had their right to vote restored by Amendment 4 to the Florida Constitution, which passed in a strong bipartisan vote, with 64 percent of the vote, and which now is being, we would argue, gutted—attempting to be gutted by the Florida legislature. And there is litigation to redress that that we are part of.

Going forward, what reforms would make a big difference? Well, first of all, we agree that it is vital to restore, reauthorize, and modernize the Voting Rights Act so that it can fully and once again protect the voting rights of all Americans and those who face racial discrimination.

Second, we strongly support H.R. 1, which we believe is the most significant and sweeping democracy reform legislation since 1965. That would include automatic voter registration, which has been described as a transformative reform that would add tens of millions to the rolls and make lists more accurate and secure.

And, finally, election security. We applaud the House of Representatives for its recent move to authorize \$600 million to help States meet this threat. We are encouraged that the Senate seems to be coming along, at a lower level. We encourage the House to stand firm in conference and in negotiations both at the proper amount of funding but also to make sure that the money is actually used for the purpose it is designed for.

The bottom line on all of this is, the public really cares about this. There is a great hunger for this. In the 2014 election, it was the lowest voter turnout in 72 years; and in the last midterm election, last year, it was the highest voter turnout since 1914. Ballot measures passed all over the country for democracy reform. It is a democracy movement from all over the country, all political views. The people are out there. And we encourage Congress to continue to play your role in making this a reality for our country.

Thank you.

[The statement of Mr. Waldman follows:]

# BRENNAN CENTER FOR JUSTICE

## TESTIMONY OF

MICHAEL WALDMAN  
PRESIDENT, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW<sup>1</sup>

HEARING ON VOTING RIGHTS AND ELECTION ADMINISTRATION IN AMERICA  
THE COMMITTEE ON HOUSE ADMINISTRATION  
U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON ELECTIONS

OCTOBER 17, 2019

One year before ballots are cast in November 2020, our election systems are under extraordinary stress. The research conducted by the Brennan Center, bolstered by our experience in the fight for voting rights in states across the country, confirms that there is strong reason for concern.

The right to vote is at the heart of democracy. Yet over the past decade, 25 states have put in place new laws making it harder to vote, for the first time since the Jim Crow era.<sup>2</sup> Many states continue to disenfranchise people living and working in our communities because they have a past felony conviction.<sup>3</sup> Voter roll purges have surged, particularly in states previously covered by the pre-clearance provisions of the Voting Rights Act.<sup>4</sup> All these obstacles to the ballot hit hardest communities of color, the poor, young, and elderly. Voter suppression remains a potent threat to American democracy, and a bitter challenge to the ideals of equality.

And there is a new and unnerving challenge: foreign interference threatens to disrupt and degrade the 2020 election. We all know that Russia intervened in 2016. Progress has been made since then. But next year, several states will still require voters to cast ballots on hackable

<sup>1</sup> The Brennan Center for Justice at NYU 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 have led the Center since 2005. I have authored books on government, the presidency, and the law, including *The Fight to Vote* (Simon & Schuster, 2016), a history of the struggle to win voting rights for all citizens. I previously served as director of speechwriting for President Bill Clinton from 1995 to 1999, and as special assistant to the president for policy coordination from 1993 to 1995. During my government service, I was the senior administration policy aide on political reform. My testimony does not purport to convey the views, if any, of the New York University School of Law. Thank you to Max Feldman and Harold Ekeh for their work on this testimony.

<sup>2</sup> Brennan Center for Justice, *New Voting Restrictions in America*, last accessed Oct. 14, 2019, <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>.

<sup>3</sup> Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States*, last accessed Oct. 14, 2019, <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.

<sup>4</sup> Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote* (Brennan Center for Justice 2018), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Purges\\_Growing\\_Threat.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf).

electronic voting machines that do not leave a paper trail. Others will conduct no post-election audits to verify an accurate vote count.<sup>5</sup>

How can we ensure that the 2020 election will be free, fair, and secure? And going forward, how can we modernize our elections so they fully and accurately reflect the voices of Americans? We believe strongly that the best response to attacks on our democracy is to strengthen our democracy.

So we strongly urge Congress to enact bold reform. Here, there is reason for optimism. Earlier this year, this House passed H.R. 1—the For the People Act of 2019. That legislation is the most sweeping democracy reform bill the Congress has taken up since 1965. We encourage the Senate to follow the House and pass this bill now. We also urge the House to pass a revitalized Voting Rights Act, as it committed to doing in H.R. 1. In addition, we urge the Senate to match this House’s proposed \$600 million appropriation to the states for election security.

Americans are hungry for positive solutions. Despite new barriers to participation, turnout surged from a 72-year low in 2014 to a hundred-year high in 2018.<sup>6</sup> Voters in states across the country passed ballot measures for voting rights and redistricting reform.<sup>7</sup> Citizens are energized and engaged, a true democracy movement. Congress should act with the same urgency as its constituents and undertake bold reform to revitalize our election systems.

## I. SIGNIFICANT THREATS TO ELECTION INTEGRITY IN 2020

The Brennan Center monitors challenges to our elections nationwide. Our attorneys, social scientists, and researchers have worked with election officials and citizens in dozens of states.<sup>8</sup> Here are the principal areas of concern for the 2020 election.<sup>9</sup>

<sup>5</sup> Andrea Córdova McCadney et al., *Voting Machine Security: Where We Stand a Few Months Before the New Hampshire Primary*, Brennan Center for Justice, Aug. 13, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/voting-machine-security-where-we-stand-few-months-new-hampshire-primary>.

<sup>6</sup> Jose A. DelReal, *Voter Turnout in 2014 Was the Lowest Since WWII*, Washington Post, Nov. 10, 2014, <https://www.washingtonpost.com/news/post-politics/wp/2014/11/10/voter-turnout-in-2014-was-the-lowest-since-wwii/>; Ed Kilgore, *2018 Turnout Was the Highest of Any Midterm in More Than a Century*, New York Magazine, Nov. 13, 2018, <http://nymag.com/intelligencer/2018/11/2018-turnout-was-the-highest-of-any-midterm-since-1914.html>.

<sup>7</sup> See, e.g., Lee Drutman, “One Big Winner Last Night: Political Reform,” Vox, Nov. 7, 2018, <https://www.vox.com/polyarchy/2018/11/7/18072204/2018-midterms-political-reform-winner>.

<sup>8</sup> In the past year, for example, we have successfully sued Georgia over the security of its voter data, leading to the enactment of new state laws; successfully challenged purge practices in Indiana; and currently are suing to overturn the new Florida law that aims to roll back Amendment 4’s restoration of voting rights to as many as 1.4 million Floridians. We are engaged in advocacy in numerous state legislatures, especially in support of enactment of automatic voter registration, rights restoration for people with felony convictions in their past, election security upgrades, and redistricting reform. And we produce cutting-edge research that gives lawmakers and advocates the tools they need to make voting more accessible and secure.

<sup>9</sup> This analysis draws on testimony given by Wendy Weiser, *Hearing on H.R. 1, The For the People Act, Before the Comm. on House Administration*, 116th Cong. (Feb. 14, 2019); Myrna Pérez, *Hearing on Protecting the Right to Vote: Best and Worst Practices, Before the Comm. on House Judiciary*, 116th Cong. (Sept. 10, 2019); and Lawrence Norden, *Election Security Hearing, Before the Comm. on House Administration*, 116th Cong. (May 8, 2019).

a. VOTER PURGES AND VOTER LIST MANIPULATION

Voter purges refer to the process when election officials attempt to remove from registration lists the names of those ineligible to vote. Done right, purges ensure that the rolls are accurate and up-to-date. When done improperly, however, they disenfranchise legitimate voters. Often, that happens too close to an election to correct the error. Bad purges cause confusion and delay at the polls.<sup>10</sup>

The Brennan Center has documented an alarming surge in voter purges—a surge that began after the U.S. Supreme Court gutted Section 5 of the Voting Rights Act in *Shelby County v. Holder*.<sup>11</sup>

Between 2016 and 2018, officials purged at least 17 million voters nationwide. The median purge rate was 40 percent higher, however, in jurisdictions previously covered by Section 5 of the Voting Rights Act than it was elsewhere. Had purge rates in those jurisdictions been consistent with those in the rest of the country, as many as 1.1 million fewer individuals would have been removed from the rolls.<sup>12</sup>

This continues the trend we documented in a major study last year. Between 2014 and 2016, states removed almost 16 million voters from the rolls—nearly 4 million more than they removed between 2006 and 2008.<sup>13</sup> This reflects a one third increase in the number of removed voters, far outstripping growth in registered voters (18 percent) or population (six percent). This increase was driven by states that had previously been covered by Section 5—that is, states with a history of voting discrimination. The Brennan Center has calculated that two million fewer voters would have been purged between 2012 and 2016 if previously covered jurisdictions had purged at the same rate as other jurisdictions.<sup>14</sup>

<sup>10</sup> Myrna Pérez, *Voter Purges* 1-3, (Brennan Center for Justice 2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>.

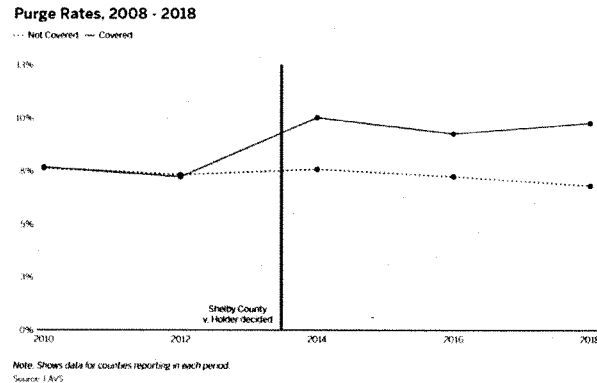
<sup>11</sup> Brater et al., *Voter Purges: A Growing Threat*, 1.

<sup>12</sup> Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, Brennan Center for Justice, Aug. 1, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.

<sup>13</sup> Brater et al., *Voter Purges: A Growing Threat*, 3-5.

<sup>14</sup> *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/our-work/analysis-opinion/florida-georgia-north-carolina-still-purging-voters-high-rates>.

The apparent impact of *Shelby County* is evident in this chart:



Improper purges, and attempts at improper purges, litter our recent history. Earlier this year, for example, the Texas Secretary of State sent lists of approximately 95,000 alleged non-citizens to county officials for purging—but within days, the state was forced to retreat, once it became clear that the lists were rife with inaccuracies.<sup>15</sup> In 2016, New York officials erroneously deleted hundreds of thousands from the rolls, with no public warning and little notice to those who had been purged.<sup>16</sup> The same year, thousands of Arkansans were purged because of supposed felony convictions—but the lists used were highly inaccurate, and included many who had never committed a felony, or who had had their voting rights restored.<sup>17</sup>

In her dissent in *Shelby County*, Justice Ruth Bader Ginsburg warned that “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>18</sup> As millions of purged voters can attest, her warning was all too prescient.

H.R. 1 contains new protections to prevent improper purges, including new guardrails on the use of inter-state databases that purport to identify voters that have re-registered in a new state, but that have been proven to produce deeply flawed data. It also includes provisions for automatic voter registration and same day registration—policies that ameliorate the impact of improper purges. We urge the Committee to continue to press for these important reforms.

<sup>15</sup> Sean Morales-Doyle and Rebecca Ayala, *There's Good Reason to Question Texas' Voter Fraud Claims*, Brennan Center for Justice, Jan. 29, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/theres-good-reason-question-texas-voter-fraud-claims>.

<sup>16</sup> Brater et al., *Voter Purges: A Growing Threat*, 5-6.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Shelby County, Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).



## b. ELECTION SECURITY

Foreign interference and inadequate election security represent a second significant threat in 2020. As the Mueller Report concluded, Russia waged a campaign to interfere in our election “in sweeping and systematic fashion.”<sup>19</sup> Moscow did more than hack DNC and campaign emails. In addition to a massive effort on social media, the Russians targeted state and local election officials, breached two state registration databases and extracted data from one, and used spear phishing attacks to gain access to and infect computers of a voting technology company and at least one Florida county.<sup>20</sup>

There is every reason to think these threats continue, especially now that the whole world knows how vulnerable we are. Before the midterm election the Director of National Intelligence testified that the “lights are blinking red.”<sup>21</sup> Robert Mueller, in his July congressional testimony, warned, “Many more countries are developing the capability to replicate what the Russians have done.” He added, the Russian effort “wasn’t a single attempt. They’re doing it as we sit here. And they expect to do it during the next campaign.”<sup>22</sup>

Indeed, the nation may face even more serious threats in 2020 and beyond. Russia seems to have started its attacks against our election infrastructure in June 2016, late in the day compared to other aspects of their campaign. By 2020, Russia will have had four years to leverage knowledge gained in 2016. Chris Krebs, head of the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security, has warned that the 2020 election is “the big game” for adversaries looking to attack American democracy.<sup>23</sup> More, we ought not assume we are at risk just from Russia. National security agencies have warned of potential attacks from China, North Korea, and Iran, as well as non-state actors.<sup>24</sup> (Since 2016, there have been reports of alleged Chinese election-related attacks against Indonesia’s voter database as well as against Australia’s major political parties.)<sup>25</sup>

<sup>19</sup> Robert S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* 1, (U.S. Department of Justice 2019), <https://www.justice.gov/storage/report.pdf>.

<sup>20</sup> *Ibid.* at 51.

<sup>21</sup> Julian E. Barnes, “‘Warning Lights Are Blinking Red,’ Top Intelligence Officer Says of Russian Attacks,” *The New York Times*, July 18, 2018, <https://www.nytimes.com/2018/07/13/us/politics/dan-coats-intelligence-russia-cyber-warning.html>.

<sup>22</sup> *Hearing on Oversight of the Report on the Investigation into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III, Before the Comm. on the Judiciary*, 116th Congress (July 24, 2018) (statement of Robert S. Mueller, III, former special counsel).

<sup>23</sup> Colleen Long and Michael Balsamo, *Cybersecurity officials start focusing on the 2020 elections*, Associated Press, Nov. 8, 2018, <https://www.apnews.com/cfaa16f6a86349bebc16e0633d6214dd>.

<sup>24</sup> See, e.g., Daniel R. Coats, Director of National Intelligence, *Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community* 6-7 (2019), <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>; Jordan Fabian, *US warns of ‘ongoing’ election interference by Russia, China, Iran*, *The Hill*, October 19, 2018, <https://thehill.com/policy/nationalsecurity/412292-us-warns-of-ongoing-election-interference-by-russia-china-iran>.

<sup>25</sup> Viriya Singgih, Arys Aditya, and Karlis Salna, *Indonesia Says Election Under Attack From Chinese, Russian Hackers*, *Bloomberg*, March 13, 2019, <https://www.bloomberg.com/news/articles/2019-03-12/indonesia-says-pollunder-attack-from-chinese-russian-hackers>; Dean Pennington, *Australia’s major parties targeted in ‘sophisticated’ cyber attack ahead of election*, *TechSpot*, February 18, 2019, <https://www.techspot.com/news/78802-australia-major-parties-targeted-ophisticated-cyberattack-ahead.html>.

The country undoubtedly has made progress in protecting our elections. In 2016, 20 percent of votes were cast on machines with no paper backup. By next year, we estimate that number will drop to 12 percent.<sup>26</sup> Several states are replacing outdated voting equipment. But major challenges remain.

At least 26 states, for example, totaling 243 electoral votes, are not currently on track to require post-election audits prior to certification of the election. Traditional post-election audits, which generally require manual inspection of paper ballots cast in randomly selected precincts or on randomly selected voting machines, can provide assurance that individual voting machines accurately tabulated votes.<sup>27</sup>

### c. DISENFRANCHISEMENT LAWS

Disenfranchisement laws—a relic of the Jim Crow era that continues to haunt our elections—represent a third significant threat to voters in 2020. Across the country, state laws deny millions of citizens the right to vote because of a criminal conviction, including at least three million who are no longer incarcerated.

These laws vary dramatically from state to state. They range from permanent disenfranchisement for everyone convicted of a felony in Iowa and Kentucky, to no deprivation of voting rights at all in Vermont and Maine. Between these extremes, some states distinguish between different types of felonies, others treat repeat offenders differently, and some have varying rules on what parts of a sentence must be completed before rights are restored. Navigating this patchwork of laws can confuse election officials and prospective voters about who is eligible to participate. The result is large-scale *de facto* disenfranchisement of voters who are eligible but do not know it.<sup>28</sup>

A particularly important fight for fairness is unfolding in Florida right now. The state had the country's harshest law, permanently disenfranchising 1.4 million people. One in four black men in Florida was ineligible to vote. Last November, nearly 65 percent of voters approved Amendment 4, which automatically restored voting rights to Floridians who had completed the terms of their sentence. In the months that followed, Amendment 4 began to fulfil its promise—rapidly restoring voting rights to Floridians who had paid their debt to society. Our research found that nearly 100 times more formerly incarcerated Floridians registered in the first three months of 2019 than in previous comparable years. And more than 44 percent of the formerly incarcerated Floridians who registered to vote between January and March of 2019 identified themselves in their voter registration forms as Black (whereas Black voters comprise 13 percent of Florida's overall voter population).<sup>29</sup> The racial justice implications were profound.

<sup>26</sup> McCadney et al., *Voting Machine Security*.

<sup>27</sup> Lawrence Norden, *How to Secure Elections for 2020 and Beyond*, Brennan Center for Justice, Oct. 2, 2019, <https://www.brennancenter.org/our-work/research-reports/how-secure-elections-2020-and-beyond>.

<sup>28</sup> Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States*, last accessed October 14, 2019, [https://www.brennancenter.org/sites/default/files/legal-work/2019.5.31\\_Criminal\\_Disfranchisement\\_Map.pdf](https://www.brennancenter.org/sites/default/files/legal-work/2019.5.31_Criminal_Disfranchisement_Map.pdf).

<sup>29</sup> Kevin Morris, *Thwarting Amendment 4* (Brennan Center for Justice 2019), [https://www.brennancenter.org/sites/default/files/analysis/2019\\_05\\_FloridaAmendment\\_FINAL-3.pdf](https://www.brennancenter.org/sites/default/files/analysis/2019_05_FloridaAmendment_FINAL-3.pdf).

Then, the Florida Legislature stepped in to roll back this important reform. In June, Governor DeSantis signed a law, which prohibits returning citizens from registering to vote unless they pay off all legal financial obligations (“LFOs”) imposed by a court pursuant to a felony conviction, even if they cannot afford to pay. That same day, several civil rights groups, including the Brennan Center, filed a federal lawsuit challenging the new law. A federal district court recently held a hearing on our motion to temporarily enjoin the law, pending a trial. If it is allowed to stand, this modern-day poll tax will have a severe impact.<sup>30</sup>

#### d. ADDITIONAL CHALLENGES

We face, of course, numerous other challenges to election integrity in 2020. For example, attempts to suppress votes through deception and intimidation remain all too widespread. This is not a new problem, but now social media platforms make the mass dissemination of misleading information easy and allow for perpetrators to target particular audiences with precision. In a recent analysis for the Brennan Center, University of Wisconsin Professor Young Mie Kim documented hundreds of messages on Facebook and Twitter designed to discourage or prevent people from voting in the 2018 election.<sup>31</sup>

Inadequate election day resources and long lines may also deter voters in 2020, particularly voters of color. A Brennan Center study found that, in the 2012 election, voters in precincts with more minorities experienced longer waits and tended to have fewer voting machines.<sup>32</sup> A more recent academic paper using cellphone data found that, in the 2016 election, voters in Black neighborhoods were significantly more likely to wait in long lines than voters in white neighborhoods.<sup>33</sup> The Brennan Center continues to research election resource allocation, and we plan to release a report on this issue early next year.

In addition, state legislatures continue to add new obstacles to the ballot box. This year, at least five states have enacted new laws restricting voting access.<sup>34</sup> These laws continue a decade-long turn toward placing direct burdens on people’s right to vote.

<sup>30</sup> Brennan Center for Justice, *Gruver v. Barton (consolidated with Jones v. DeSantis)*, last accessed Oct. 14, 2019, <https://www.brennancenter.org/our-work/court-cases/gruver-v-barton-consolidated-jones-v-desantis>.

<sup>31</sup> Young Mie Kim, *Voter Suppression Has Gone Digital*, Nov. 20, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/voter-suppression-has-gone-digital>.

<sup>32</sup> Christopher Famighetti et al., *Election Day Long Lines: Resource Allocation 1-2* (Brennan Center for Justice 2014), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_ElectionDayLongLines-ResourceAllocation.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_ElectionDayLongLines-ResourceAllocation.pdf).

<sup>33</sup> Daniel Garisto, *Smartphone Data Show Voters in Black Neighborhoods Wait Longer*, *Scientific American*, Oct. 1, 2019, <https://www.scientificamerican.com/article/smartphone-data-show-voters-in-black-neighborhoods-wait-longer/>.

<sup>34</sup> Brennan Center for Justice, *Voting Laws Roundup 2019*, last modified July 10, 2019, <https://www.brennancenter.org/analysis/voting-laws-roundup-2019>.

## II. BOLD REFORM IS NEEDED TO ADDRESS THESE THREATS

Our elections face urgent threats, and we must respond with equal urgency. And we should take this moment of public engagement to press for long-needed changes to ensure free, fair, and accurate elections every year going forward. We encourage Congress to pass H.R. 1, to restore the Voting Rights Act, and to appropriate necessary funds for election security.

### a. H.R. 1—A BREAKTHROUGH FOR VOTING ACCESS

H.R. 1 comprises reforms to revitalize every aspect of American democracy. Among the most important of H.R. 1's reforms is automatic voter registration ("AVR"). AVR is a simple but transformative policy that could bring millions into the electoral process. Under AVR, every eligible citizen who interacts with designated government agencies is automatically registered to vote, unless they decline registration. Fully implemented nationwide, it would add fifty million to the rolls, cost less, and improve accuracy and security.<sup>35</sup>

AVR shifts registration from an "opt-in" to an "opt-out" approach. When eligible citizens give information to the government—for example, to get a driver's license, receive Social Security benefits, apply for public services, register for classes at a public university, or become naturalized citizens—they are automatically signed up to vote unless they decline.<sup>36</sup> Registration information is electronically transferred to election officials, avoiding paper forms and snail mail. This significantly increases the accuracy of the rolls and drives down the costs of maintaining them.<sup>37</sup>

AVR works. In the past five years, 16 states and the District of Columbia have adopted AVR (though several are still implementing the policy). A Brennan Center study found that AVR dramatically boosted the number of registrants everywhere it has been implemented, with increases ranging from 9 to 94 percent.<sup>38</sup> FiveThirtyEight recently supplemented our findings. It reported that the eight jurisdictions that implemented AVR by the 2018 registration deadline automatically registered about 2.2 million new voters.<sup>39</sup>

H.R. 1 includes myriad other important measures to expand voting rights and strengthen democracy. Among these, it incorporates the Democracy Restoration Act, which would restore federal voting rights to citizens with past criminal convictions living in our communities.

<sup>35</sup> Brennan Center for Justice, *The Case for Automatic Voter Registration* (2016), [https://www.brennancenter.org/sites/default/files/publications/Case\\_for\\_Automatic\\_Voter\\_Registration.pdf](https://www.brennancenter.org/sites/default/files/publications/Case_for_Automatic_Voter_Registration.pdf).

<sup>36</sup> *Id.* 6-7.

<sup>37</sup> *Id.* 11.

<sup>38</sup> Kevin Morris and Peter Dunphy, *AVR Impact on State Voter Registration*, (Brennan Center for Justice 2019), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_AVR\\_Impact\\_State\\_Voter\\_Registration.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_AVR_Impact_State_Voter_Registration.pdf).

<sup>39</sup> Nathaniel Rakich, *What Happened When 2.2 Million People Were Automatically Registered to Vote*, FiveThirtyEight, Oct. 10, 2019, <https://fivethirtyeight.com/features/what-happened-when-2-2-million-people-were-automatically-registered-to-vote/>.

### b. REVITALIZE THE VOTING RIGHTS ACT

The Voting Rights Act of 1965 (“VRA”) was the nation’s most effective civil rights law. In 2013, however, the Supreme Court struck down the “coverage formula” that determined which jurisdictions were subject to pre-clearance.<sup>40</sup> This decision effectively blocked the pre-clearance system from operation. The years since have demonstrated the urgent need to revitalize the law. State and local jurisdictions have continued to implement discriminatory voting rules, disenfranchising voters of color in election after election.<sup>41</sup> Over the course of several months, this Committee has held a series of field hearings in states across the country, documenting serious challenges to voting accessibility and fair election administration.

These ongoing problems demand a strong, but thoughtful response. When the Supreme Court gutted preclearance, it stated explicitly that Congress could fix the VRA, using current data and taking a wider perspective.<sup>42</sup> Moreover, the VRA has long been a bipartisan congressional priority—the reauthorization in 2006 passed the House overwhelmingly and the Senate 98-0—and it should be once again.<sup>43</sup>

For its part, H.R. 1 also contains a strong commitment to revitalizing the VRA. The Voting Rights Advancement Act (H.R. 4), currently under consideration in this House, contains an updated coverage formula and other vital protections carefully tailored to current conditions. We encourage Congress to follow through on its commitment in H.R. 1 and to act expeditiously to restore the VRA to its full strength.

### c. STRENGTHEN ELECTION SECURITY

First and foremost, election security in 2020 requires funding. The Brennan Center has long supported both a complete, nationwide transition to paper ballot voting machines and the implementation of risk limiting audits (“RLAs”), an effective check on election results, to ensure security and confidence in electoral results. But these and other critical reforms require money, and states are running out of time to put new machines and systems in place for 2020. We enthusiastically applaud the House for proposing to appropriate \$600 million for election

<sup>40</sup> *Shelby County*, 570 U.S. at 557.

<sup>41</sup> See, e.g., Wendy Weiser and Zachary Roth, *This Is the Worst Voter Suppression We’ve Seen in the Modern Era*, Brennan Center for Justice, Nov. 2, 2018, [https://www.brennancenter.org/our-work/analysis-opinion/worst-voter-suppression-weve-seen-modern-era?utm\\_source=facebook&utm\\_medium=socialmedia](https://www.brennancenter.org/our-work/analysis-opinion/worst-voter-suppression-weve-seen-modern-era?utm_source=facebook&utm_medium=socialmedia); Rebecca Ayala, *Voting Problems 2018*, Brennan Center for Justice, Nov. 5, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/voting-problems-2018>; Makeda Yohannes, *New Hampshire’s New Voting Law Threatens Student Voters*, Brennan Center for Justice, July 18, 2018, <https://www.brennancenter.org/blog/new-hampshires-new-voting-lawthreatens-student-voters>; Rebecca Ayala and Jonathan Brater, *What’s the Matter with Georgia?*, Brennan Center for Justice, Oct. 12, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/whats-matter-georgia>.

<sup>42</sup> *Shelby County*, 570 U.S. at 557.

<sup>43</sup> 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](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>.

security in the appropriations bill voted on in June.<sup>44</sup> This represents a robust down payment on our overall election security needs—which the Brennan Center estimates will cost approximately \$2.2 billion over the next five years.<sup>45</sup> We are encouraged that the Senate has agreed to appropriate \$250 million for election security on a bipartisan basis.<sup>46</sup> But we believe it is critical that the final spending bill reflect the House’s proposed appropriation, as well as its provisions to ensure that the funds are used for election security rather than unrelated activities.

Funding is an important first step toward securing our elections, but Congress can and should do more. At present, for example, there is almost no federal oversight of the private vendors who design, build, and maintain our election systems. That should change. We recommend that Congress adopt a mandatory reporting system for all cyber security incidents for election vendors and consider additional reforms, such as vendor employee background checks. In addition, Congress should make permanent the Department of Homeland Security’s designation of elections systems as “critical infrastructure.”<sup>47</sup> A permanent designation will help to guarantee that states are provided with priority access to tools and resources available from DHS and greater access to information on cyber vulnerabilities on a voluntary basis.

### III. CONCLUSION

Much work remains to be done to ensure that the 2020 election is free, fair, and secure. I thank this Committee for holding this important hearing and urge Congress to take quick and forceful action to reform our election systems.

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<sup>44</sup> Press Release, House Comm. on Appropriations, Appropriations Committee Releases Fiscal Year 2020 Financial Services and General Government Funding Bill, June 2, 2019, <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2020-financial-services-and>.

<sup>45</sup> Lawrence Norden and Edgardo Cortés, *What Does Election Security Cost?*, Brennan Center for Justice, Aug. 15, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/what-does-election-security-cost>

<sup>46</sup> Carl Hulse, *After Resisting, McConnell and Senate G.O.P. Back Election Security Funding*, N.Y. Times, Sept. 19, 2019, <https://www.nytimes.com/2019/09/19/us/politics/mcconnell-election-security.html?module=inline>.

<sup>47</sup> Press Release, U.S. Department of Homeland Security, Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector, Jan. 6, 2017, <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>.

Chairwoman FUDGE. Thank you.  
 Ms. Nunez, you are recognized for 5 minutes.

**STATEMENT OF ELENA NUNEZ**

Ms. NUNEZ. Thank you, Chairwoman Fudge, for inviting me to testify before the House Administration Committee Elections Subcommittee today. And thank you to Chairwoman Fudge, Ranking Member Davis, and all Members of the Subcommittee for holding this critically important hearing.

My name is Elena Nunez, and I am the Director of State Operations and Ballot Measure Strategies for Common Cause. We are a national, nonpartisan watchdog organization with 1.2 million supporters and 30 State organizations throughout the country.

For nearly 50 years, Common Cause has been holding power accountable through lobbying, litigation, and grassroots organizing. We fight to reduce the influence of big money in politics, enhance voting rights for all eligible Americans, strengthen ethics laws to make government more responsive, and stop gerrymandering.

We were founded by Republican John Gardner at a time when Republicans and Democrats came together to work on the pressing issues of the day. During the 1970s, Common Cause worked with many Members of Congress, Democrats and Republicans alike, to help pass major democracy reforms that sought to correct some of the most egregious abuses of power, including the Federal Election Campaign Act and the Ethics in Government Act.

Similarly, each of the five times the Voting Rights Act has been reauthorized, it had strong bipartisan support before being signed into law by a Republican President.

However, as you have heard from many of the witnesses today, in the aftermath of the Supreme Court's *Shelby County* decision, voting rights have become an increasingly politicized issue.

You have heard about many of the attacks on the right to vote through voter purges, polling place closures, and restrictive forms of voter ID, so I am going to focus my testimony on some of the more subtle forms of voter suppression that can keep people from being able to participate.

One tactic that we are seeing in increasing numbers is the placement of polling sites at police stations or having a law enforcement presence at other polling sites, which can have a chilling impact on voters.

In 2016, Macon, Georgia, election officials tried to move a voting precinct to a police station in a largely African-American community. And throughout the country, in advance of the 2016 and 2018 elections, rumors circulated online and via fliers that Immigration and Customs Enforcement would be patrolling voting locations.

We are also seeing a growing trend of voter suppression through misinformation. Voters may be given misinformation about registration requirements, polling locations, or ballot deadlines. In 2016, automated social media accounts, likely connected to the Internet Research Agency, some of which were targeting African-American and Latino voters, falsely claimed that voters could vote from home for Hillary Clinton.

Increasingly, election administration practices around signature processes are a growing concern for voter suppression. Signature

mismatch laws can significantly affect voters with disabilities, women who get married or divorced, seniors, and people for whom English is a second language, among others.

The often arbitrary application of the law can lead to bias by election officials, nearly all of whom are not handwriting experts, because in most cases there are not uniform standards, and all too often there are not adequate provisions to cure a signature if there is a question.

In Florida in 2018, most of the roughly 10,000 votes not counted because of voter error were thrown out because of signature mismatches. One study found that young voters and voters of color were more likely to have their ballots rejected and they were less likely to cure those problems.

We believe that voters are best able to participate when they have convenient options to cast their ballots. Efforts to reduce options, namely by reducing opportunities for early voting, is another form of suppression that we have seen in North Carolina, Ohio, and Wisconsin, among other States.

In North Carolina in 2013, the legislature cut a week of early voting, a move that was eventually overturned by a court because the change targeted African-Americans with “surgical precision.”

In addition to reducing the number of days of early voting, we are seeing a trend towards eliminating or reducing options during evenings and weekends, times that are often most convenient for working people. These changes have a disproportionately discriminatory impact, as African-American voters tend to use early voting more than white voters do.

While long lines are often viewed as a sign of high voter interest, there can also be an indication of voter suppression when the lines are an inevitable result of poor planning or inadequate resources. Machine failures due to aging voting equipment and delays in checking in voters due to poor voter rolls can create backups that have a ripple effect.

The U.S. has not made election day a national holiday or mandated paid time off to work, so many eligible voters cannot take unpaid leave to wait in line for multiple hours to cast a ballot. Vote suppressors, recognizing this dynamic, can starve localities for resources so that the actual in-person voting process takes longer than Americans are able to spend.

Our goal should be a system where all eligible voters can cast ballots without barriers and have confidence that their votes are counted accurately. Many States, through litigation, ballot measures, and State legislative efforts, are fighting voter suppression and expanding voter access.

To make sure that voters throughout the country can have quality access, Federal action is needed by adopting the For the People Act, H.R. 1; the SHIELD Act, including the Deceptive Practices and Voter Intimidation Prevention Act; and the Voting Rights Advancement Act.

Thank you again for the opportunity to testify today, and I look forward to answering your questions.

[The statement of Ms. Nunez follows:]





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**Committee on House Administration, Subcommittee on Elections**  
**“Voting Rights And Election Administration In America”**  
**October 17, 2019**

**Written Testimony of**  
**Elena Nunez**  
**Director of State Operations and Ballot Measure Strategies**  
**Common Cause**

**Introduction**

Thank you, Chairwoman Fudge, for inviting me to testify before the House Administration Elections Subcommittee. And thank you to Chairwoman Fudge, Ranking Member Davis, and all Members of the Committee for holding this critically important hearing. My name is Elena Nunez, and I am the Director of State Operations and Ballot Measure Strategies at Common Cause, a national nonpartisan watchdog organization with 1.2 million supporters and 30 state chapters. For nearly 50 years, Common Cause has been holding power accountable through lobbying, litigation, and grassroots organizing. Common Cause fights to reduce the role of big money in politics, enhance voting rights for all eligible Americans, foster an open, free, and accountable media, strengthen ethics laws to make government more responsive to the people, and stop gerrymandering.

Common Cause was founded by John Gardner, a Republican, at a time when Republicans and Democrats worked together on the most pressing issues of the day. During the 1970s, Common Cause worked with many Members of Congress -- Democrats and Republicans alike -- who put country over party, and we were able to help pass major democracy reforms that sought to correct some of the most egregious abuses of power, including the Federal Election Campaign Act, the presidential public financing system, and the Ethics in Government Act, all timeless laws that are still extremely consequential to this day.

**Many Forms of Voter Suppression**

The Voting Rights Act is another historic law that has always had strong bipartisan support. In fact, each of the five times it's been reauthorized, it was signed into law by a Republican president and received strong bipartisan congressional support. However, even voting rights

have become partisan in recent years, and we've seen certain states and localities try to significantly restrict the right to vote in the last decade. Especially since the Supreme Court's devastating 5-4 *Shelby County v. Holder* decision in 2013, dozens of states and localities have tried to silence voters and make it harder for them to have their voices heard. According to a Brennan Center analysis, 25 states have put in place new voting restrictions, 15 states have passed more restrictive voter ID laws, 12 states have enacted laws making it harder for citizens to register to vote, 10 states made it more difficult to vote early or absentee, and three states made it harder to restore voting rights for people with previous convictions.<sup>1</sup> Many states saw the Supreme Court's decision as essentially giving a green light to voter suppression, which is done in countless ways, including poll closures, voter ID, problematic list maintenance practices including voter purges, and others. Today, though, I'm going to instead focus my testimony on several less obvious types of voter suppression tactics.

### **Voter Intimidation and Harassment**

One voter suppression tactic that we have seen includes placing polling locations at police stations or other facilities viewed as hostile to certain voters. In 2016, Macon, Georgia, elections officials tried to move a voting precinct to a police station in a largely African American community.<sup>2</sup> Just last month in another Georgia locality, Jonesboro, which is 60% African American, the nearly all-white city council announced it would move a polling place to a police station.<sup>3</sup> In Texas, Dallas County recently allowed polling locations to be consolidated at vote centers, which can be at police stations.<sup>4</sup>

A related voter suppression tactic involves having law enforcement at or near polling locations. Although "a number of states expressly prohibit the presence of law enforcement at the polls,"<sup>5</sup> just the threat of having police or law enforcement at polling locations may deter certain voters who have outstanding fines, such as parking tickets or court fees, from voting. In advance of the 2016 and 2018 elections, rumors circulated online and in flyers that Immigration and Customs Enforcement (ICE) officers would be patrolling voting locations.<sup>6</sup>

Under the justification of safety and security, more jurisdictions seem to be placing uniformed police officers at voting booths. Springfield, Missouri, did this in 2016, and the Advancement Project noted that "[p]lacing police at poll sites can be inherently intimidating to voters, particularly in communities of color where such presence has historical ties to efforts to impede voter access to the polls."<sup>7</sup> It went on to say that "police should be in poll sites only where a

<sup>1</sup> <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>

<sup>2</sup> <https://truthout.org/articles/polling-places-in-police-stations-why-civil-rights-groups-are-still-fighting-voting-rights/>

<sup>3</sup> [https://www.huffpost.com/entry/jonesboro-georgia-polling-location\\_n\\_5d9e0979e4b06ddfc51272f0](https://www.huffpost.com/entry/jonesboro-georgia-polling-location_n_5d9e0979e4b06ddfc51272f0)

<sup>4</sup> <https://www.dallasnews.com/news/2019/10/04/elections-dallas-county-change-two-big-ways/>

<sup>5</sup> [https://www.brennancenter.org/sites/default/files/analysis/Briefing\\_Memo\\_Ballot\\_Security\\_Voter\\_Intimidation.pdf](https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Ballot_Security_Voter_Intimidation.pdf)

<sup>6</sup> <https://www.propublica.org/article/ice-dispelling-rumors-says-it-wont-patrol-polling-places>

<sup>7</sup> <https://advancementproject.org/news/voting-rights-advocates-demand-removal-of-police-in-polling-places/>

specific and legitimate law enforcement need justifies that presence.” In the closely-contested U.S. Senate special election in Alabama in 2017, multiple voters reported that police were at or near polling locations, especially those in heavily African American precincts.<sup>8</sup>

President Trump himself has encouraged police to get involved at polling locations in recent elections. In 2016, then-candidate Trump stated, “We have to call up law enforcement. And we have to have the sheriffs and the police chiefs and everybody watching.”<sup>9</sup> And right before the 2018 election, President Trump threatened via Twitter that he would use law enforcement to observe polling locations,<sup>10</sup> potentially deterring eligible Americans from voting.

### **Misinformation Efforts**

Although voter harassment and intimidation efforts can be fairly easy to document, voter misinformation efforts are often less obvious and can be difficult to immediately recognize. In the 2018 election alone, various misinformation tactics were used, and certain organizations sent wrong information to voters, many of whom lived in states or districts with competitive races that could determine control of the House and/or Senate. In late October, the Republican National Committee (RNC) sent a mailer to registered Montana voters stating that they could mail absentee ballots that are postmarked the day before the election as long as they were received by election officials by November 16th, 10 days after Election Day (state law stipulates that absentee ballots must be received by 8pm on Election Day).<sup>11</sup>

Also in Montana, a group sent a mailer to 90,000 voters stating incorrectly that they were not registered to vote.<sup>12</sup> The state Republican Party in Missouri sent mailers to 10,000 voters with incorrect information about when their absentee ballots were due.<sup>13</sup> On Election Day, voters in several states received text messages from various organizations that had incorrect information about voters’ polling locations, which resulted in voters going to the wrong polling places to vote and ultimately being turned away.<sup>14</sup> Some precincts distributed incorrect ballots to voters.<sup>15</sup> And in Texas, “thousands of students who live on campus at Prairie View A&M had been incorrectly told to register to vote using an address in a different precinct and would need to fill out a change-of-address form before casting a ballot.”<sup>16</sup>

And these were just some of the examples from the 2018 election. In 2016, automated social media accounts, likely connected to the Internet Research Agency, some of which targeted African American and Latinx voters, claimed (incorrectly) that voters could “vote from home” or

<sup>8</sup><https://slate.com/news-and-politics/2017/12/it-looks-like-alabama-violated-federal-law-with-its-inactive-voter-scheme.html>

<sup>9</sup> <https://www.npr.org/2016/08/13/489889496/trump-calls-to-stake-out-polling-places>

<sup>10</sup> <https://twitter.com/realDonaldTrump/status/1059470847751131138>

<sup>11</sup> [https://billingsgazette.com/news/local/mailer-promoting-absentee-voting-in-montana-has-wrong-information-elections/article\\_5485a8b4-2500-52f6-bd11-6688cc818008.html](https://billingsgazette.com/news/local/mailer-promoting-absentee-voting-in-montana-has-wrong-information-elections/article_5485a8b4-2500-52f6-bd11-6688cc818008.html)

<sup>12</sup> <https://www.ktvq.com/news/local-news/2018/10/10/election-mailer-causing-confusion-headache-in-montana/>

<sup>13</sup> <https://www.kansascity.com/news/politics-government/election/article220334185.html>

<sup>14</sup> <https://qz.com/1453215/midterms-voters-are-getting-texts-with-false-information-about-voting/>

<sup>15</sup> <https://www.kansascity.com/news/politics-government/election/article221167130.html>

<sup>16</sup> <https://www.texastribune.org/2018/10/16/Prairie-View-voter-registration/>

"vota desde casa" for Hillary Clinton.<sup>17</sup> In 2011 in a Wisconsin recall election, the conservative group Americans for Prosperity sent Democratic voters incorrect information about when absentee ballots were due.<sup>18</sup> In 2008, flyers were distributed in largely African American neighborhoods in Philadelphia warning that citizens with warrants or unpaid fines who showed up to vote could be arrested.<sup>19</sup>

There are likely significant other similar examples occurring around the country that go unreported. Although not every example is necessarily nefarious, some of them probably were intended to suppress the vote, especially because many of these instances seem to be focused in swing states or districts.

#### **Signature Requirements and Signature Mismatches**

Another increasingly used voter suppression tactic involves states that have "exact match" signature laws for ballots, both in-person and absentee. Although many states have laws requiring one's signature on file to match the signature on one's ballot, this practice has increasingly been used to arbitrarily disenfranchise certain voters. Signature mismatch laws can significantly affect voters with disabilities, women who get married or divorced, seniors, people for whom English is a second language, and military personnel, among other individuals.<sup>20</sup> The often arbitrary application of the law can lead to bias by election officials, nearly all of whom are not handwriting experts, because in most cases there are no uniform standards.

In Florida in 2018, most of the around 10,000 votes not counted because of "voter error" were thrown out because of signature mismatches.<sup>21</sup> Florida doesn't have "signature teams" to verify signatures, as do other states and localities that conduct all-mail voting, such as Washington and Oregon. According to a University of Florida study, mail-in ballots cast by the "youngest voters, blacks and Hispanics were much more likely to be rejected than mail ballots cast by white voters, and that those voters are less likely to cure problems with their ballots when notified by election supervisors than other voters."<sup>22</sup> Meanwhile, Georgia faced several lawsuits right before the 2018 election for not notifying voters whose absentee ballots were rejected for signature mismatches.<sup>23</sup> In Ohio in 2016, ballots with minor errors, including signature mismatches, were discarded at a significantly higher rate in Democratic communities with higher African American populations than were ballots with errors in predominantly white counties. And in New Hampshire, after a 95-year-old voter had her 2016 absentee ballot unknowingly discarded (along with the ballots of at least 700 other New Hampshire voters), a federal judge tossed out the state's signature mismatch law because of the "lack of standards, training and

<sup>17</sup> [https://intelligence.house.gov/uploadedfiles/2018\\_02\\_27\\_13\\_40\\_38\\_twitter\\_suppression.pdf](https://intelligence.house.gov/uploadedfiles/2018_02_27_13_40_38_twitter_suppression.pdf)

<sup>18</sup> <https://www.politico.com/blogs/david-catanese/2011/08/afp-wisconsin-ballots-have-late-return-date-037977#>

<sup>19</sup> <https://www.npr.org/templates/story/story.php?storyId=95509946>

<sup>20</sup> <https://www.acluga.org/en/news/aclu-georgia-files-lawsuit-absentee-ballot-signature-matching-law>

<sup>21</sup> <https://www.orlandosentinel.com/politics/os-ne-signature-mismatch-florida-laws-20181120-story.html>

<sup>22</sup> <https://www.miamiherald.com/news/politics-government/state-politics/article218654810.html?fbclid=IwAR0788igqY14RjDvR6WiOtFKAIL01-ykYTi0xprPUiMLkUwhM8kwaMZiFyU>

<sup>23</sup> <https://psmag.com/social-justice/handwriting-disputes-are-suppressing-the-vote>

oversight offered to poll workers who are tasked with deciding whether to throw out someone's ballot."<sup>24</sup>

Many jurisdictions that have strict signature mismatch laws have faced legal challenges over their subjective interpretation of the guidelines. Some states can still reject the ballots of voters without even notifying them. Although nearly all absentee ballots are counted, the top reason that certain ones are rejected was because of a "non-matching signature,"<sup>25</sup> and in a close election, rejected absentee ballots could change the result.

### **Cutbacks in Early Voting**

A less apparently obvious form of suppressing votes is done by reducing early voting opportunities. Since 2004, the number of Americans casting a ballot before election day has doubled to about 40%.<sup>26</sup> However, often under the guise of "cost savings" or even "fairness," certain jurisdictions have attempted to eliminate or significantly reduce early voting in recent years. States and localities often claim that reducing early voting will save them money, which although true in some cases, appears not to be the primary reason for the reduction, as African American voters tend to utilize early voting significantly more than do white voters.<sup>27</sup>

In North Carolina, the legislature reduced early voting from 17 days to 10 days, which was eventually overturned by a court because the change targeted African-Americans with "surgical precision."<sup>28</sup> Florida reduced early voting from 14 days to eight days.<sup>29</sup> Tennessee reduced early voting from 15 days to 13 days.<sup>30</sup> Wisconsin eliminated early voting for nights and weekends in 2014, then tried to restrict early voting to two weeks (from six weeks); it also eliminated weekend voting right before the election (a change that is pending in the 7th Circuit).<sup>31</sup> Meanwhile in Ohio, the Republican legislature eliminated six days of early voting, and then the Republican Secretary of State cut early voting on nights and Sundays.<sup>32</sup> And most recently earlier this year, Texas passed a law that significantly curtailed the number of mobile polling locations for early voting, depriving some localities of any early voting options for many miles.<sup>33</sup>

African American voters tend to use early voting disproportionately more so than white voters do,<sup>34</sup> so these changes clearly have a disproportionately discriminatory impact. Some of these

<sup>24</sup><https://www.nhpr.org/post/federal-judge-strikes-down-nhs-signature-mismatch-absentee-voting-law#stream/0>

<sup>25</sup> [https://www.eac.gov/assets/1/6/2016\\_EAVS\\_Comprehensive\\_Report.pdf](https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf)

<sup>26</sup><https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview/>

<sup>27</sup><https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

<sup>28</sup><https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

<sup>29</sup> <https://www.npr.org/2012/11/06/164389320/floridas-early-voting-outcome-differs-from-2008>

<sup>30</sup> <https://www.aclu.org/facts-about-voter-suppression>

<sup>31</sup> <https://www.motherjones.com/politics/2019/01/federal-court-blocked-wisconsin-republican-early-voting/>

<sup>32</sup> <http://www.msnbc.com/msnbc/ohio-early-voting-cuts-could-be-stopped#51941>

<sup>33</sup> <https://www.texastribune.org/2019/10/10/texas-temporary-voting-access-young-rural-voters/>

<sup>34</sup> <http://www.msnbc.com/msnbc/why-early-voting-cuts-will-hit-blacks-hardest>

suppression efforts have been challenged (successfully) in courts, but other states are continuing to consider similar cutbacks to early voting.<sup>35</sup> Reducing early voting (or creating confusion about early voting) likely increases the chances that some of those voters will vote on Election Day,<sup>36</sup> potentially creating longer lines.<sup>37</sup>

#### **Depriving States and Localities of Resources**

Creating longer lines on election day is another form of voter suppression that is often harder to track. By depriving states and localities of necessary resources to have adequate early voting, poll worker training, improved voting infrastructure, and technology updates, the voting process on election day can take significant time. Many jurisdictions have older, outdated voting equipment that is prone to malfunction, and Congress has not provided any meaningful resources to states to update their voting machines since 2002. Since most employers do not provide paid time off to vote, and the U.S. has not made election day a national holiday or mandated paid time off to vote, many eligible voters cannot take unpaid leave from work to wait in line for multiple hours in order to vote. Vote suppressors recognize this dynamic, and by starving localities for resources, the actual in-person voting process can take longer than many Americans are able to spend.

The \$380 million in election security grants that Congress appropriated to states in 2018 was a decent start. However, with more than 178,000 individual precincts, nearly 117,000 distinct polling locations,<sup>38</sup> and more than 8,000 voting jurisdictions each running elections in their own way, that funding is just a fraction of what is needed. Elections officials are often left to fend for themselves, and significantly more investments must be made in state and local election infrastructure. In addition to strengthening cybersecurity of elections systems, such as by allowing voter verifiable paper ballots and risk-limiting audits (which Colorado and Rhode Island have pioneered), elections officials need more funding to update voting equipment that is **not** connected to the Internet, hire more poll workers, and do additional training for officials to ensure the integrity of our elections.

#### **Solutions**

With a mostly complicit Department of Justice under President Trump and Attorney General Bill Barr, non-profit and civic organizations have largely been filling the void to fight back against voter suppression efforts. Common Cause has partnered with the Lawyers' Committee for Civil Rights Under Law, which oversees the national hotline that fields calls from voters and volunteers during early voting and on Election Day. Lawyers from that hotline take calls from citizens each election year, including from thousands of our trained election protection

<sup>35</sup> <https://www.aclu.org/facts-about-voter-suppression>

<sup>36</sup> <http://www.msnbc.com/msnbc/why-early-voting-cuts-will-hit-blacks-hardest>

<sup>37</sup> <https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

<sup>38</sup> [https://www.eac.gov/assets/1/6/2016\\_EAVS\\_Comprehensive\\_Report.pdf](https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf)

volunteers stationed at hundreds of precincts across the country. Our volunteers are the eyes and ears of the election, helping to answer voters' questions, solve problems at the polls, and identify illegal behavior for elevated action in real time. We ensure that voters know their rights, and that those rights are protected.

For the 2018 election, Common Cause recruited, trained, and deployed more than 6,500 volunteers across 30 states, including 3,500 volunteers who were placed in key precincts in more than 150 counties in nine critical states. We led recruitment efforts in many states and organized over 100 separate trainings, both in-person and via webinar. We worked with coalition allies to develop training curricula that were accurate to local rules and procedures, and equipped volunteers to deal with problems as they arose. Our trainings reminded volunteers of the historic importance of poll monitors, and provided them with educational materials, including "Know Your Rights" cards, that they could share with voters.

Litigation has certainly been an important tool to fight back against voter suppression efforts, as some of my fellow witnesses have outlined. Additionally, there are critical efforts that we lead in states to overcome suppression efforts. For states with the initiative process, we have helped lead campaigns to protect and expand the right to vote in recent years. We helped pass citizen initiatives to provide automatic voter registration and other pro-voter reforms in Michigan and Nevada. And when there is a reform-friendly legislature, we look for legislative opportunities. Earlier this year, Common Cause New York led the "Let NY Vote" campaign, which successfully pushed for New York to enact a package of voting reforms, including pre-registration of 16- and 17-year-olds, early voting, voter registration portability, and others.<sup>39</sup>

At the federal level, the For the People Act (H.R. 1), which passed the House this year but which Senate Majority Leader McConnell continues to block, contains many strong provisions to overcome vote suppression efforts. The historic legislation includes automatic voter registration, same day registration, expanded early voting, and stopping voter purges and signature mismatches, among other key provisions. The SHIELD Act, which was marked up yesterday in this committee and is expected to be voted on by the full House of Representatives next week, includes the Deceptive Practices and Voter Intimidation Prevention Act to help stop voter suppression efforts. And although it is outside this Committee's jurisdiction, passing the Voting Rights Advancement Act (HR 4) would update the coverage formula for the Voting Rights Act and ensure that many voter suppression tactics could no longer be used to silence the voices of American voters.

### **Conclusion**

Voter suppression is ultimately about power. Voter suppression impacts who gets a seat at the table and who is often left voiceless on the outside. Our democracy is in a crisis, and voting remains one of the key ways that Americans can have their voices heard. For nearly 50 years, Common Cause has helped to protect and strengthen the right to vote. In recent years,

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<sup>39</sup> <https://letnyvote.org/>

Republicans are largely guilty of trying to suppress votes, but in 10 or 20 years, it may be Democrats who are guilty of this practice. Common Cause called out Democrats when they undermine democracy, and Common Cause will continue to call out Republicans who are suppressing votes of eligible Americans around the country. Some people will say that because voter turnout is up, voter suppression does not really have an impact. That is a ridiculous and flawed argument. Just because people overcome barriers to voting does not mean that voter suppression is acceptable. Vote suppression might lead to a short-term, narrow gain for Republicans now, but suppressing votes of Americans does long-term, lasting damage to our democracy. Until every eligible American can have their voices heard and votes counted, we at Common Cause will continue to fight with every tool at our disposal to stop voter suppression.

Thank you again for the opportunity to submit testimony.



Chairwoman FUDGE. Thank you very much.

Thank you all.

We will now the begin with our questioning, and I will recognize Mr. Aguilar for five minutes.

Mr. AGUILAR. Thank you, Madam Chairwoman.

Ms. Lhamon, I will start with you, but, also, as the Californian up here, thank you for your service.

Ms. LHAMON. Thank you.

Mr. AGUILAR. The Legal Affairs Secretary is no small position in California. So I will be sure to talk to you about San Bernardino County and any judicial vacancies in another platform.

Ms. LHAMON. I look forward to that conversation.

Mr. AGUILAR. You know, but this is for the entire panel. In this chamber, even just yesterday, the Ranking Member talked extensively about ballot harvesting.

And so, Ms. Lhamon, can you talk a little bit about what the California experience has taught us, the barriers that individuals have, you know, specifically the kind of robust vote-by-mail system that we see?

But this is becoming hyper-political. And some of my colleagues across the aisle are conflating voter fraud with legitimate exercising of our electoral process. And they have blamed losses, congressional losses, on this, basically telling folks that thousands of ballots just kind of show up, the inference being that individuals are just grabbing other people's ballots. It is just becoming hyper-political.

So can you talk a little bit about ballot harvesting? And is there evidence? Was there any testimony given to you and your Commission supporting claims of widespread voter fraud that a lot of my colleagues have used, obviously, to pass increased voter suppression laws?

Ms. LHAMON. Not only was there no evidence given to the Commission about widespread voter fraud, the data and the research that is bipartisan reflect that voter fraud is vanishingly rare in this country.

So the concerns about that type of vote misuse both have existing criminal penalties in the Voting Rights Act for voting twice and State and Federal penalties for the kinds of voter fraud that already exist. And so it is duplicative and also harmful to initiate strict voter ID, among other kinds of requirements, in the name of combating voter fraud.

But, also, the existence of voter fraud, as I mentioned, essentially does not exist. And the testimony, both that we at the Commission received and also that our State advisory committees received across the many States that investigated this question, just don't find the existence of voter fraud at all.

And that extends, as I mentioned, from bipartisan research. So The Heritage Foundation, the Republican National Committee, a number of conservative-leaning as well as nonpartisan organizations have researched this question and consistently and persistently find that voter fraud essentially does not exist in this country.

Mr. AGUILAR. Any others on the panel?

Ms. Nunez, then Mr. Waldman.

Ms. NUNEZ. Thank you.

I think one thing that is important to keep in mind when we talk about ballot harvesting, as it is known, is that the system works when we give voters options to cast ballots, and that also means giving them options on how they return them.

So I think, in terms of past practices, you want to give voters multiple options. And for some voters, that may be giving their ballot to another person.

I think, specifically, though, there is some good input from the Native American Rights Fund, specifically, about how, for Native voters, being able to have someone else return their ballot for them is critically important. And there is a whole set of factors as to why that is the case, having to do with the distance from polling locations for voters who are living on a Native reservation.

But the upshot is that if we don't allow voters to choose how to return their ballots, we are not giving them the opportunity to take advantage of that expanded access that can come through a mail ballot or absentee ballot system.

Mr. AGUILAR. And as this panel heard testimony in Arizona, the definition of family in Native American culture might be very different—

Ms. NUNEZ. Precisely.

Mr. AGUILAR [continuing]. Than we might know.

Mr. Waldman.

Mr. WALDMAN. First, in terms of the broad claim, the illusory claim, of widespread voter fraud, the Brennan Center's research has shown that, in terms of in-person voter impersonation, you are more likely to be struck by lightning than to commit voter fraud in the United States. And that is just an established fact.

The real issue here is we want to make it easier for people to vote. About one out of three Americans now votes before election day. This is, in a sense, a matter of consumer choice. People need this kind of convenience.

It is already illegal everywhere to fill out an absentee ballot for someone. And we have seen, where there have been problems, that that has been what has been going on. There is no evidence of an actual—

Mr. AGUILAR. And that is election fraud, and that is illegal already.

Mr. WALDMAN. And it is done to voters, not by voters.

Mr. AGUILAR. Yeah.

Mr. WALDMAN. There is no evidence that people helping collect ballots has actually caused impropriety. And we ought to be looking for ways to deal with actual risks to the system rather than things that are less real.

Mr. AGUILAR. Thank you so much. I appreciate it.

Ms. Wright, maybe 10 seconds?

Ms. WRIGHT. Sure. I mean, I would just mention that a lot of harm has been done in the name of combating voter fraud.

And one of the best examples is that the first victims of the Indiana voter ID law that was put into place was a group of a dozen nuns, residing at a convent, who showed up at the polls, the place they had always voted. They didn't have driver's licenses, they didn't have passports, and they had to be turned away, even

though the poll worker was one of the nuns who lived with them and knew each one of them personally. But they didn't have the right ID, so they couldn't vote.

We should really avoid doing harm in the name of protecting against nonexistent voter fraud.

Mr. AGUILAR. Thank you, Ms. Wright.

Thank you, Madam Chairwoman.

Chairwoman FUDGE. Thank you.

Ranking Member Davis, you are recognized for five minutes.

Mr. DAVIS of Illinois. Thank you.

And I appreciate the discussion on ballot harvesting. We had an interesting discussion yesterday on ballot harvesting. I just find it odd that we have a State where it is still illegal; somebody going to jail. We had a special election.

I have a chain-of-custody concerns. And I think all of us, we want to make sure that every ballot is cast and every ballot is counted correctly. We ought to all be concerned about chain-of-custody issues.

And I think the process can easily be manipulated. That is what we saw in North Carolina. And, frankly, until it was legal in California, you know, somebody there may have gone to jail for the same thing. We may have actually been able to investigate whether the fraud existed a little better.

I am interested in finding that RNC study you talked about. I haven't seen it, but we will call—my team will call over, but I would love to get with you afterwards, Ms. Lhamon.

And thank you all for your testimony.

Look, we all want to make sure that everybody has a chance to vote. We all want to make sure that the processes are in place to give every single citizen in this country who is eligible to vote the right to cast that ballot.

I am in Illinois. Obviously, we have many provisions that I am supportive of. Same-day registration, that allows folks in my area to actually have every opportunity to cast that vote.

But we also can't take away what we have already seen happening. Mr. Waldman said in his opening testimony, we saw tremendous increase in midterm voting in 2018. Great. Great. Let's not sidestep that success. Let's build on it. Let's work together and say, this is great, it is working.

Ms. Wright, you mentioned—well, I will come back to you. I have a couple of questions real quick for Ms. Lhamon.

Ms. Lhamon, I don't have Native American Tribes in my district, but I know you mentioned them in your opening testimony. For my knowledge, how many Native American Tribes are there in the United States?

Ms. LHAMON. I don't have that number off the top of my head, but it is a not-small number.

Mr. DAVIS of Illinois. Okay. You know, you said you have heard from Native Americans across this country about their difficulties in casting votes. What has the overall trend been for Native American turnout across the country over the past few election cycles?

Ms. LHAMON. It continues to fall below the 50-percent threshold that was the basis for enacting the Voting Rights Act in the first

place, looking at turnout. So very, very serious concerns in particular for Native American voters.

Mr. DAVIS of Illinois. So they didn't follow the same trend from 2014 to 2018 in the midterms?

Ms. LHAMON. They may have been up, but it is well below the 50-percent threshold.

So the concern is that Native Americans in this country continue to have very, very difficult challenges for voting. Their polling places have been reduced. The Native IDs, as I mentioned, are not always accepted, even though they ought to be accepted. There are considerations of vote by mail——

Mr. DAVIS of Illinois. I was at one of our field hearings in North Dakota, in Standing Rock Reservation. Great people. Great opportunity to hear about a process that doesn't exist in my home State of Illinois. They actually have no registration process in North Dakota. I mean, you walk in and prove you have an address in North Dakota, same day, boom, you are there.

Ms. LHAMON. That is singular in the United States.

Mr. DAVIS of Illinois. Yeah. And then, all of a sudden, even with no registration, they were allowing the Native American Tribal leaders to verify anybody with just a letter from the Tribe as somebody who lived there to go vote.

So you are saying there are still more things that we need to do, right?

Ms. LHAMON. We have substantial challenge with respect to Native American voters in North Dakota, among other States——

Mr. DAVIS of Illinois. And I also heard in North Dakota that the turnout was substantially higher. I mean, there is improvement.

Ms. LHAMON. And improvement is wonderful and ought to be celebrated. My only point is that it is below 50 percent and that that is a very serious concern.

We ought to be celebrating increased turnout wherever it exists. And we also ought to be recognizing that, across the board, in this country, we have very, very low turnout for voters. And that is, in itself, a concern.

Mr. DAVIS of Illinois. Okay. Well, then what other processes would you recommend to increase voter turnout in Native American areas and other areas?

Ms. LHAMON. Well, certainly with respect to Native Americans, we want to make sure that there are accessible polling places, that people have clarity, including in Native languages, about how to vote and what is involved in voting. The Alaska State advisory committee for the Commission heard astonishing testimony about failure of translated materials, failure of people available to——

Mr. DAVIS of Illinois. Newer technology, 21st-century technology can be helpful.

Ms. LHAMON. It would be helpful. And, also, there are particular challenges in places like Alaska, where there are 23 different languages——

Mr. DAVIS of Illinois. Absolutely.

Ms. LHAMON [continuing]. In which materials need to be translated.

Mr. DAVIS of Illinois. I apologize. I do have one more question for Ms. Wright.

And I want to get to you. You mentioned prison in the Census counts, how they may unfairly give an advantage to rural areas if the prisoners are counted, and it may adversely affect the home areas of those prisoners.

Were you saying that assuming that most would come from more urban areas?

Ms. WRIGHT. No. The vote dilution comes in when population is counted as if it were——

Mr. DAVIS of Illinois. As it is——

Ms. WRIGHT [continuing]. Rather than at the prison.

Mr. DAVIS of Illinois. So the population is counted, and the Census——

Ms. WRIGHT. Right.

Mr. DAVIS of Illinois [continuing]. Is used, the data is used for the area——

Ms. WRIGHT. Instead of in their home communities. And——

Mr. DAVIS of Illinois. Okay. So would that same application be valid for colleges and universities, where rural students go to urban areas?

Ms. WRIGHT. Well——

Mr. DAVIS of Illinois. Does that unfairly punish the rural areas?

Ms. WRIGHT. But in colleges and universities, students do have the right to register and vote in those communities if they——

Mr. DAVIS of Illinois. They didn't commit——

Ms. WRIGHT [continuing]. Intend to stay there.

Mr. DAVIS of Illinois [continuing]. A crime that put them in prison.

Ms. WRIGHT. Yes, but the point is, when you look at the logic of how this system works—take Maine and Vermont, for example. When incarcerated people in Maine and Vermont cast their ballots, they don't cast them in the prison community. They cast them absentee from their home communities. And yet the Census Bureau is counting them as residents of the prison. And that just doesn't match up, and it creates all kinds of inequities.

Mr. DAVIS of Illinois. Well, I appreciate your logic, and I just don't necessarily know if I agree with it. But thank you for your time.

And thank you all.

I yield back.

Chairwoman FUDGE. Thank you very much.

Let me just say a few things, as we were talking about Native Americans.

First off, I think it is illegal for us to even hold them to State standards. Their treaties are with the Federal Government, and they should only be held to the standard that the Federal Government has and not to what the States have. That is number one.

Number two, I think it is important that we understand that in 2018 their numbers were up because the Tribal leaders had to go and get new IDs for all of the people on their particular reservations. When you look at the fact that on some reservations in this country the unemployment rate is above 60 percent, they were not going to go and buy IDs. They would not have voted had not resources come from either the Tribal leaders or others in their community to help them get a new ID, an ID that had to put an ad-

dress on it. They have never had an address in all these years. They have used post office boxes. But, all of a sudden, we are going to make it more difficult, because now they have to have an actual address to go and vote.

I am just trying to figure out—maybe you can help me—why is it that they don't want us to vote? Can somebody answer that question for me?

Just answer it. Anybody. Why are they making this difficult? I mean, why do we not have bipartisan support anymore? Just somebody help me figure it out. Because, I mean, is it just because of the way I look, or what is it? Please.

Mr. DAVIS of Illinois. Madam Chairwoman, are you insinuating that I don't want you to vote? Republicans?

Chairwoman FUDGE. First, let me just say, I am asking the question of the panel.

And, secondly, I am not asking anything. I am just asking the question, why has it become so difficult for people of color, for Native Americans, for young people—I mean, you want to equate people in prison to kids in college. That is insane.

Mr. DAVIS of Illinois. Actually——

Chairwoman FUDGE. The question——

Mr. DAVIS of Illinois. Will the gentlelady yield?

Chairwoman FUDGE. I am reclaiming my time.

Mr. DAVIS of Illinois. Will the gentlelady yield?

Chairwoman FUDGE. No, I am reclaiming my time. I will not yield. The question is to the panel.

Ms. LHAMON. The increases in impediments to the right to vote are extraordinarily distressing. And I think that the reasons can be many, but the reality is that the right to vote is a core component of democracy. And we, as a country, should do better, can be better, ought to be better than we are right now in terms of placing those impediments.

Chairwoman FUDGE. So what is the purpose of placing those impediments? That is what I am trying to get to. What is it in somebody's psyche that believes that, all of a sudden, in the last 10 or 12 years, that voting has gone so off the rails that we have to change things we have been doing for hundreds of years? There was no problem before; why is there a problem now? I just don't understand it.

Mr. Waldman.

Mr. WALDMAN. I think, when you look at the whole history of the country, it has unfortunately but inevitably required a fight to expand and maintain the right to vote and the right to participate. As the country is changing demographically, once again we are seeing a backlash, and we are seeing laws enacted that make it harder for communities of color, immigrant communities, and others to vote.

Happily and fortunately, in the past and in many ways even now, there is still bipartisan and left/right support for these things. The last time the Voting Rights Act was before this Congress, it passed the Senate 98-to-nothing. So many of these measures we are describing as significant reforms have been enacted with bipartisan support.

In the State of Illinois, automatic voter registration passed unanimously and was signed into law by Governor Rauner, a Republican Governor of Illinois. And in Florida, a massive bipartisan majority voted to restore the right to vote to 1.4 million Florida residents who had their right denied because of a past felony conviction, which was a direct remnant of the Jim Crow era.

So there is still, deep in the soul of the country, a belief in the right to vote. And we all encourage all of you and all of us to work to modernize the system so some of these fights can be in the past and not in the present.

Chairwoman FUDGE. I guess I am just trying to make a point that this same thing—it seems to have just taken on a life of its own. Nobody knows where it started; nobody knows why it started. We know that it has always been an issue. Voting has been an issue in this country for a very, very long time. But I would say this: I can trace my family back at least six generations in this country. I am as American as anybody in this room. I do not believe that people like me, who have helped build this Nation, who have never done anything to hurt this country, should be made to go through all kinds of hoops to be able to do what the Constitution gives us the right to do.

All these people who say they believe in the Constitution, they can't possibly, because it says that we all have a right—an unfettered, unabridged right to vote. It doesn't say you have to have a certain kind of ID. It doesn't say that if you have been to prison you can't vote. You are still citizens of this Nation.

And so, for to us start to put all of these roadblocks in the way, I can't figure it out. You can't figure it out. So it is like this has a life of its own.

But I would suggest to you this: that the more we try to erode the rights of people in this country—it is not going to stop at voting. It is going to get worse. And if we really are patriots and believe in what the Constitution says and believe in this great Nation, then we need to make it easier to vote.

We want to go out here and talk about every other country and what they don't do. I bet you, any other democracy in this world doesn't do what we do. We should make it a holiday. We should make a vote on Saturday, maybe. We should give people time off to vote. But, no, we still vote on an agrarian calendar day that doesn't even make any sense to do today.

So I am going to ask each of you, if you would, tell me one thing you want to us do to make it easier for people to vote in this country.

We will start with you, Ms. Lhamon.

Ms. LHAMON. I certainly believe automatic voter registration is enormously helpful. And allowing people to be able to vote on the day of an election would be extraordinarily helpful. So if I had to pick one thing, that would be it.

Chairwoman FUDGE. Thank you.

And, Ms. Wright, I agree with you, by the way. If we continue to count prisoners where they are, when they leave and come home, the resources that come from that Census count are going to stay in those places where they no longer are. And the people who have to take care of them, whether it be through Second

Chance, whether it be through some other kind of diversion programs, whatever it may be, we don't have the resources in our community.

Your one point?

Ms. WRIGHT. There are so many things that need to be done. It is very hard to pick one.

It is certainly vital to restore some version of the preclearance provisions of the Voting Rights Act that were struck down in 2013, because that really did unleash the floodgates, as we have seen. And that has been an enormous weakening of the right to vote.

Chairwoman FUDGE. Mr. Waldman.

Mr. WALDMAN. In addition to what has been mentioned, a national guarantee of effective early voting and election day registration to make it possible for as many people in our modern, mobile, and overworked age to vote.

Chairwoman FUDGE. Ms. Nunez.

Ms. NUNEZ. All of the above.

I think it is important to make sure it is convenient to both register and vote. So same-day registration and automatic voter registration are key to having accurate rolls. And then we need to make sure people can cast ballots in a way that makes sense, whether that is early, at home, or in a polling location on election day.

Chairwoman FUDGE. I thank you all so very, very—did you want to make a comment, Mr. Davis?

Mr. DAVIS of Illinois. Thank you all very much. I appreciate the opportunity to hear from you your suggestions. We look forward to continuing to work with you as this Subcommittee and, in turn, the House Administration Committee moves forward.

I appreciate the discussion on Census activities. You know, the discussion that the Chair and I had here momentarily when I asked her to yield—at the time, she didn't. Thank you for doing it now. Please don't insinuate that my discussion on Census activities and fairness in rural America when it comes to other folks who may be counted in areas that they may not live in permanently, and the resources in rural America are just as important as anywhere else. So that is my discussion. And I apologize if I thought you insinuated that there was anything other than that, but my discussion was simply on the Census track.

And I am glad that we are having these hearings to talk about the need to get more folks to vote. That is what needs to happen. But let's also make sure that, every single election, every vote is counted and every vote gets to the ballot box.

I yield back.

Chairwoman FUDGE. Thank you.

And just to be clear, your discussion about college students that have a choice—people in prison do not. And for the Ranking Member to say, "Well, they didn't commit a crime"—it had nothing to do with whether they are both counted in the same place or not. It just really didn't.

Mr. DAVIS of Illinois. It is about fairness when it comes to the Census. If they are going to be counted in one part of the country—if they are going to be counted in rural America for whatever resource purpose there is, the same resources, when college grad-



uates go back to their communities where they live to take advantage of the resources that are offered in workforce investment programs, are just as important as the resources that we all, in a bipartisan way, agree to fund in every part of America.

Let's—if we want to talk about the Census——

Chairwoman FUDGE. Mr. Davis.

Mr. DAVIS of Illinois [continuing]. We can talk about it, but——

Chairwoman FUDGE. Mr. Davis, those people, many of them, vote at home in the first place.

Mr. DAVIS of Illinois. As somebody who represents four public universities, I can tell you, a lot of them don't.

Chairwoman FUDGE. But they have a choice.

Ms. Wright, did you want to say something?

Ms. WRIGHT. Well, with your indulgence, I guess I would just like to say that the issue of prison gerrymandering is clearly an injustice, but in terms of the importance of the issues, if I could name one other issue, it would simply be the re-enfranchisement of people who have lost the right to vote because of criminal conviction. That, in itself, is the core of the problem, and prison gerrymandering is one aspect of it.

Chairwoman FUDGE. It is unconstitutional is what it is.

Thank you all so very, very much for being here.

I thank this panel, and we will ask the next panel to please come to the table.

[Recess.]

Chairwoman FUDGE. Good morning.

We want to welcome our third panel. The Ranking Member is going to leave us briefly but is planning to return. So thank you all so much for being here.

Ms. Hannah Fried is the Director of All Voting Is Local, a collaborative housed at The Leadership Conference Education Fund in conjunction with the American Civil Liberties Union Foundation, the American Constitution Society, the Campaign Legal Center, and the Lawyers' Committee for Civil Rights Under Law. Ms. Fried has run voter protection efforts for two Presidential campaigns and spent several years in Federal Government services at the Department of Justice and the Environmental Protection Agency.

Welcome.

I know I am not doing this in order, but Ms. Barbara Arnwine—how are you?—is the National co-Chair of the National Commission for Voter Justice. Ms. Arnwine is also the President and Founder of the Transformative Justice Coalition and served as head of the Lawyers' Committee for Civil Rights Under Law from February of 1989 through June of 2015. Ms. Arnwine is renowned for her contributions on critical justice issues including passage of the landmark Civil Rights Act of 1991 and the 2006 reauthorizational provisions of the Voting Rights Act.

Welcome.

Denise Lieberman is the Director of Advancement Project's Power and Democracy Program and a senior attorney. Ms. Lieberman works to identify and remove systemic barriers to voting. A seasoned constitutional and civil rights lawyer, Ms. Lieberman works on the ground in Missouri, in addition to advancing broad voter protection initiatives nationwide, engaging in political anal-

ysis, lobbying, legal advocacy, litigation, and community-building to advance electoral reform, including spearheading a nationwide advocacy effort to combat repressive voting legislation this past year.

Welcome.

Ms. Kase serves as the Chief Executive Officer of the League of Women Voters of the United States, where she is leading the organization through a period of rapid transformation and growth, focused on building power by engaging in advocacy, legislation, litigation, and organizing efforts centered around issues of voting rights and democracy reform. Prior to joining the League in 2018, she served as COO of CASA, an organization at the forefront of the immigrant rights movement, representing nearly 100,000 members.

As you know, you will see a lighting system in front of you. When you begin, the light will turn green. When you have 1 minute left, you will see the yellow light. And when you see the red light, please prepare to wrap up.

Ms. Fried, you are recognized for 5 minutes.

**STATEMENTS OF HANNAH FRIED, DIRECTOR, ALL VOTING IS LOCAL; VIRGINIA KASE, CHIEF EXECUTIVE OFFICER, LEAGUE OF WOMEN VOTERS; BARBARA ARNWINE, NATIONAL CO-CHAIR, NATIONAL COMMISSION FOR VOTER JUSTICE; AND DENISE LIEBERMAN, SENIOR ATTORNEY AND PROGRAM DIRECTOR, POWER AND DEMOCRACY, ADVANCEMENT PROJECT**

#### **STATEMENT OF HANNAH FRIED**

Ms. FRIED. Thank you, Chairwoman Fudge and Members of the Subcommittee. I am Hannah Fried. I am the Campaign Director for All Voting Is Local, a collaborative campaign of The Leadership Conference Education Fund. We fight to eliminate discriminatory barriers to voting before they happen. Since 2018, we have worked in Arizona, Florida, Ohio, Pennsylvania, and Wisconsin. Thank you for the opportunity to testify.

Our election system is broken. In 2016, problems at the polls prevented 1 million voters from casting a ballot. These problems disproportionately harm voters of color, young people, low-income Americans, and voters with disabilities.

In the past two decades, Congress has recognized the need for strong Federal protections for the right to vote, passing the Help America Vote Act in 2002 and reauthorizing the Voting Rights Act in 2006. Both passed with strong bipartisan support and a robust record.

Despite this, in 2013, five Supreme Court Justices gutted the critical protections of the Voting Rights Act Section 5 preclearance system. Since the *Shelby* case, States and localities across the country have erected barriers to voting without critical safeguards.

Federal protections for voting are as vital today as they have been for the past century. The 2018 elections were lauded for record turnout, but eligible Americans voted at a rate of less than 50 percent and faced insurmountable obstacles.

State officials purged voters from the rolls, sometimes simply for not voting. From 2010 to 2018, Georgia's Secretary of State, now-Governor Brian Kemp purged more than 1.4 million voters.

Worse still, some States are more committed to purges than to ensuring an accurate list maintenance process. In 2018, Georgia’s “exact match” law put into question the registration status of 50,000 voters over minor inconsistencies in their registration records.

Just recently, Ohio’s Secretary of State admitted their purge system was rife with errors. Just shy of half a million Ohioans, many of them African-American and low-income voters, will be purged this year under this flawed system.

In 2018, voters faced large-scale polling place changes. The Leadership Conference Education Fund’s “Democracy Diverted” report found that, in former Section 5 States, there were 1,173 fewer polling places in 2018 than in 2014, despite last November’s record turnout. Maricopa County, Arizona, 31 percent Latino, closed 171 polling locations after 2012, the most of any county studied in the report.

Widespread polling place changes lead to the overuse of provisional ballots. Our campaign’s analysis of 717 former Section 5 counties found that voters in counties with more polling place closures are more likely to be asked to cast a provisional ballot.

HAVA contemplated that provisional ballots would be used as a failsafe, but they are less likely to be counted than a regular ballot. Their overuse is the canary in the coal mine, signaling systemic problems that result in voters not knowing where or how to vote.

Our campaign’s analysis of provisional ballot usage has found strong connections to race. In Pennsylvania, voters in Philadelphia County, 41 percent African-American, are five times as likely to get a provisional ballot than voters in Allegheny, 12.7 percent black, or Berks, 4 percent black.

In 2018, African-American students faced unique barriers to voting. At Ohio’s two HBCUs, voters cast a disproportionate number of provisional ballots and were twice as likely to have their ballots rejected than voters countywide. In Florida in 2018, Florida A&M University, the State’s sole public HBCU, was the only major public campus without an early vote site.

In 2018, voters of color were more likely to have problems voting by mail. An analysis by All Voting Is Local of our States found that voters in mostly white communities are less likely to have their mail-in ballots rejected than voters living in communities of color.

In Arizona, just over 1 percent of Native American voters are on the State’s permanent early voting list, compared to approximately 80 percent of non-Native-American voters.

In 2018, strict photo ID laws targeted African-American voters with almost surgical precision, as the Fourth Circuit in 2016 wrote of North Carolina’s law. Last fall, our campaign helped hundreds of Wisconsin voters through the arduous process of complying with that State’s strict photo ID law, a law that has been found to deter from voting more than 20 percent of African-American registered voters compared to 8.3 percent of white registrants.

Election administration practices can and should be used to expand access to the ballot for all eligible Americans. Too often, they instead become a barrier to voting, disenfranchising millions of eligible Americans, particularly voters of colors.

Any wrongfully disenfranchised voter is one too many. Congress must restore and expand safeguards of the right to vote, ensuring that every eligible American, regardless of race, income, age, or ability, can make their voice heard.

Thank you.

[The statement of Ms. Fried follows:]



**STATEMENT OF HANNAH K. FRIED, DIRECTOR OF ALL VOTING IS LOCAL,  
THE LEADERSHIP CONFERENCE EDUCATION FUND**

**COMMITTEE ON HOUSE ADMINISTRATION  
SUBCOMMITTEE ON ELECTIONS  
U.S. HOUSE OF REPRESENTATIVES  
HEARING ON "VOTING RIGHTS AND ELECTION ADMINISTRATION IN  
AMERICA"**

**OCTOBER 17, 2019**

Chairperson Fudge, Ranking Member Davis, and members of the Subcommittee: My name is Hannah Fried and I am the Campaign Director for All Voting is Local (AVL). Thank you for the opportunity to testify today on the current state of voting rights and election administration.

All Voting is Local launched in 2018 as a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law. We fight to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for all of us. Since 2018, our campaign has had staff on the ground in five states with a recent history of discrimination in voting: Arizona, Florida, Ohio, Pennsylvania, and Wisconsin.<sup>1</sup>

Our election system is broken. In 2016, problems at the polls such as long lines, voter identification laws, and registration problems prevented 1 million voters from casting a ballot.<sup>2</sup> These problems do not affect all Americans equally: time and again, their impact falls disproportionately on voters of color, young people, low-income Americans, and voters with disabilities. A study of wait times in the 2016 presidential election, released this past summer and led by economist Keith Chen of the University of California - Los Angeles, found that voters in Black neighborhoods waited longer to cast a ballot than voters in white neighborhoods, and

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<sup>1</sup> More information is available at [www.allvotingislocal.org](http://www.allvotingislocal.org).

<sup>2</sup> See Charles Stewart, "SPAE 2016 final report.pdf," *2016 Survey of the Performance of American Elections*, <https://doi.org/10.7910/DVN/Y38V1Q/2NJD19>. Harvard Dataverse, V1, 2017.

were approximately 74 percent more likely to wait for more than half an hour.<sup>3</sup> These findings, distressingly, are not unique.

In the past two decades, Congress has recognized the need for strong federal protections for the right to vote. Seventeen years ago, Congress passed -- and President George W. Bush signed -- the Help America Vote Act of 2002 (HAVA), to address systemic voting problems that reached national prominence during the 2000 election. Passed with strong bipartisan support, HAVA mandated sweeping reforms, seeking to establish uniform and nondiscriminatory election administration practices. Among HAVA's provisions are minimum standards for the maintenance of voter registration records; the authorization of federal funding for new voting equipment; and a requirement that election officials offer a voter a provisional ballot in the event of a question concerning their eligibility.

Just four years after HAVA's passage, Congress reauthorized the Voting Rights Act of 1965 (VRA) with sweeping bipartisan support, again demonstrating its recognition of an ongoing need for federal protections for the right to vote. Despite Congress's great deliberation and care in reauthorizing the VRA, in 2013, five justices of the Supreme Court gutted the Section 5 preclearance system, the most powerful provision of the VRA, in *Shelby County v. Holder*.<sup>4</sup> That system had enabled the U.S. Department of Justice and federal courts for 50 years to block proposed discriminatory voting restrictions in states and localities with the most troubling histories of discrimination before these restrictions could disenfranchise voters. It ensured that, when jurisdictions changed the rules or operations of voting, the changes were public, transparent, and studied to ensure they would not discriminate against voters because of their race or language. In *Shelby*, the Court noted that if Congress wanted to lawfully reauthorize the VRA's preclearance system, it would need to draft a new coverage formula based on "current conditions."

Since *Shelby*, states and localities across the country -- former Section 5-covered jurisdictions and beyond -- have erected barriers to voting without adequate safeguards. Improper voter purges, polling place closures and consolidations, strict photo identification laws, and the methods by which ballots are reviewed and rejected disenfranchise voters at every juncture. Too often, the disenfranchisement of eligible American voters at the polls has no effective remedy because once an election is held, there is no way to hold it again.

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<sup>3</sup> M. Keith Chen, Kareem Haggag, Devin G. Pope, Ryne Rohla, "Racial Disparities in Voting Wait Times: Evidence from Smartphone Data", <https://arxiv.org/abs/1909.00024>, Sept. 4, 2019.

<sup>4</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

In 2018, The Leadership Conference Education Fund and partners launched the All Voting is Local campaign to monitor and remove barriers to voting, well before Election Day. The campaign started five years after the *Shelby* decision, to bolster the work of advocates who have sought to mitigate the gap in federal voting rights enforcement created by that case.

Federal protections for the right to vote are as vital today as ever. The Senate must follow the lead of this body and pass H.R. 1, the For the People Act, which would safeguard our democracy including by: requiring online, same day, and automatic voter registration; prohibiting voter purges based on non-voting in past elections; expanding opportunities to vote early in person; expanding opportunities to vote by mail and creating standards for the review and processing of mail-in ballots; and requiring that a provisional ballot be counted if it is cast by an eligible voter at the wrong polling place.

Further, the Voting Rights Act's critical safeguards like preclearance must be restored, so the myriad tactics used by jurisdictions with a history of discrimination to make it harder for people to participate in their elections can be vetted to ensure that they don't discriminate based on race. The Voting Rights Advancement Act (VRAA) would do that. It would also apply nationwide to six different types of covered practices, such as the reduction, consolidation, or relocation of polling places in jurisdictions with large percentages of language or racial minority groups, or changes in documentation or qualifications to vote.

### **Polling place closures, moves and changes**

#### *Changes to Election Day polling places*

Polling place closures are a common and insidious tactic for disenfranchising voters. According to *Democracy Diverted*, a report released last month by The Leadership Conference Education Fund, polling place closures are often implemented under the guise of cost savings or other bureaucratic imperative, but can result in long lines, transportation hurdles, and mass confusion about where eligible voters may cast their ballot.<sup>5</sup> For many people, particularly voters of color, older voters, rural voters, and voters with disabilities, these burdens make it harder -- if not impossible -- to vote.

Before the *Shelby* decision, voting changes in covered jurisdictions<sup>6</sup> were scrutinized under Section 5 of the VRA to ensure they would not be discriminatory -- but *Shelby* eliminated this

<sup>5</sup> The Leadership Conference Education Fund, "Democracy Diverted: Polling Place Closures and the Right to Vote," <https://civilrights.org/democracy-diverted/>, September 2019.

<sup>6</sup> 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.

critical protection for voters. Without that process in place, 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 -- in formerly covered jurisdictions and beyond -- to make sure polling place reductions do not discriminate against voters of color. These include thoughtful studies of the impact on voters from all backgrounds, approval of proposed changes from diverse cross-sections of the community, and outreach to impacted voters through mailed and emailed correspondence, text messages, and public service announcements on local radio. In the absence of these efforts, widespread polling place closures create barriers to the ballot box that are incredibly difficult, if not impossible, to overcome.

Too often, election officials close polling places with little notice to, or meaningful input from, the communities they serve. One of the most egregious examples of attempted polling place closures happened before the 2018 midterm election in Randolph County, Georgia, where the Board of Elections proposed to close seven out of the nine polling places in a county whose population is 60 percent Black.<sup>7</sup> The poll closures in Randolph County would have had the effect of requiring African American voters in poor rural areas, many lacking transportation, to travel long distances to vote. Because of a broad public outcry and advocacy from community groups, including All Voting is Local and other organizations, the board reversed its position and kept the polling places open.<sup>8</sup>

Despite these events in the lead-up to the 2018 midterms, some Georgia officials have continued to close and move polling places, unabated. Just last month, on September 3, the City Council of Jonesboro, Georgia voted to move the city's only polling location to its police department<sup>9</sup>, without providing the public notice required by Georgia law and without taking into consideration the possible deterrent effect to voters of color.<sup>10</sup>

<sup>7</sup> Letter from Sean Young, ACLU Georgia, to Randolph County Board of Elections and Registration (Aug. 14, 2018) (regarding proposal to eliminate polling sites), [https://www.acluga.org/sites/default/files/field\\_documents/aclu-ga-ltr-re-randolph-polling-place-closures-8-14-18.pdf](https://www.acluga.org/sites/default/files/field_documents/aclu-ga-ltr-re-randolph-polling-place-closures-8-14-18.pdf).

<sup>8</sup> Johnny Kaufman, Georgia County Votes To Keep Polling Places Open After Intense Scrutiny, NPR, (Aug. 24, 2018, 11:59AM), <https://www.npr.org/2018/08/24/641556969/georgia-county-votes-to-keep-polling-places-open-after-intense-scrutiny>.

<sup>9</sup> Mark Niesse, Groups Oppose Moving Voting Precinct to Jonesboro Police Station, ATLANTA JOURNAL-CONSTITUTION, (Oct. 8, 2019), <https://www.ajc.com/news/state--regional-govt--politics/groups-oppose-moving-voting-precinct-jonesboro-police-station/rgeerwVvqS17uDWs0bp5vL/>.

<sup>10</sup> Letter from advocates at the Lawyers' Committee for Civil Rights Under Law, Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, and the New Georgia Project to Mayor of the City of Jonesboro, Members of the Jonesboro City Council, Members of the Clayton County Board of Elections and Registrations, and Director of Elections (Oct. 7, 2019) (on file with AVL).



The recent experiences of Georgia voters are not unique to that state. The Leadership Conference Education Fund's *Democracy Diverted* report found 1,688 polling place closures between 2012 and 2018 in states formerly covered under Section 5. Perhaps even more striking, the analysis found 1,173 fewer polling places in 2018 compared to 2014 -- despite a significant increase in voter turnout.<sup>11</sup>

Widespread polling place changes and closures are not limited to states formerly covered under Section 5. The spread of voter suppression across the country demonstrates the need to increase scrutiny of such changes, which the VRAA would require under its covered practices and notice and transparency provisions.

In November 2018 in Ohio, All Voting is Local partnered with the Lawyers' Committee for Civil Rights Under Law and state partners such as the NAACP Cleveland Branch to coordinate nonpartisan Election Protection. In determining where to deploy poll observers in Cuyahoga County (Cleveland), AVL noticed that several polling locations had been consolidated and precincts had been moved. After the election, AVL determined that between 2016 and 2018, there was a reduction of 41 polling locations countywide, with 15.7 percent of all precincts experiencing a change in location.<sup>12</sup>

While polling places were reduced across Cuyahoga County, majority Black communities were particularly harmed. This past spring, All Voting is Local conducted an analysis of polling place changes in Cleveland in 2018. In the city of Cleveland, there are 17 total wards, and eight of them were majority African American, ranging from 98.1 percent to 72.1 percent. The other nine minority Black wards ranged from 43.6 percent to 15.5 percent.<sup>13</sup> In the eight Black-majority wards, six had polling location changes, while only four of the nine Black-minority wards had changes. Throughout the city, 45 precincts had a change in their polling location, with 29 of them in Black-majority wards and 16 in Black-minority wards.

According to data from the Election Protection hotline and nonpartisan observers stationed at polling locations, Cuyahoga County had more than twice the number of reports of voters at the wrong polling location compared to two other large Ohio counties, Franklin and Hamilton. Poll observers at one Cleveland polling location that is 89.4 percent Black reported that they redirected 40 voters who were at the wrong location. The location with the next highest number of reported voters at the wrong polling location is 98.1 percent Black. Both of these locations had

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<sup>11</sup> See *supra* note 5.

<sup>12</sup> All Voting is Local, analysis of polling locations in Cuyahoga County, March 2019.

<sup>13</sup> The Center for Community Solutions, "Cleveland Neighborhoods and Wards Snapshot," <https://www.communitysolutions.com/resources/community-fact-sheets/cleveland-neighborhoods-and-wards/>. Last accessed April 2019.

precinct changes between 2016 and 2018.<sup>14</sup>

*Access to early voting polling places*

Lack of access to polling places is not limited to Election Day. Since 2010, at least seven states have reduced in-person early voting,<sup>15</sup> which is disproportionately used by voters of color, by limiting the days and hours that sites are open and closing voting locations. In North Carolina in the lead-up to the 2016 presidential election, at least 17 counties made significant cuts to early voting days and hours.<sup>16</sup> Statewide, early vote turnout among African-American voters declined almost nine percent compared to 2012.<sup>17</sup>

Even when early voting is expanded, state and county officials do not consistently, affirmatively ensure equal access across communities. In July 2018, when a federal court struck down Florida's ban on early voting at public colleges, AVL worked with partners to secure early voting sites on college campuses throughout the state, with a focus on students of color. In particular, AVL helped place an early voting site at the predominantly Hispanic Florida International University. A post-election analysis published by the Andrew Goodman Foundation found that nearly 60,000 voters cast early in-person ballots at campus sites that advocates, including AVL, helped to secure.<sup>18</sup> However, Florida A&M University (FAMU) – the state's sole public Historically Black University – was the only major public campus without an early voting location.

The exclusion of FAMU cannot be attributed to anticipated low turnout. African-American voters in Florida historically have voted early at high rates.<sup>19</sup> Indeed, in keeping with this tradition, African-American voters cast a disproportionately high number of early in-person

<sup>14</sup> See *supra* note 12.

<sup>15</sup> The seven states are: Florida, Nebraska, North Carolina, Ohio, Tennessee, Wisconsin, and West Virginia. See Tim Lau, Early Voting Numbers Soar as Midterms Approach, BRENNAN CENTER FOR JUSTICE, (Oct. 29, 2018), <https://www.brennancenter.org/blog/early-voting-numbers-soar-midterm-elections-approach>.

<sup>16</sup> Insightus, Super-Suppressors: The 17 North Carolina Counties that are Strangling Early Voting to Death, (Oct. 28, 2019, 11:25AM), <http://www.insight-us.org/blog/super-suppressors-the-17-north-carolina-counties-that-are-strangling-early-voting-to-death>.

<sup>17</sup> See Zachary Roth, Black Turnout Down in North Carolina After Cuts to Early Voting, NBC NEWS (Nov. 7, 2016, 1:45PM), <https://www.nbcnews.com/storyline/2016-election-day/black-turnout-down-north-carolina-after-cuts-early-voting-n679051>.

<sup>18</sup> Dr. Daniel A. Smith & ElectionSmith, Inc., "On-Campus Early In-Person Voting in Florida in the 2018 General Election," <https://andrewgoodman.org/wp-content/uploads/2019/08/On-Campus-Early-In-Person-Voting-in-Florida-in-the-2018-General-Election-FINAL-8-9.pdf>, Aug. 9, 2019.

<sup>19</sup> United States Election Project, Voter Turnout Demographics, <http://www.electproject.org/home/voter-turnout/demographics> (last visited, Oct. 13, 2019).

ballots at the campus sites that were available in 2018.<sup>20</sup> The Andrew Goodman study, written by Professor Daniel A. Smith of the University of Florida, found high rates of campus early voting among historically disenfranchised groups, including:

- almost 30 percent of campus early vote ballots were cast by Hispanic voters, compared to just under 13 percent of early ballots cast at non-campus locations
- more than 22 percent of campus early vote ballots were cast by Black voters, compared to 18 percent of early ballots cast at non-campus locations

#### **Vote by mail and absentee voting**

Polling place closures are often justified by reference to changing methods of voting. In Arizona, for example, election officials have made significant changes to Election Day polling places -- consolidating, moving and closing sites -- alongside the increased use of vote by mail<sup>21</sup> (also known as absentee voting). But access to vote by mail -- like access to polling places -- is not equitable, and restrictions on vote by mail disproportionately burden voters of color.

In 2011, the Arizona legislature passed S.B. 1421, a statute that outlawed the collection of mail-in ballots by community groups. Historically, organized ballot collection drives were conducted in Latino, African American, and Native American communities. The U.S. Department of Justice at the time refused to preclear the law without the state demonstrating first that the law would not disproportionately impact communities of color. Unable to provide such data, the legislature quickly repealed the law at the next legislative session.

The Arizona legislature passed new ballot collection restrictions in 2013. The new statute, H.B. 2305, outlawed ballot collection by parties or campaigns and required nonpartisan ballot collectors to complete and return an affidavit for every ballot collected. In response, citizen groups collected over 140,000 signatures for a citizen referendum to repeal H.B. 2305 and to require a supermajority for future legislation related to ballot collection. To prevent the referendum from moving forward, the legislature reversed itself, again, and repealed the ballot collection restrictions.

In 2016, in the wake of *Shelby*, the Arizona legislature passed H.B. 2023, a ballot collection prohibition like the law previously passed in 2011 that the U.S. Department of Justice had refused to preclear. The constitutionality of H.B. 2023 is currently on appeal in *DNC v. Reagan*<sup>22</sup>

<sup>20</sup> See *supra* note 18.

<sup>21</sup> Sam Radwany, 2018 Early Voting Surpasses All Votes Cast in 2014 Election in Arizona, KGUN9 (Nov. 5, 2018, 5:56PM), <https://www.kgun9.com/news/political/elections-local/early-voting-turnout-arizona>.

<sup>22</sup> *Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 715 (9th Cir. 2018) (vacated pending en banc review).

before an *en banc* panel of the Ninth Circuit Court of Appeals. However, as Chief Judge Sidney Thomas stated in his dissent in the three-judge panel decision in this case: “H.B. 2023, which criminalizes most ballot collection, serves no purpose aside from making voting more difficult, and keeping more African American, Hispanic, and Native American voters from the polls than white voters.”

In Arizona and across the country, the exclusion of communities of color from vote by mail is not only a consequence of outright statutory restrictions. Too often, state officials fail to consider the impact of their policies on communities of color, which further operates to the exclusion of historically disenfranchised voters.

A recent analysis by All Voting is Local of counties in our five pilot states found that voters in mostly white communities are less likely to have their mail-in ballots rejected than voters living in communities of color. Areas with higher populations of African American, Latino or Asian voters experience higher rates of mail-in ballot rejections due to signature mismatch. This trend is most pronounced for Latino voters -- a troubling pattern given that Latinos vote by mail at higher rates than other groups.<sup>23</sup>

We further found that, in Arizona, the lack of reliable mail delivery is an additional obstacle to voting by mail that harms Native American voters. In Arizona, Native American voters on reservation land face significant barriers to by-mail voting as most areas do not have reliable mail service. While nearly 75 percent of Arizonans vote by mail, it is estimated that only 26 percent of Native Americans in Arizona have a U.S. Postal Service address.<sup>24</sup> Because of these barriers, in-person early voting is often the only form of early voting available for most on-reservation voters. At the same time, reservation early vote sites are limited.

Racial disparities in the use of Arizona’s permanent vote by mail list (known as the PEVL) starkly demonstrate how vote by mail policies operate to the exclusion of Native American voters. The PEVL enables Arizonans to sign up a single time to receive mail-in ballots in every upcoming election, considerably easing the process of voting by mail. However, non-Native American voters’ use of the PEVL far outpaces that of Native American voters. An analysis by

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<sup>23</sup> See Priscilla L. Southwell, A Panacea for Latino and Black Voters? Elevated Turnout in Vote by Mail Elections, 47 SOC. SCI. J. 819 (2010), <https://www.sciencedirect.com/science/article/abs/pii/S036233191000042X>; see also Jens Manuel Krogstad et al., “Historic Highs in 2018 Voter Turnout Extended Across Racial and Ethnic Groups,” Pew Research Center, <https://www.pewresearch.org/fact-tank/2019/05/01/historic-highs-in-2018-voter-turnout-extended-across-racial-and-ethnic-groups/>, May 1, 2019.

<sup>24</sup> All Voting is Local, analysis of Native American Postal Addresses, March 2019.

All Voting is Local found that just over 1 percent of Native American voters are on the PEVL, while approximately 80 percent of non-Native American voters are on the PEVL.<sup>25</sup>

#### **Provisional ballot usage**

Provisional ballots should be used as a “last resort” for voters who encounter a problem that cannot be resolved at the time that they cast their ballot. In addition, they are less likely to be counted than regular ballots.<sup>26</sup> Problems that a voter might encounter that would prevent them from casting a regular ballot include a change to the voter’s polling location; not providing required documentation or identification at the polls; or their name not appearing on the voter list at their polling location. In some cases, election officials can resolve the problem itself after the election; in others, a voter must take additional steps to provide additional information, such as proper identification. While provisional ballots can be beneficial for voters who might otherwise be turned away, elections officials should minimize their use by adopting strong election administration procedures, effective poll worker training, and robust voter education programs. Too often, provisional ballots signal barriers to voting, or, due to their overuse, are themselves an obstacle.

A recent All Voting is Local analysis of 717 counties previously covered by Section 5 of the VRA found that voters in counties with more polling place closures are more likely to be asked to cast a provisional ballot than voters living in counties with fewer polling place closures.<sup>27</sup> The pattern is even more pronounced in Arizona where widespread reduction of polling places has occurred since 2013. The Leadership Conference’s recent report *Democracy Diverted* found that since preclearance was eradicated, 320 polling places in 13 of 15 counties have been removed. Maricopa County, which is 31 percent Latino, closed 171 voting locations since 2012 -- the most of any county studied in the report.<sup>28</sup>

All Voting is Local’s analyses of provisional ballot usage in Ohio and Pennsylvania have found strong connections between race and the use of provisional ballots.

Last month, AVL released findings concerning the use of provisional ballots at Central State and Wilberforce universities, Ohio’s sole Historically Black Colleges & Universities (HBCUs). Our

<sup>25</sup> All Voting is Local, analysis of the PEVL, March 2019.

<sup>26</sup> See generally Benton Strong, *RELEASE: The Racially Discriminatory Effects of Provisional Ballots*, Center for American Democracy, AMERICAN PROGRESS (Oct. 29, 2014), <https://www.americanprogress.org/press/release/2014/10/29/99809/release-the-racially-discriminatory-effects-of-provisional-ballots/>.

<sup>27</sup> All Voting is Local, analysis of provisional ballots and poll closures, October 2019. The 717 counties across previously covered Section 5 areas include those for which The Leadership Conference Education Fund could obtain both poll closure data and provisional ballot data.

<sup>28</sup> See *supra* note 5.

campaign found that, in 2018, college voters cast a disproportionate number of provisional ballots. At Central State, 46.4 percent of all votes cast were by provisional ballot. In contrast, the overall rate in Greene County, where Central State is located, was only 1.89 percent. Even more troubling, provisional voters at the precincts serving Central State and Wilberforce were at least twice as likely to have their ballots rejected than other provisional voters in Greene County.<sup>29</sup>

These issues are not limited to Ohio's two HBCUs. Franklin County, Ohio accounts for 10.93 percent of the state's electorate, and in 2018, the countywide rate of provisional ballots cast was 1.84 percent. However, our campaign's analysis found that people of color, millennials, and low-income voters were all significantly more likely to cast a provisional ballot. Of the three polling locations near Franklin County's Ohio State University campus, nearly one in 10 voters cast a provisional ballot. The county board of elections rejected nearly 65 percent of the provisional ballots cast on campus at the Ohio Union polling location.<sup>30</sup>

Franklin County's rate of provisional ballot rejection is also troubling. In the 2018 general election, more than one in five rejected provisional ballots statewide came from Franklin County. While other urban counties, including Cuyahoga, Hamilton, and Summit *decreased* their rate of provisional rejections in 2018, Franklin's rate *increased*. Among the reasons ballots were rejected in Franklin County: the voter was in the wrong precinct or wrong location (38 percent of the statewide total); insufficient identification (36 percent of the statewide total); and signature mismatch (65.9 percent of statewide total).<sup>31</sup>

Our campaign has identified similar patterns in Pennsylvania. In that state, voters in Philadelphia County (41% Black) are more than five times as likely as voters in Allegheny County (12.7% Black) or Berks County (4% Black) to be given a provisional ballot.<sup>32</sup>

### Strict photo identification laws

According to the Brennan Center for Justice, since 2010, 15 states have passed restrictive voter identification laws that require voters to show an ID before casting a regular ballot, including six with strict photo ID laws.<sup>33</sup> Such laws have repeatedly been found to disproportionately burden

<sup>29</sup> All Voting is Local, "NEEDS IMPROVEMENT: Barriers to the Ballot at Ohio's Historically Black Colleges and Universities," <https://allvotingislocal.org/wp-content/uploads/2019/09/AVL-CSWU-Report-2019.pdf>, Sep. 2019.

<sup>30</sup> All Voting is Local, "REJECTED: How the Provisional Ballot System in Franklin County, Ohio Fails Voters," [https://allvotingislocal.org/wp-content/uploads/2019/05/2019\\_AVL-OH\\_Franklin-Co-Provisional-Ballot-Report.pdf](https://allvotingislocal.org/wp-content/uploads/2019/05/2019_AVL-OH_Franklin-Co-Provisional-Ballot-Report.pdf), May 2019.

<sup>31</sup> *Id.*

<sup>32</sup> All Voting is Local, analysis of Pennsylvania provisional ballot rates, October 2019.

<sup>33</sup> Brennan Center for Justice, "New Voting Restrictions in America," <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>. Last visited Oct. 13, 2019.

low-income voters and voters of color. In striking down North Carolina's photo identification law -- which was part of an omnibus bill that included cuts to early voting -- the Fourth Circuit Court of Appeals in July 2016 found that legislators had intentionally designed the law to discriminate against Black voters, and drafted the law in a manner that would "target African-Americans with almost surgical precision."<sup>34</sup>

In 2011, Wisconsin enacted a strict voter ID law that became the subject of a multi-year legal challenge. In the lead-up to the 2018 election, the All Voting is Local campaign assisted hundreds of Wisconsin voters through the arduous process of getting an ID, which can include providing officials with a birth certificate or passport, filling out multiple forms, and repeat trips to the DMV. A recent study conducted by the University of Wisconsin-Madison<sup>35</sup> found that 6 percent of registered voters in Dane and Milwaukee counties who did not cast a ballot in the 2016 general election were prevented from voting because they lacked the requisite identification. The study further found that 11.2 percent of registered voters who did not cast a ballot in the 2016 general election were deterred by the photo ID law. In other words, these voters either didn't have ID, believed they didn't have ID, or were told they didn't have ID. But as the study found, most of the people surveyed who indicated they did not vote because they lacked ID did in fact possess the requisite form of identification.

Troubling as these findings are, they likely reflect the lower bound of the impact of Wisconsin's strict photo ID law. As the principal investigator on the study, Professor Kenneth R. Mayer, noted following the release of the findings: "The main conclusion of the study is that thousands, and perhaps tens of thousands, of otherwise eligible people were deterred from voting by the ID law. The 11.2% figure is actually a lower bound since it does not include people who don't even register because they lack an ID."<sup>36</sup> Responding to assertions that the number of impacted voters would not have been enough to have changed the outcome of the 2016 election, Professor Mayer further noted: "An eligible voter who cannot vote because of the ID law is disenfranchised, and that in itself is a serious harm to the integrity to the electoral process."<sup>37</sup>

More troubling still, the impact of Wisconsin's strict photo ID law is not felt equally by all Wisconsin voters. This same study further found that the law deterred:

<sup>34</sup> *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

<sup>35</sup> Kenneth R. Meyer & Michael G. DeCrescenzo, "Supporting Information: Estimating the Effect of Voter ID on Nonvoters in Wisconsin in the 2016 Presidential Election," <https://elections.wisc.edu/wp-content/uploads/sites/483/2018/02/Voter-ID-Study-Supporting-Info.pdf>, Sep. 25, 2017.

<sup>36</sup> Press Release from the Elections Research Center at the University of Wisconsin-Madison, Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election, <https://elections.wisc.edu/wp-content/uploads/sites/483/2018/02/Voter-ID-Study-Release.pdf> (last visited Oct. 13, 2019).

<sup>37</sup> *Id.*

- 21.1 percent of low-income registrants (household income under \$25,000) compared to 7.2 percent for those over \$25,000 and 2.7 percent of high-income registrants (over \$100,000 household income)
- 27.5 percent of African-American registrants compared to 8.3 percent of white registrants

The suppressive effects of a strict photo identification law can linger even after a court strikes it down. In Pennsylvania in 2014, a state court found unconstitutional the state's strict photo ID law.<sup>38</sup> Nevertheless, as recently as the 2018 midterm election, our partners at the nonpartisan Election Protection coalition received reports from voters about election workers improperly requiring them to show photo identification prior to casting a ballot, and turning voters away who did not have such ID.

#### **List maintenance**

Election officials at the state and local level are responsible for developing and maintaining their voter registration lists, ensuring that eligible voters are able to register and that voter registration lists are up-to-date and accurate. Yet, across the country, millions of eligible Americans encounter problems registering to vote, or are removed (or "purged") from the voter rolls without notice -- sometimes simply for not voting. A 2018 study by the Brennan Center for Justice found that between 2012 and 2016, former-Section 5 jurisdictions had purge rates significantly higher than jurisdictions that had not been subject to preclearance.<sup>39</sup> Indeed, from 2010 to 2018, Georgia Secretary of State (now Governor) Brian Kemp purged more than 1.4 million voters from the state's voter registration rolls, many simply because they did not vote in previous elections.<sup>40</sup> The state's "exact match" law put into question the registration status of more than 50,000 Georgia voters, due to minor inconsistencies in their registration records.<sup>41</sup>

Voter purges disproportionately harm voters of color, low-income voters, and young people who are more likely to move and less likely to respond to correspondence from the state -- all factors that trigger removal from the voter rolls. A 2016 Reuters analysis of Ohio's voter purge -- upheld by the U.S. Supreme Court in 2018 -- found that in predominantly African-American neighborhoods around Cincinnati, 10 percent of registered voters had been removed due to

<sup>38</sup> *Applewhite v. Commonwealth*, No. 330 M.D. 2012 (Pa. Commw. Ct. filed Jan. 17, 2014).

<sup>39</sup> Jonathan Brater et al., "Purges: A Growing Threat to the Right to Vote," [https://www.brennancenter.org/sites/default/files/publications/Purges\\_Growing\\_Threat\\_2018.pdf](https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf). Brennan Center for Justice, 2018.

<sup>40</sup> Alan Judd, Georgia's Strict Laws Lead to Large Purge of Voters, ATLANTA JOURNAL-CONSTITUTION (Oct. 27, 2018), <https://www.ajc.com/news/state--regional-govt--politics/voter-purge-begs-question-what-the-matter-withgeorgia/YAFvuk3Bu95kJIMaDiDFqJ/>.

<sup>41</sup> Id.



inactivity since 2012, compared to just four percent in the suburban Indian Hill.<sup>42</sup> The study further found that more than 144,000 people were removed from the rolls in Ohio's three largest counties, which includes the cities of Cleveland, Cincinnati, and Columbus -- hitting hardest neighborhoods that are low-income and have a high proportion of Black voters.<sup>43</sup>

Since last year, the All Voting is Local campaign has been spearheading an effort, together with in-state and national partners, to combat improper voter purges. When Ohio Secretary of State Frank LaRose recently revealed errors in the state's purge lists,<sup>44</sup> AVL and other advocates called on his office to halt the purge until the problems could be better understood. We and other in-state groups galvanized grassroots advocates, calling and texting more than 100,000 voters, encouraging them to re-register or update their voter registration so that they would not be removed.

Our campaign's methods of contacting voters likely to be purged are effective, and it is incumbent upon state officials determined to purge voters to make an equal commitment to efforts to contact them first. Last year, in the lead-up to the 2018 midterm elections, the All Voting is Local campaign texted 384,444 voters in the "pipeline" to be purged. Of the voters we contacted, 62,479 cast a ballot. For comparison, the Ohio Secretary of State's mailer to 264,516 voters in March 2019 resulted in just 540 voters updating their registration.<sup>45</sup>

Problems with states' list maintenance practices are not limited to purges. In 2018, Florida voters passed a ballot measure to restore voting rights to millions of Floridians previously barred by a felony. Earlier this year, the Florida legislature took steps to roll back these new freedoms, passing S.B. 7066, which denies the right to vote to any returning citizen with outstanding court-ordered fines and fees, and is now the subject of a legal challenge.<sup>46</sup> Reports from some

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<sup>42</sup> Andy Sullivan & Grant Smith, Use It or Lose It: Occasional Ohio Voters May Be Shut Out in November, REUTERS, (Jun. 2, 2016, 7:05AM), <https://www.reuters.com/article/us-usa-votingrights-ohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-out-in-november-idUSKCN0Y019D>.

<sup>43</sup> Id.

<sup>44</sup> Andrew J. Tobias, Ohio Secretary of State Frank LaRose says Ohio's System of Maintaining Voter Registrations Rife with Problems, CLEVELAND.COM, (Sep. 25, 2019), <https://www.cleveland.com/open/2019/09/ohio-secretary-of-state-frank-larose-says-ohios-system-of-maintaining-voter-registrations-rife-with-problems.html>.

<sup>45</sup> Press Release from Frank LaRose, Ohio Secretary of State (Apr. 10, 2019), <https://www.sos.state.oh.us/media-center/press-releases/2019/2019-04-10-a>.

<sup>46</sup> Brennan Center for Justice, Groups File Motion for Preliminary Injunction to Block SB7066, (Aug. 3, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/groups-file-motion-preliminary-injunction-block-sb7066>.

Florida election officials<sup>47</sup> reveal extensive problems with the state's system for verifying information concerning returning citizens' eligibility, including that:

- there is no centralized, standardized system for determining the status of a returning citizen's criminal sentence, particularly their legal financial obligations, in order to confirm their eligibility to vote
- county supervisors of elections vary in their capacity to research and confirm state-provided lists of ineligible voters
- eligibility records are incomplete or inaccurate

In the absence of preclearance, Florida's troubling practices for determining eligibility are being put into place without any consideration or analysis of the impact on voters of color.

### **Recommendations**

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 sufficiently 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, voter identification laws, list maintenance practices, and the rates of usage and rates of (and reasons for) the rejection of vote by mail and provisional ballots. These studies should be made in consultation with impacted communities.
- Require jurisdictions that receive federal funds to undertake outreach efforts to contact voters that they seek to purge -- including through mailed and emailed correspondence, by text message and by phone, and through public service announcements on local radio that encourage voters to check their registration, register, and re-register.
- Expand and modernize opportunities to register to vote, including same-day voter registration, automatic voter registration, and a fully functional system of online voter registration -- as passed in H.R. 1.

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<sup>47</sup> See Linda So, Restoring Felon Voting Rights a 'Mess' in Battleground Florida, REUTERS (Oct. 7, 2019 7:48AM), <https://www.reuters.com/article/us-usa-election-florida-felons-insight/restoring-felon-voting-rights-a-mess-in-battleground-florida-idUSKBN1WN0YV>.

- Uniform standards for the counting of provisional ballots, including that election officials count provisional ballots cast by an eligible voter at the wrong polling place -- as passed in H.R. 1.
- Expand and modernize opportunities to vote before Election Day, including by prohibiting states from imposing restrictions on an individual voter's ability to cast a mail-in ballot, and ensuring at least 15 consecutive days of in-person early voting -- as passed in H.R. 1.
- Ensure early voting locations are equitably distributed, close to public transportation, and accessible to all communities (including historically disenfranchised communities).
- Ensure wait times at early voting sites and Election Day polling locations are fully resourced, with sufficient numbers of well-trained poll workers and adequate equipment to meet demand, so that voters wait no longer than 30 minutes.

### **Conclusion**

Our democracy works best when every eligible voter can make their voice heard. Election administration practices can and should be used to expand access to the ballot for all eligible Americans. Yet, this is not the reality for millions of people in this country. Instead, laws, policies, and practices stand up barriers to voting and serve to disenfranchise millions of eligible Americans, particularly voters of color. Even in 2018 -- a record year for turnout -- voters across the country faced unnecessary barriers to voting ranging from problematic purges to strict photo identification laws to the overuse of provisional ballots. Any wrongfully disenfranchised voter is one too many. This is why Congress must restore and expand safeguards of the right to vote, ensuring that elections are administered fairly and equitably, so that every eligible American -- regardless of race, socioeconomic status, age, or ability -- can make their voice heard.

Thank you for your leadership on this critical issue.

Chairwoman FUDGE. Thank you very much.  
Ms. Kase, please, five minutes.

#### STATEMENT OF VIRGINIA KASE

Ms. KASE. Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee, my name is Virginia Kase, and I serve as the Chief Executive Officer at the League of Women Voters of the United States. Thank you for the opportunity to testify today on voting rights and election administration in America, an issue of paramount importance to our organization.

The League of Women Voters is nonpartisan, founded nearly 100 years ago in 1920 by women who understood the importance of securing voting rights for women. The League is active in all 50 States as well as the District of Columbia, with 764 local affiliates, in every congressional district in our country.

In 1965, the Voting Rights Act outlawed racial discrimination in voting and established procedures to protect equal access to the vote for everyone. Despite a long history of support from legislators of all political parties, in 2013 the Supreme Court overturned key provisions of the VRA in the case of *Shelby County v. Holder*.

Since that decision, politicians across the country have passed unnecessarily restrictive legislation and adopted practices that discriminate against and disenfranchise voters of color and minorities whose first language is not English, making it harder for them to register and much more difficult to vote.

These restrictive legislative initiatives included efforts to implement photo ID requirements in States like Texas, Wisconsin, Missouri, and Pennsylvania.

The League pushed back against efforts to roll back early voting hours in Ohio, and we pushed back against efforts to roll back and eliminate pro-voter reforms like preregistration and same-day registration in North Carolina. Essentially, the *Shelby* decision weakened the Voting Rights Act as a mechanism to fight discrimination by striking down important preclearance and oversight provisions.

These suppressive laws have a major impact on our elections: excessive, long lines in urban areas, where minorities reside; consolidation of polling sites with little or no notice; reduction in early voting hours that limit participation; massive voter purges with no effective notice that cause registration barriers on election day; and inadequate numbers of machines in areas where early voting showed a clear influx in voter participation.

And because these issues repeatedly show up in areas with large minority populations, in States like Georgia, Florida, North Carolina, Arizona, Michigan, Ohio, and Texas, it is unlikely that this scheme was incidental or unintentional but, instead, expressly targeted the growing population of the new American majority, including minorities, youth, and income-sensitive individuals. In effect, these suppressive laws shut out millions of the new American majority and denied citizens the protection of their right to vote.

With these minority-targeted voting barriers road-tested, the 116th Congress has a momentous opportunity to restore voting rights in this country. The opportunity to strengthen the Voting Rights Act by creating a new formula that would trigger preclearance of certain changes to voting laws and administrative

practices is needed now more than ever. And the creation of a national notification process that lets all voters know when changes to election processes may occur ensures that voters are informed prior to them showing up to the polls on election day.

If Congress fails to act immediately, this will be the first redistricting cycle to occur without a fully functioning Voting Rights Act and will allow States to push through unjustifiable changes to their laws that will have a direct impact on voters for a decade.

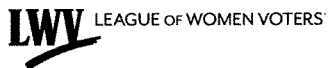
Without continued oversight and safeguards in place to protect voters from all backgrounds, it is left to organizations like the League of Women Voters and other nonprofit voting rights group to inform and protect voters affected by these policies and practices.

But that should not be the sole role of the League and our partners. It is the responsibility of government to create and enforce laws that prevent barriers in the democracy our forefathers designed to foster an open, transparent government powered by the people, for the people—all of the people. It is the duty of government to protect the rights of voters and to encourage participation in our political system, not create barriers that prevent participation.

As we have for nearly 100 years, the League looks forward to working across the aisle to determine the points of consensus for any and all voting rights legislation considered before Congress. We look forward to working with elected leaders to protect and uphold their responsibility of ensuring voters have the unobstructed ability to exercise their right to vote.

Thank you again for the opportunity to testify on the importance of restoring the Voting Rights Act, and I look forward to taking questions and continuing to work with you all on this important issue.

[The statement of Ms. Kase follows:]



**Statement for Virginia Kase, Chief Operating Officer, LWVUS  
U.S. House Committee on House Administration, Subcommittee on Elections  
October 17, 2019**

Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee on the Elections of the U.S House of Representatives Committee on House Administration, my name is Virginia Kase and I serve as the Chief Executive Officer at the League of Women Voters of the United States, ("The League"). Thank you for the opportunity to testify today on 'Voting Rights and Election Administration in America,' an issue of paramount importance to our more than 400,000 members and supporters.

The League of Women Voters is a nonpartisan organization that was founded nearly 100 years ago in 1920 by women who understood the importance of securing voting rights for women. Since 1920, the League has worked to deliver on our mission to empower voters and defend democracy, and ensuring that that everyone has the right, the desire, the knowledge, and the confidence to participate. The League structure is a federated model with Leagues in every single state as well as the District of Columbia. We have 764 local affiliates who reside in every congressional district in the country. Our members and supporters are strong activists and professionals who believe that the *Voting Rights Act* must be fully restored with increased access to the polls for the people.

In 2018, the League protected 4.2 million voters through pre-litigation, litigation, and civic education and engagement mechanisms.

- Working with Secretaries of State in 5 jurisdictions, the League labored tirelessly to eliminate purges of voter rolls using the National Voter Registration Act (NVRA) in southern and southwestern states. The League was the lead organization in advancing the NVRA in the 1990s, and we are currently the chief enforcer of the law.
- Next, the League was plaintiff in nearly two dozen cases centered around voting rights and won more than half those cases to protect rights of disproportionately impacted voters (i.e. minority voters). The League has also worked to protect voters at the ballot box through a robust observer corps and poll watching on Election Day as well as holding more than 1,000 meetings with election administrators prior to the November 2018 midterm election to assist in educating voters to mitigate voter misinformation and assist voters in overcoming obstacles on Election Day.
- Finally, the League is well-known for our civic education and engagement in communities across the country. The League works to educate voters through our premier online platform VOTE411.org, our one-stop shop for voter information on candidates at the state and local levels. This information is also printed by League affiliates into voter guides to help educate members of the public around the offices up for election in the current cycle, yet we do not endorse or oppose any political candidate.

LWV.ORG

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Many of the actions we've taken would not have been necessary if important provisions within the *Voting Rights Act of 1965* were still intact.

In 1965, the *Voting Rights Act* outlawed racial discrimination in voting and established procedures to protect equal access to the vote for every American citizen. It was subsequently reauthorized with wide bipartisan support in 1970, 1982, 1992 and 2006. Despite a long history of support from legislators from all political parties, in 2013, the Supreme Court overturned key provisions of the VRA that triggered careful review of voting changes in political jurisdictions with a history of racial discrimination in voting processes before they could take effect. Since that decision, politicians in states, counties, cities, and towns across the country have passed unnecessarily restrictive legislation and adopted practices that discriminate against and disenfranchise voters of color and minorities whose first language is not English—making it harder for them to register and much more difficult to vote.

These restrictive legislative initiatives included efforts to implement voter photo ID requirements in states like Texas, Wisconsin, Missouri, and Pennsylvania. The League's work also included pushing against efforts to roll back early voting hours in Ohio and eliminate multiple pro-voter reforms like pre-registration and same day registration in North Carolina.

The *Shelby* decision weakened the *Voting Rights Act* as a mechanism to fight discrimination by striking down Section 4, which determines the states and jurisdictions that must secure federal approval before changing election laws, and thereby essentially eliminating the preclearance process in Section 5.

The impact of these suppressive laws has been numerous: excessive, long lines in urban areas where minorities reside; consolidation of polling sites with little or no notice; reduction in early voting windows that made it harder for minority voters to make an effective plan to vote; massive voter purges with no effective notice that caused registration barriers on Election Day, and inadequate numbers of machines in areas where early voting data showed a clear influx in voter participation. And because these issues repeatedly showed up in areas with large minority populations within states like Georgia, Florida, North Carolina, Arizona, Michigan, Ohio, and Texas, it is unlikely that this scheme was incidental or unintentional but instead expressly targeted the growing population of the New American Majority.

The League believes without the ill-founded decision the Supreme Court made in *Shelby v. Holder*, suppressive laws implemented or adopted between 2014-2018 would have violated the VRA. In effect, these suppressive laws shut out millions of minority voters, and have stifled the ability and protection of citizens of their right to vote. In the 2016 election cycle this means that voters without the proper ID would not have been turned away in Wisconsin. It means voters illegally purged from the rolls in Florida would not have had to cast provisional ballots or be unable to cast a ballot at all. It means that the burden of long Election Day lines in Ohio and North Carolina may have been relieved.

Without the Voting Rights Act, there is currently no check on voter suppression. Leagues across the country have weighed in about the importance of full restoration of the VRA during prior field hearings in North Dakota, Florida, Ohio, Georgia, Alabama, North Carolina, and



Tennessee. The full testimony for each state can be found in the field hearing records but I would like to highlight a few stories from these states:

In North Dakota, there is no question that barriers around the requirements of a physical address to ascertain identification unduly impact the communities that the *Voting Rights Act* was designed to protect. In 2017, the North Dakota legislature passed a law that changed the identification requirements for electors and aimed towards the Native American communities of this state. The changes to the requirements and lack of communication and notification from the Secretary of State to voters and tribal councils, led to voters within Native American communities being denied the right to cast a ballot. It is estimated that 23.5 percent of Native American eligible voters lacked an appropriate ID compared to 12 percent of non-Native eligible voters. If the *Voting Rights Act* had been in place, these communities would not have been disenfranchised at the polls.

Another example comes from North Carolina, when in 2013 the state legislature passed "the most restrictive voting law North Carolina has seen since the era of Jim Crow." The anti-voter, legislation was created with the sole purpose of making it harder for minority voters to cast a vote that matters in districts across the state. The "Monster Voting Bill of 2013" was eventually considered unconstitutional when a three-judge federal appeals panel determined that lawmakers had targeted "African Americans with almost surgical precision." If the protections within the VRA had still been in effect, this law never would have been implemented and millions of minority voters would not have been shut out or had their votes stifled at polling locations. And these stories continue across the country providing evidence of the continued need for ongoing protections of the *Voting Rights Act*. These stories go on and on throughout the country evidencing a scheme intended to disenfranchise millions of voters nationwide.

With these minority-based voting barriers road tested effectively in 2018 midterms, the 116<sup>th</sup> Congress has a momentous opportunity to level the field in relation to civil rights and voting rights enforcement. The opportunity to strengthen the *Voting Rights Act* by creating a new formula that would trigger preclearance of certain changes to voting laws and administrative practices is needed now more than ever. And the creation of a national notification process, that lets all voters know when changes to elections processes may occur ensures that voters are informed prior to them showing up to the polls on Election Day.

The League has toiled to help the voters most impacted by voter suppression tactics across the country with election officials and without court intervention, where possible (e.g. NVRA notice letters), has pursued litigation when amicable solutions cannot be achieved (e.g. Tennessee third party registration<sup>1</sup>), and has engaged our base of 400,000 members and supports through action alerts across the country, yet still there is little relieve. It has never been clearer that national oversight is still required to effectively nip voter suppression and check those who would make it harder for so many to exercise their sacred right to vote and fully participate in our democracy.

**And there is no question that these barriers unduly impact the very communities for which the Voting Rights Act was designed to protect.**





Restoring the VRA is necessary to ensure that our elections are free, fair, and accessible for all Americans. The problems that spurred the passage of the original *Voting Rights Act of 1965* still exist. Without continued oversight and safeguards in place to protect voters from all backgrounds, it is left to organizations like the League of Women Voters and other nonprofit voting rights groups to inform and protect voters affected by these policies and practices. But that should not be the sole role of the League and our partners; it is the responsibility of government to create and enforce laws that present barriers in the democracy our forefathers designed to foster an open, transparent government for, by, and of the people. If Congress fails to act immediately, this will be the first redistricting cycle to occur without a fully functioning *Voting Rights Act* and will allow states to push through unjustifiable changes to their laws that will have a direct impact for voters for a decade. Congress must fulfill its obligations under the Constitution to eradicate voting discrimination by restoring the strength and effectiveness of the *Voting Rights Act*. The right to vote is one of the most sacred and basic rights in our country and it must be protected.

The League will continue to pursue all avenues to fight for voters' rights, but we require strong action by Congress now to repair, restore, and modernize the Voting Rights Act's protections that have helped us prevent racial and language discrimination in our elections for more than half a century. It is the duty of government to protect the rights of voters and to encourage participation in our political system, not create barriers that prevent participation. As we have for nearly 100 years, the League looks forward to working across the aisles to determine the points of consensus for any and all voting rights legislation considered before Congress. And we look forward to holding our elected leaders accountable for protecting and upholding their responsibility to ensure voters have the unobstructed ability to exercise their right to vote.

Thank you again for the opportunity to testify on the importance of restoring the *Voting Rights Act* and I look forward to taking questions and continuing to work on this important issue.

Chairwoman FUDGE. Thank you very much.  
 Ms. Arnwine, you are recognized for five minutes.

#### STATEMENT OF BARBARA ARNWINE

Ms. ARNWINE. Thank you, Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee. Thank you for the opportunity to testify today on this important topic.

I want to dedicate my remarks, of course, to the memory of Congressman Elijah Cummings.

My name is Barbara Arnwine. I have already been introduced. I am here representing the National Commission for Voter Justice, which was conceived by Reverend Jesse Louis Jackson, Sr. He is represented here today by Reverend Todd Yearly of Baltimore.

And I want to make sure that we get this into the record, that this Commission was formed in July 2017 to respond to the myriad voter suppression measures in the post-*Shelby v. Holder* era.

Also, many will recall President Donald Trump's manifold assertions, post-election, of pervasive voter fraud and his subsequent creation of the now-defunct Presidential Advisory Commission on Election Integrity. We felt there was an urgent need instead to counteract his dangerous and erroneous narrative and instead provide a truthful account of the urgent need for the protection of our democracy from the insidious threat of the modern era of voter suppression.

I created the Map of Shame in April of 2011, which was the first national tool to expose and educate the American public about the rise of contemporary voter suppression measures. Since I released the Map of Shame, there has been erected a formidable and substantial regimen of disenfranchising barriers to the ballot box and to the ability to have the votes counted for millions of eligible but vulnerable voters.

Since its launch in January 2018, the Commission has held a series of hearings, compiled over 14 State reports looking at voting rights, and has engaged in many voter education and other efforts.

One thing that we heard in June of 2018 from Professor Donald Jones of the University of Miami was that when the only real proper way to look at this era that we are in is understanding that when it comes to voting rights, America is facing a second civil war. That is how extreme this period is. This reality of an active war against the rights of American citizens to exercise the right to vote and have their votes counted is supported by mounting evidence when we consider the myriad of voter suppression laws passed in the States, the multitude of voting rights cases filed in the State and Federal courts, the numerous reports documenting actions by the States which have impaired the rights of citizens to vote and have their vote counted, and the continuing negative cases from the Supreme Court, and the new insidious threat of Russian use of social media, as documented by the Senate Select Committee on Intelligence investigation report.

We also have created a new tool and document that is called the 61 Forms of Voter Suppression. And let me be very clear that a year ago, this was less than 30. That the creativity, the insidiousness, the rapid expansion of voter suppression measures is that extreme and it is growing. If I were to do this today, I would probably

add four more. That just shows you how creative these States are being and how persistent they are being in pursuing this.

Our major findings of our hearings have been already expressed by some of the testimony, but I just want to make clear one point. I mean, there are two really critical things that we need to appreciate today. One is that when *Shelby v. Holder* was decided, we were only 18 months into the regimen of modern voter suppression. We are now eight years deep into this regimen, and the Congress now knows a lot more than the Supreme Court knew back in 2013. So you have substantially more evidence about the impact of the absence of a preclearance mechanism.

The second thing I want to make clear is that nothing in the world can substitute for preclearance to prevent racial discrimination, and that in this era of massive voter suppression, that this clumsy and ineffective regimen that exists is not enough.

So we want to commend the Congress. We want to commend you for this hearing.

We have things we would like to move into the record: The testimony of Reverend Jesse Jackson, the 61 Forms of Voter Suppression, and, of course, I would like to expand my remarks.

Thank you so much.

[The statement of Ms. Arnwine follows:]

**Written Testimony of Barbara R. Arnwine, Co-Chair, National Commission for Voter  
Justice  
before the  
U.S. House of Representatives  
Committee on House Administration, Subcommittee on Elections  
“Voting Rights and Election Administration in America”**

Chairwoman Fudge, Ranking Member Davis, Members of the Subcommittee, thank you for the opportunity to testify today on this important topic of voting rights and election administration in America.

My name is Barbara R. Arnwine and I am the Founder and President of the Transformative Justice Coalition, a national non-profit organization devoted to racial, gender and economic justice, which commenced operations in 2015. I am also the immediate Past President and Executive Director of the Lawyers' Committee for Civil Rights Under Law where I proudly served for 26 years. Today I sit before you in my capacity as a Co-Chair of the National Commission for Voter Justice.

Conceived by the Rev. Jesse L. Jackson Sr., this non-partisan Commission was formed in July 2017 originally to respond to the myriad of voter suppression measures in the post-*Shelby v. Holder* Era<sup>1</sup>. Also, many will recall that President Donald Trump's manifold assertions post-election of pervasive voter fraud and his subsequent creation of the now defunct Presidential Advisory Commission on Election Integrity. We felt there was an urgent need to counteract the President's erroneous and dangerous narrative and instead provide a truthful account of the urgent need for the protection of our Democracy from the insidious threat of the modern era of voter suppression which had become manifest in our nation since January, 2011. In April, 2011, I created the Map of Shame which was the first national tool to expose and educate the American public about the rise of contemporary voter suppression in the states. Since, I released the Map of Shame, there has been erected a formidable and substantial regime of disenfranchising barriers to the ballot box and to the ability to have votes counted for millions of eligible but vulnerable voters.

On January, 2018, the NCVJ was officially launched with a press conference on the steps of the Supreme Court of the United States to emphasize the on-going need to address its decision in *Shelby v. Holder*, decided June 25, 2013<sup>2</sup>. The work of the Commission is designed to highlight, document, and address the scourge of voter suppression across the country, while advancing electoral reform and civic engagement to promote an inclusive and robust U.S. Democracy. This non-partisan and diverse commission is composed of prominent civil rights leaders, voting rights experts, scholars, elected officials, lawyers, students and community activists. The Commission has undertaken a schedule of work centered around independent research, hearings and listening sessions in the states to hear directly from U.S. citizens; publications of findings, recommendations and strategies; and direct organizing and collaboration with community-based organizations to enhance voter engagement. The National Commission for Voter Justice has compiled, reviewed and distilled existing reports published by the federal government, states, major research institutions, civil rights, voting rights and civic engagement organizations as well as prior private and public commissions. Collaboration with non-partisan institutions and other

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<sup>1</sup> 570 U.S. 529 (2013).

<sup>2</sup> *Supra*.

commissions focusing on voting rights issues and vulnerable communities have been actively pursued.

“When it comes to voting rights, America is facing its Second Civil War”. This statement was the testimony of Donald Jones, Professor of Law at the University of Miami, during the Commission’s Florida hearing in June 2018. This statement set the tone for the outlook of the Commission, and must become the lens through which Congress and this Nation view the modern fight against voter suppression. This reality of an active war against the rights of American citizens to exercise their right to vote and have their votes counted is supported by mounting evidence when we consider: the myriad of voter suppression laws passed in the states; the multitude of voting rights cases filed in the state and federal courts; the numerous reports documenting actions by the states which have impaired the rights of citizens to vote and have their vote counted<sup>3</sup>; and the continuing negative cases from this Supreme Court including its decisions in *Husted v. A. Philip Randolph*<sup>4</sup>, and *Brakebill v. Jaeger*<sup>5</sup>; and a new insidious threat of Russian use of social media as documented by the Select Senate Committee Investigation Report.

Despite the valiant efforts of lawyers, organizations and individuals to fight against this new wave of state and local government sponsored voter suppression, there is no substitute for aggressive Congressional action to protect the rights of voters now under attack. Indeed, while we laud Congress’ formation of the Subcommittee on Elections, we are also cognizant of how pressing and urgent the need is to provide redress to protections lost in this modern voter suppression era. In *Shelby v. Holder*, in the majority opinion written by Chief Justice John Roberts, the Court acknowledged that racial discrimination still exists but asserted that Congress had not done its job in carefully constructing a contemporary coverage formula based on modern day conditions. Notably, at the time of the writing of this decision, this modern era of voter suppression had only been underway for 18 months. Now 8 years into this era, Congress possesses substantial more information and knowledge about these current conditions. Only Congress can formulate and adopt appropriate legislation which adequately responds to the challenge propounded by the SCOTUS by proposing a new coverage formula and other modern measures to address this extreme period of voter denial and voter suppression.

In its two years of existence, the work of the National Commission for Voter Justice has been extensive:

- In 2018, the NCVJ held 11 field hearings covering the states of MI, SC, GA, FL, CA (southern), WI, PA, TX, and OK. The NCVJ also held one hearing devoted to youth voting, and one hearing at the 2018 CBCF ALC.
- In advance of field hearings, a professional report was prepared on each state which outlined voting rights and electoral reform issues since the year 2000.
- These reports were prepared by a combination of third year law student fellows and with the pro bono assistance of the law firm of Morrison & Foerster, LLP.
- In addition, The Commission conducted research and prepared full briefing books on voting rights in MD, NC, OH, NJ and Alabama.

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<sup>3</sup> The Brennan Center Report, “Purges: A Growing Threat to the Right to Vote”; Leadership Conference Report, “Democracy Diverted: Polling Place Closures and the Right to Vote”

<sup>4</sup> 584 U.S. \_\_\_\_ (2018).

<sup>5</sup> 586 U.S. \_\_\_\_ (2018).

- The Transformative Justice Coalition (TJC) conducted voter empowerment programming in NC (2018), and assisted with the Selma Jubilee for the 54th Anniversary of Bloody Sunday in Alabama (2019).
- Every hearing was videotaped and shared via Facebook Live. As such, there exists testimony, data, reports, etc., available from the hearings. Written testimony and documents also exist.
- The Commission has partnered with over 100 organizations in 21 states.

From the first listening session conducted in Michigan in January of 2018 and forward, it became obvious that invidious voter suppression is a profound reality in every single state in which we conducted a hearing or prepared research. This disenfranchisement can often be directly linked to the deliberate actions of state legislatures, state and local boards of elections and some private anti-democracy forces. In addition to actual legislative and procedural barriers to the vote, states have engaged in voter discouragement by failing to educate voters about new barriers imposed by their legislatures which impair their ability to vote and have their vote counted.

Based on these hearings and research, I have created a new document entitled "61 Forms of Voter Suppression" which reveals the depth of this regimen. Originally this document only included 30 forms of voter suppression but the states and local jurisdictions have become ever more determined to impose devious, confusing and disenfranchising laws and procedures.

We are preparing an initial report for the public of our findings and recommendations, to date, to be published this fall. We are not finished with all of our hearings and research but want to provide insight regarding our initial work. We also intend to continue to work and support organizations and voters in the states with the worst voter suppression.

#### **MAJOR FINDINGS AND RECOMMENDATIONS OF THE NATIONAL COMMISSION FOR VOTER JUSTICE:**

- States and local jurisdictions, especially previously Section 5 covered jurisdictions, are prolific, creative and determined to block the vote of vulnerable voters including African Americans, Latinos, Native Americans, Asian Americans, low income voters, voters with disabilities, student voters, formerly incarcerated persons, newly naturalized citizens, voters displaced by natural disasters and homeless voters.
- There exists no substitute for the powerful instrumentality of Section 5 preclearance coverage. No other law has the ability to comprehensively intercept, review, object, deter and prevent unlawful discrimination.
- The restoration of the pre-clearance framework in the *Voting Rights Advancement Act* would be a fundamental and critical tool in the protection of voters. As we discovered during our hearings and state-based research, our worst fears have been actualized post-Shelby.
- Voter suppression measures we heard from witnesses included targeted poll closures, exact match requirements, refusal to place polling sites on student campuses, voter registration non-processing, voter caging, voter purging, onerous voter ID, failure to follow state procedures, abuses of provisional balloting, disparate impact between white and people of color jurisdictions created by the failure to provide adequate election equipment

and staff, racial gerrymandering, cuts to early voting, eliminating souls to the polls Sunday voting, barriers to language assistance, disability accommodation failures and so many more disenfranchising which should have been intercepted and reviewed for racially discriminatory impact prior to their enactment.

- In this post-*Shelby* era, our nation has labored under a clumsy and ineffective system of severely weakened voting rights protection. This is best exemplified by the numerous lawsuits filed seeking to enjoin scores of these outrageous voter denial schemes. Many of these lawsuits have been successful but when they come on the eve or during elections their efficacy has been dulled. Often court ordered remedial actions impose additional burdens on voters who have to identified, contacted and they must take action to rectify any errors.
- Powerful decisions from our highest courts have spoken to this new era of voter denial, most notably, *NAACP v. McCrory*, 4th Circuit, 2016<sup>6</sup>. Other Courts have spoken in recent decisions of voter suppression and voter denial.
- There is a tremendous necessity for the National Notice Provision of the VRAA. In every single hearing conducted by the Commission, voters complained about the lack of public notice of election changes. This provision would provide voters with the opportunity to defend themselves from negative legislative, administrative and procedural practices.
- Congress, the President, and Department of Homeland Security must take action to protect African American communities from the targeted voter suppression and voter discouragement campaigns being undertaken by foreign governments.
- For the record, the NCVJ supports many of the provisions of the *For The People Act* especially hand marked paper ballots and greater election security.

#### **Beyond the VRAA and the *For The People Act*:**

The National Commission for Voter Justice urges Congress to consider the need for Permanent Independent Voting Rights Infrastructure. During our hearings we heard repeatedly about the lack of teaching of civics, the lack of support groups to assist voters, the absence of voter education, the obstacles of low income, student, elderly and homeless voters to afford transportation on election days, and so many other needs that this infrastructure could address. The NCVJ would like to work with the House Administration Committee further on propounding this proposal.

#### **CONCLUSION**

There is nothing more critical to our Democracy than the right of every citizen to cast a ballot and have it counted. Congress must take fully address the Shelby challenge in a tailored, careful and thoughtful manner. These hearings help to further that objective.

We would like to formally adopt into the record the "61 Forms of Voter Suppression" and the supporting letter from Reverend Jesse L. Jackson Sr., which provides the historical context to the long fight against voter suppression.

Thank you again for this opportunity to testify and I look forward to answering your questions.

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<sup>6</sup> 831 F.3d 204 (4<sup>th</sup> Cir. 2016).

Chairwoman FUDGE. Thank you.

With no objection, so ordered. Thank you very much.

Ms. Lieberman, you are now recognized for five minutes.

#### STATEMENT OF DENISE LIEBERMAN

Ms. LIEBERMAN. Thank you, Chairwoman Fudge and Members of this Subcommittee, for holding this important hearing today on voting rights and election administration. My name is Denise Lieberman. I am the Director of Power & Democracy at Advancement Project National Office.

Advancement Project is a national racial justice organization that works in deep partnership with grassroots organizations to develop community-based solutions that are inspired by the tactics that produced the earlier landmark civil rights victories. We are proud to stand behind our many partners on the ground in the States who are fighting battles for racial justice and the right to vote. And the need is great. We are faced today with the greatest battle for the solvency of our democracy since the post-Reconstruction era.

I am particularly gratified, Chairwoman Fudge, that this Subcommittee has chosen to have a people's panel, because our fight to protect the right to vote and the need for Congress to take definitive action to secure the right to vote for all citizens lies in the lived experiences of the people for whom protection is most needed and the people whose voices are most often silenced. Because at the end of the day, the right to vote is about self-determination, the right of people to make decisions about their own lives and their own destinies. It is about dignity. It is society's structural mechanism that says you count, literally. And so when the right to vote is denied or abridged, it says you don't count.

And so this is a very, very personal matter. As much as it is policy, as it is legal, and we need to understand all of these statistics, it is deeply rooted in the basic human dignity of all people.

And we also know that any remedial actions that this body takes are going to need to be justified in legal challenges based on the record of the lived experiences of the people who these measures impact most.

So Advancement Project has been pleased to work in collaboration with other members of the Racial Equity Anchor Collaborative to support this Subcommittee's field hearings that you have held over the last eight months, documenting the state of voting rights in jurisdictions around the country. The Anchor Collaborative members, which include Advancement Project, Asian & Pacific Islander American Health Forum, Demos, Faith in Action, the NAACP, National Conference of American Indians, the National Urban League, Race Forward, and UnidosUS, are all dedicated to advancing a voting system that is free, fair, and accessible to all people, regardless of race, ethnicity, ability, or language proficiency.

In addition to helping identify leaders on the ground to testify at this Committee's field hearings, the Anchor Collaborative partners embarked on a robust grassroots effort to lift up the voices of everyday voters of color and their experiences. So to complement the field hearings, we conducted a series of people's hearings in select



States to gather firsthand accounts of voter suppression, and through the creation of a website, We Vote We Count, where voters across the country can share their voting experiences.

We held hearings in States like Alabama, North Carolina, Ohio, North Dakota, South Dakota, Georgia, Florida, and Texas, and heard from voters firsthand. Witnesses there attested to, among other things, having to wait in long lines to cast ballots, being denied bilingual ballots or language assistance at the polls, being denied disability assistance at the polls, having to restore their registration status after an illegal purge, undertaking onerous barriers to restoring their voting rights after a criminal conviction, having to stand up to last-minute changes to polling locations and hours of operation, rampant misinformation, and voter intimidation.

The reports also capture the impact of voter ID laws, cuts to early voting, the increasingly scarce polling places in ever-changing locations, which present significant burdens for those without easy access to transportation or inflexible work schedules.

And the results were clear. Since the loss of Federal oversight in the post-*Shelby* era, voters of color across the country are confronted with renewed barriers to casting a ballot. We have documented these reports in a soon to be released report called “We Vote We Count: The Need for Congressional Action to Secure the Right to Vote for All Citizens,” which includes testimonies from African Americans, Asian Americans, Native Hawaiian, Pacific Islanders, Hispanics, and Native Americans, whose firsthand accounts provide a glimpse into the inner workings of actual access to the ballot around the States, and compel this body to take action to restore the preclearance provisions of the Voting Rights Act.

What we saw around the country is that voters have lost confidence in the wake of the *Shelby* decision in the ability of the Department of Justice to fairly secure their right to vote. And so we know that the *Shelby* decision emboldened attacks on the right to vote, not just in the former preclearance States, but around the country, designed to curtail the growing political power of voters of color as they emerge into the new American majority.

And so we thank you today, Congresswoman Fudge and members of this Committee, for holding this hearing. Please heed the words of these voters across the country and take action to secure Federal protection for the right to vote.

Thank you.

[The statement of Ms. Lieberman follows:]



**Remarks of Denise D. Lieberman, Esq.  
Project Director, Power & Democracy, Advancement Project National Office**

**Committee on House Administration, Elections Subcommittee  
Hearing on "Voting Rights and Election Administration in America"**

**October 17, 2019  
Longworth House Office Building, Washington D.C.**

Thank you Chairwoman Fudge and to the House Administration Committee, Subcommittee on Elections for holding today's important Hearing on Voting Rights and Election Administration. I am honored to provide remarks on the People's Panel. My name is Denise Lieberman and I am Senior Attorney and Director of the Power & Democracy Program at Advancement Project's National Office. Advancement Project is a national racial justice organization that works in deep partnership with grassroots organizations in the states to develop community-based solutions inspired by the tactics and courage that produced the landmark civil rights victories of earlier eras. We are proud to stand beside our many partners in who are fighting battles for racial justice on the ground every day. The need could not be greater – we are faced today with the greatest battle for the solvency of our democracy since the post-reconstruction era when the promise of a robust democracy was deliberately and violently thwarted.

As Director of Advancement Project's Power & Democracy Program, I oversee our Voter Protection Program and Right to Vote initiatives. My legal work on voting rights goes back two decades, starting in my home state of Missouri with class action litigation during the 2000 elections and extending nationwide. I have litigated voting challenges in states around the country including Missouri, North Carolina, Florida, Wisconsin, Louisiana, Pennsylvania and others. We are working with partners in Florida, Louisiana and Virginia and others to address the collateral consequences of mass incarceration and advance broad rights restoration efforts. I am also an adjunct professor of political science and law at Washington University in St. Louis, where I teach courses including Voting Rights & Election Law.

I am particularly honored to speak today on the "People's Panel" – because our fight to protect the right to vote – and the need for Congress to take definitive action to secure the right to vote for all citizens – lies in the lived experiences of the people for whom protection is most needed and the people whose voices are most often silenced. Because the right to vote is about self-determination, the right of all people to have agency over their own destinies. It confers dignity. It is society's structural mechanism that tells people they count – literally. When the right to vote is abridged, it says that you don't count. This has a direct correlation to the ability of people to build power to exercise self-determination over the issues that impact them the most. It is no accident that Advancement Project's voting rights work is framed as Power & Democracy. It is about building power in order to protect democracy. Make no mistake – the right to vote is the way for communities of color, and other communities too often left

without a voice, to build power – and that is precisely why many who wield disproportionate power in our society are threatened by a robust democracy.

Moreover, we know that any action Congress takes to restore provisions of the voting rights act and ensure federal protection for the right to vote – measures that are sorely needed – will need to be justified in legal challenges based on the specific ways in which voters of color are impacted on the ground in their ability to register to vote, cast a ballot and have their ballots counted.

So Advancement Project has been pleased to work in collaboration with other members of the Racial Equity Anchor Collaborative to support the House Administration Committee’s Field Hearings over the last eight months documenting the state of voting rights in jurisdictions around the country. Anchor collaborative members – Advancement Project, Asian & Pacific Islander American Health Forum, Demos, Faith in Action, NAACP, National Congress of American Indians, National Urban League, Race Forward and Unidos US – are dedicated to advancing a voting system that is free, fair and accessible to all people regardless of race, ethnicity, ability or language proficiency. The stories we captured over this year

In addition to helping identify leaders on the ground to testify at the House Administration Committee’s Field Hearings, the Anchor Collaborative partners embarked on a robust grassroots effort to lift up the voices of everyday voters of color and their experiences accessing the right to vote. To complement this Committee’s Field Hearings, we conducted “People’s Hearings” in select states and gathered first-hand accounts of voter suppression through those hearings and through creation of the #WeVoteWeCount website where voters across the country can share their voting experiences. At these People’s Hearings, witnesses testified to the erosion of equal access to voting and the ferocity of post-*Shelby* election related discrimination in states like Alabama, North Carolina, Ohio, North Dakota, South Dakota, Georgia, Florida and Texas – from measures that make it harder for citizens to register to vote, to cast a ballot, and to have those ballots counted. Witnesses attested to, among other things, having to wait in long lines to cast a ballot, being denied bilingual ballots or language assistance at the polls, having to restore their registration status after an illegal voter purge, and having to stand up against last-minute changes to polling locations and hours of operation, misinformation and voter intimidation. Additionally, the reports capture the impact of voter ID laws, improper voter purges, cuts to early voting, and increasingly scarce polling places with ever-changing locations, which present burdens for those without easy access to transportation and inflexible work schedules.

In the post-*Shelby* era, voters of color confront renewed barriers to casting a ballot. Our soon-to-be-released report on this effort, *We Vote, We Count: The Need for Congressional Action to Secure the Right to Vote for All Citizens*, includes testimonies from African Americans, Asian Americans, Native Hawaiian, Pacific Islanders, Hispanics and Native Americans, whose first hand accounts provide a glimpse into the inner workings of voter suppression across the country. Voters testified to onerous and confusing limitations to access to the ballot, limitations that disproportionately impact voters of color, including:

- An increase in the number of voting rights violations since the *Shelby* decision.
- An increase in the costs and burdens to access the right to vote, and increased costs associated with challenging constitutional violations.
- An increase in the costs of litigating violations of the voting rights act
- Evidence of discrimination in voting

- A need for transparency, notice and federal protection for the right to vote.

These People's Stories demonstrate why the Voting Rights Act and federal protection for the right to vote remains necessary to combat widespread voter suppression today – to ensure communities of color across the nation can be heard. Long ago, the Supreme Court proclaimed that the right to vote is “regarded as a fundamental political right, because [it is] preservative of all rights.”<sup>1</sup> Yet we have never lived up to this ideal. Historically we have limited access to the ballot by enacting laws that intentionally disenfranchise people of color, and have maintained efforts to keep communities of color from the electoral process.

Current efforts to suppress the vote bear resemblance to the voter suppression practices of the civil rights era, prior to passage of the Voting Rights Act, in placing hurdles and barriers to accessing the vote that disproportionately fall on voters of color. In the words of the late Rosanell Eaton, lead plaintiff in our litigation challenging North Carolina's monster voter suppression law passed in the immediate wake of the *Shelby* ruling: “You know, all of this is coming back around before I could get in the ground. I was hoping I would be dead before I'd have to see all this again.”<sup>2</sup> Today's methods of disenfranchisement are far reaching and have real impact on communities of color and their ability to access the franchise.

*“I...am an elderly semi-disabled citizen of Miami Gardens, Florida. A native of Columbus, Georgia, I remember the era when suppression was visible in many areas of life itself. I recall the marches, the violence, the cotton fields, the maids. I remember the black and white bathrooms and fountains. However, this last voting term [2018], I was taken back to what's been embedded in the black culture: long lines, no assistance for elderly and even handicapped. I witnessed several people being turned away for several reasons. No matter how hard I tried to remember the song and believe in it, it would quickly escape me. And that is, WE SHALL OVERCOME ONE DAY.”*

- Annie Ruth Passmore, born March 31, 1936, a witness at the North Miami, Florida, People's Hearing, May 2019.

In conducting the People's Hearings, we found that witnesses framed the right to vote in primarily two ways: 1) the right to be regarded and recognized as an eligible voter and 2) the right to cast a ballot without undue burden.<sup>3</sup> These frameworks were prevalent themes throughout stories collected via the Field and People's Hearings. Indicating that, for communities of color, the right to be recognized as an eligible voter and the right to vote without undue burden are the components of the concept of the “right to vote” most severely contested or undermined in the modern day fight to vote. The right to vote confers dignity and builds power. Winnie Tang, President for Asian Services, testified during the Florida People's Hearing of the dignity conferred when bilingual services are available: “So, what we are doing in the community to have translating. We're in Chinese, then we bring the voter to interpreter in Chinese

<sup>1</sup> *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)

<sup>2</sup> Woman who faced Jim Crow takes on North Carolina's powers over voting rights, *The Guardian*, available at: <https://www.theguardian.com/world/2014/sep/25/north-carolina-voter-id-law-jim-crow-african-american>.

<sup>3</sup> See, Morley, Michael T. “PROPHYLACTIC REDISTRICTING? CONGRESS' SECTION 5 POWER AND THE NEW EQUAL PROTECTION RIGHT TO VOTE. (Special Issue on Gerrymandering).” *William and Mary Law Review* 59, no. 5 (April 1, 2018): 2053. Accessed April 20, 2019. <https://www.questia.com/library/journal/1G1-541811728/prophylactic-redistricting-congress-section-5-power>.

to have them to read it to vote so they can feel their power, so they will not feel reluctance in their own way.”<sup>4</sup>

*“As you know, in 2017, North Dakota passed a law that was designed to reduce the tribal vote. The state law requires IDs to have the current residential street address. This goes beyond the typical voter registration requirements. Our rural reservations and housing systems were not set up that way. Many of our members use a PO Box for their addresses. We recently began developing community streets and housing with residential addresses, but our reservation is mostly rural. The state knew this, and they used it to suppress tribal voters.”*

*— Roger White Owl, Chief Executive Officer of the Mandan, Hidatsa, and Arikara Nation*

Ever since the Supreme Court significantly weakened the Voting Rights Act in the landmark *Shelby* ruling in 2013, states across the country have revived and implemented new restrictions on the right to vote - measures are akin to Jim Crow 2.0.

*“We have been battling for 2023 days today, five years, nine months and 24 days since the Voting Rights Act was gutted in 2013. This monster voter suppression law was the worst of its kind after Shelby in the nation, and it was only possible because the preclearance protection was no longer in place. It, in fact, has been the worst we have seen since Jim Crow. We heard the lawyer who was leading the effort say in court that retrogression was okay now that the Voting Rights Act was no longer in place.”*

*— Rev. William Barber, President, Poor People's Campaign*

Stories offered during the Alabama, Florida and North Carolina People's hearings highlighted how, for example, voter ID laws created conditions eerily analogous to circumstances during the Jim Crow era. Alabama Commissioner Sheila Tyson, for example, testified to the impact of Alabama's ID requirement impacting more than 300,000 voters in the state without state ID, exacerbated by the fact that a fourth of those individuals lacked access to a car, combined with the closure of more than 30 DMV offices in primarily African American and poor counties. “You have to drive four hours to get a driver's license but you can't vote without a driver's license or some type of state ID. But then you turn around at close [the voter ID offices.]”<sup>5</sup> In North Dakota, Charles Walker, Judicial Committee Chairman of the Standing Rock Sioux Tribe, noted the challenges, in a county with a 35.9 percent poverty rate, “that the nearest driver's license site is about 40 miles away.”<sup>6</sup>

Historian Alexander Keyssar notes, “It's against [the] background of immigration and African American empowerment in some places that the nation witnessed the passage of innumerable state laws designed to limit the political power of African Americans and immigrants and immigrant workers. Literacy tests, understanding clauses, detailed registration requirements, proof of citizenship laws, as have shown up again in recent years, all of these things that have appeared in the late 19th and early 20th century, and

<sup>4</sup> Testimony of Winnie Tang, Florida People's Hearing, 2019

<sup>5</sup> Testimony of Commissioner Sheila Tyson, Alabama People's Hearing, 2019

<sup>6</sup> Testimony of Charles Walker, the Judicial Committee Chairman Standing Rock Sioux Tribe

they worked in a lot of places, and, again, not just in the south where we do know the dreadful story. I don't think that these historical parallels are coincidence..."<sup>7</sup>

Today, the increase in political participation among voters of color, the increase in immigration and the influx of voter suppression mirrors other periods of American history. We saw similar backlash to growing political power by immigrants and African Americans during Reconstruction and the Pre-Civil War era. Each era of growth in political power of voters of color has been met with new laws limiting access to the vote. The lived experiences of voters reveal these parallels.

Efforts to make voting harder for people of color during this and other important times in our country's history is not an accident, but a pervasive and effective effort to prevent or dissuade people of color from freely participating in the political process and building power. This moment of greater participation by people of color and greater voter suppression are in a constant battle for the heart of America's democracy.

The stories we collected make clear that current levels of voter suppression unduly burden the right to vote and disproportionately impede access for voters of color. Measures that abridge the right to vote – especially for communities of color – are on the rise since *Shelby*. (In the first year after *Shelby*, 73% of previously covered jurisdictions introduced restrictive voting laws.) Not only did the *Shelby* decision open the door to discriminatory practices that would have been halted at the outset under the preclearance, but it made it more difficult to challenge such laws, placing the burden on already under-represented voters of color and their advocates. Since then, without the law's stopgaps, the evidentiary burdens – and costs associated with such challenges – has fallen even more heavily on impacted voters to challenge denials of their fundamental right to vote.

But our People's Hearings also revealed – yet again, as we have seen throughout history – the determination of impacted communities in the face of efforts to shut out their voices to uplift the strategic imperative of the right to vote. Ella Baker refers to the genius of ordinary people, and that is what we see in these stories. This Committee should heed their words. What we are seeing around the country is that people are rising up and demanding action to combat the rise in voter suppression. Through grassroots organizing, legal, legislative and electoral strategies and deep tenacity, groups have demanded and are continuing to impact access to democracy in meaningful ways – for example with the passage of Amendment 4 in Florida and Act 636 in Louisiana to restore voting rights to people with felony convictions – campaigns lead by impacted individuals. But now those measures are being met with their own legislative and administrative backlash; the battle for access to the vote continues to fall on the backs of those most impacted.

More than half a century after hard fought civil rights struggles lead to the passage of the Voting Rights Act, the urgency of that movement today could not be clearer. Communities of color are resisting assaults on their lives, dignity and freedom on multiple fronts. The *Shelby* decision emboldened attacks on the right to vote - assaults designed to curtail the growing political power of voters of color as they emerge into the new American majority. Today nearly a third of eligible voters are voters of color, and those numbers are only growing – producing a backlash against the growing American electorate.

<sup>7</sup> Testimony of Dr. Alexander Keyssar at the U.S. Commission on Civil Rights, August 18, 2017, p. 66. Dr. Keyssar is the Matthew W. Stirling Jr. Professor of History and Social Policy at the Harvard Kennedy School of Government. He is an historian who has written several books including the acclaimed, *The Right to Vote: The Contested History of Democracy in the United States* (2000).

Sometimes the courts see through the ruse, but in the post-*Shelby* world, the protections may be short lived.

The stories we captured demand that Congress act to ensure that the right to vote is a reality for all citizens. The full protections of the Voting Rights Act are necessary to ensure that the promises of the Reconstruction Amendments are kept. Discriminatory voting measures and practices cannot be effectively challenged after the fact. A lost vote can never be reclaimed, and the collective legacy of these lost votes leaves a lasting scar on those individuals, their families, and our very democracy for generations.

Thank you Congresswoman Fudge and members of the committee for holding these hearings, and in particular for including a “People’s Hearing.” These stories show that it is time for Congress to act by reinstating the pre-clearance provisions of the Voting Rights Act. Moreover, we must enshrine an explicit Right to Vote at the federal level. Legal protection for voters is needed now more than ever, both to safeguard hard-fought progress and to defeat persistent and ongoing attempts to narrow the franchise.

Chairwoman FUDGE. Thank you.

Thank you all so much.

Mr. Aguilar, you are recognized for five minutes.

Mr. AGUILAR. Thank you, Madam Chairwoman. Thank you to the panelists.

Ms. Lieberman, I will start with you, and then we can work our way across, because you spoke about barriers in your new report. Can you talk to me about some of the most common barriers? You know, we have taken testimony, and we have gone around the country and we have seen quite a few. Talk to us about what your research tells you are the barriers that you often find, but also specifically, if the panel can talk a little bit about vulnerable and emerging populations and the types of barriers that those constituencies face.

Ms. LIEBERMAN. Absolutely. And what we saw was that voters were reporting difficulties at every step of the process, from registering to vote, to casting a ballot, to having those ballots counted. We have seen a rise in discriminatory voter registration procedures, onerous processes for being able to register to vote, and particularly, onerous processes for people who are attempting to restore their rights to vote, either after an illegal purge or after having their rights suspended due to a felony conviction.

We just heard, for example, last week in Louisiana during early voting, from voters who, despite having gone to numerous government agencies in the wake of last year's passage of Act 636, which restored voting for people with felony convictions who have been out for five years, were still not able to cast a ballot, despite having jumped through numerous hoops and hurdles. Those hoops and hurdles were pervasive throughout the processes that voters described, through polling place closures and changes, to having to drive numerous hours.

Witnesses in Alabama testified to the closure of over 30 DMV locations in disproportionately African American and poor counties after that State enacted a voter ID law, causing people to have to drive sometimes up to four hours to get to a process. I could go on and on, but these populations are significantly impaired.

In North Dakota, a witness testified to, in a county that has a 36 percent poverty rate, the barriers of people having to drive numerous hours just to get all the underlying documents, to get the IDs, in order to vote under that State's ID law. So what we found is that they are pervasive throughout the voting process.

Mr. AGUILAR. Ms. Arnwine.

Ms. ARNWINE. Yes. We found that the populations that we looked at were—sorry again—the populations we looked at were African Americans, Latinos, Native Americans, Asian Americans, low-income voters, voters with disabilities, student voters, formerly incarcerated persons, newly naturalized citizens, voters displaced by natural disasters, and homeless voters. These are some of the most vulnerable voters, and they are really bearing the brunt of the voter suppression. And by our calculation, millions of voters have been denied or blocked from voting who come from those categories. Not to mention those who are LGBTQIA and may have changed their identity, name, or sexual identity.



We found that of the measures, the 61 Forms captures a lot of these measures, because that is how many there really are. There are so many more. But most former—but most of the ones that you have already heard, some of them, such as our witnesses talked about targeted poll closures, exact-match requirements for registration and for counting absentee ballots. The refusal to place polling sites on student campuses, which is now a big fight again in Texas, but that was a huge issue in Florida. And coming out of our hearing, there was a lawsuit filed that challenged the refusal to put polling places on student campuses in Florida for early voting, and they won it. And they were able to have those polling sites in 2018.

We also heard about voter caging, especially in Michigan, and in many other States; Texas, Alabama. Voter purging, that was one of our first hearings that we really start realizing up front, by the third hearing, we knew that voter purging was a huge problem in our country.

And I still think that, realistically, the ability to intercept and fight voter purging has been one of the weakest parts of our community's ability to respond. And it is problematic because it is widespread, and there is many States where there is no activity going on to stop it.

Onerous voter ID, failure to follow State procedures, like we saw in South Carolina, where they failed to follow their own procedures as to staffing of polling places, resulting in literally some of the longest lines in, you know, targeted minority neighborhoods. We also saw abuses of provisional balloting, disparate impact between white and people of color jurisdictions created by the failure to provide adequate election equipment and staffing, racial gerrymandering, cuts to early voting—

Chairwoman FUDGE. Ms. Arnwine, I am going to have to cut you off.

Ms. ARNWINE. Yes, okay. But I just want to—he asked me.

Chairwoman FUDGE. If you want the other two to quickly answer, we can—

Ms. ARNWINE. Yes.

Mr. AGUILAR. If you could.

Ms. ARNWINE. Sorry.

Chairwoman FUDGE. Thank you.

Ms. ARNWINE. Yes.

Ms. KASE. So I will go quickly. Just a few examples in addition to the ones that have been cited. For example, when we see people who have finally become re-enfranchised after being incarcerated, there are additional attacks on that by requiring them, for example, in Florida, to pay fines, a restitution, in order to be able to do that. So every single time you see that we try to overcome these barriers, there are new ones that are put in people's places.

Recently, we had a Supreme Court decision, *Russo v. Common Cause*. The League of Women Voters was part of that case. And we now are very concerned that we are going to see partisan—I mean, racial gerrymandering disguised as partisan gerrymandering, because there has basically been a green light for that. We have seen broken down election equipment. The League is on duty every election day. We are looking in every congressional district, looking at—seeing what is happening on the ground.

We had six-hour lines in Georgia because of broken down voter equipment. And we are doing rapid response. It should not be the responsibility of nonprofit organizations like ours to have to do rapid response because the government is not doing what they are supposed to be doing to enfranchise voters.

Senior citizens, rural communities, minorities, and youth all having difficulties accessing IDs. Third-party voter registration criminalization, like what recently happened in Tennessee, that we were able to fight back and combat once again. And so it is just these constant, constant attacks that communities are facing, and we, organizations like ours, are being responsible for addressing these.

Mr. AGUILAR. Thank you, Ms. Kase.

Ms. Fried, I am so sorry.

Chairwoman FUDGE. Thank you.

And just, by the way, did you know that the director of the League of Women Voters was on the purge list in Ohio?

Ms. KASE. Yes, I did. And we have had many situations like this. One of the oldest voting rights organizations in the country, and we are not immune.

Chairwoman FUDGE. Ms. Fried, if you want to answer very, very quickly, I will let you.

Ms. FRIED. I will. Thank you.

What I would like to highlight from what my fellow panelists have said is that the problems that American voters are facing are not singular; they are stacking. A voter who has a problem getting a voter ID, then get to the polling—has to drive miles to get to their polling place, then there is a line at the voting location; these problems are not singular in their origin. And our solutions, our response to them, needs to be across the spectrum. There need to be both Federal statutory protections as well as State administrative protections, laws and practices that expand access to the ballot, particularly in communities of color.

Chairwoman FUDGE. Thank you. Thank you.

Let me just—just for a moment, just pretend that I am Chief Justice Roberts, and I would just like for you to make the case as to why we should fully reinstate the Voting Rights Act and what you think the preclearance formula should look like, if you have any idea. We are going to start at your end, Ms. Fried.

Ms. FRIED. Thank you. In between 2013 and 2018, there were almost 1,700 polling places that closed in former section 5 jurisdictions. The Leadership Conference released just earlier this fall a report discussing these changes. Seventy-five percent of those happened between 2014 and 2018, despite the increase in turnout in 2018.

Voter suppression is pervasive. Voters in this country face extraordinary barriers to the ballot. Our ability to vote, the ability particularly of communities of color to vote, is, frankly, miraculous in light of the barriers that they face. This is especially true in former Section 5 areas. Poll closures, voter ID laws, a lack of access to early vote, particularly in communities of color, restrictive hours of early vote, these problems are widespread, and they are pervasive, and we aren't seeing the kinds of improvements to them that we need to be.

What preclearance allowed us to do was to understand, not only that changes are happening, but the impact that they have. Without preclearance, we can't understand fully the impact on communities of color of these changes. It is absolutely vital that preclearance be restored.

Chairwoman FUDGE. Thank you.

Ms. Kase.

Ms. Kase. If you were Chief Justice Roberts, I would say that we have three bodies of government for a reason. And the Supreme Court's job is to serve as a representative of the American people. And when we see people's rights being violated time and time again—and the most fundamental right that we have as citizens of this country is our right to vote, to have our voice heard—that the Supreme Court has a responsibility to protect that right so that every citizen is considered equal.

We talk about equal under law. We should be equal in the ballot box. And it means removing barriers for each citizen to exercise that right.

But I would say that there are already remedies that you all have in place that have been proposed. And one of the ones that we are really in favor of is the formula under Representative Sewell, which is statewide having 15 or more violations over the past 25 years, at least one of which was committed by the State itself. In political subdivision, three or more violations during a calendar year. Voting violations, voting violations of the 14th or 15th violations. I mean, you have all of this information yourself, so I don't want to waste too many people's time, because there is just too much to read off. But the formula is here, and we support these formulas, and we think that Congress must act. You must act now, because we are coming into very serious elections this coming year.

Chairwoman FUDGE. I will just ask you this question. Most of what you are talking about really goes back to the original, you know, 14 or so jurisdictions. But what about States like Ohio that was not covered under preclearance? What about States like Pennsylvania and Wisconsin?

One of the things that the Supreme Court was concerned about is that they were determined to say that that is such an old record and the data is so old that we can't prove that they should still be held to the same standard of preclearance. But I think that the situation is worse and it is bigger. So what do we do to include those new jurisdictions?

Ms. KASE. We need to, first of all, do a better job of tracking what is happening so that we can ensure that it is a living and breathing process, meaning that it doesn't end after a certain amount of time; that on an annual basis, we are able to look at where there have been violations and ensure that those protections are in place where we are seeing them happening.

And yes, you are right, it has expanded. It hasn't gotten better. It has, in fact, gotten worse. In 2013—since 2013, we have seen that time and time again.

Chairwoman FUDGE. Thank you.

Ms. Arnwine.

Ms. ARNWINE. Yes. Chief Justice Roberts, may it please the court, first, in the *Shelby* decision, you spoke very powerfully about

the fact that we all recognize that there still exists discrimination in voting, and you felt that Congress had not, quote, done its job. Since then, Congress has been very keen looking at what are, in fact, the modern-day conditions that exist between the States and among the States when it comes to voter accessibility and voter fairness.

What we know at this point, in this eight years that have occurred since 2011, is that the States that were previously covered by preclearance have, in fact, had some of the worst records for, not only poll closures, but for purges, that literally millions of voters have been affected by that, that those voters deserve the coverage and the protection of our laws of our country to not have to be subjected to that voter denial before they are able to have their votes counted properly. That what you also have in the—you have told this Congress to come up with a new set of coverage formula, and that coverage formula is designed to look at those violations that are the most extreme, that deny the most voters their rights to participate.

Since your directive to Congress, we have held hearings, we have compiled and looked at reports of what is happening in the States. We are able to come up with a formula that captures for preclearance the States that are engaging in the worst activities. But at the same time, we also have recognized that in this modern era, we have to come up with some additional new standards, that we just can't look at voter turnout anymore, we can't look at some of the old original casting back standards. That instead, that what we need to look at now is to make sure that there are better notice provisions, to make sure that on a national scale, as you were concerned, that States are able to be held accountable. We believe we have done our job and that you should uphold our new legislation.

Chairwoman FUDGE. Thank you very much.

Ms. Lieberman.

Ms. LIEBERMAN. Chief Justice Roberts, I agree with everything my fellow panelists have said, and, you know, the writing is on the wall here. I mean, in the first year after the *Shelby* decision came down, 73 percent of the previously covered jurisdictions introduced restrictive voting laws. New restrictive voting laws have been introduced in 25 States since 2010, right? And we have seen, through the stories of individuals, that *Shelby* has emboldened, not just the former preclearance States, but States around the country, to continue to make voting harder, more confusing, more onerous, and more burdensome.

But not only that, not only did *Shelby* open the door to discriminatory practices that would have been halted at the outset under preclearance, but it has also made it more difficult to challenge those laws, unduly placing the burden on already underrepresented voters of color and their advocates.

So since *Shelby*, without the law's stopgaps, the evidentiary burdens and the costs associated with these challenges has fallen even more heavily on the very impacted communities that these laws are designed to protect, to challenge denials of their fundamental right to vote. And so it is very clear that that is simply not tenable. It is not working.

Congress has the opportunity right now before it, with H.R. 4, to implement Federal voting protections, to place the burden where it should be, on the backs of the government agencies that are seeking to implement new restrictive voting changes, to show that they are not discriminatory.

Chairwoman FUDGE. Well, I think you all can represent me anytime. I thank you all so much for being here, and I thank you for your testimony. Thank you so much.

Ms. ARNWINE. Thank you very much.

Chairwoman FUDGE. The other panel I don't think has arrived yet, right? Okay. They are on their way over.

Thank you all again very, very much.

[Recess.]

Chairwoman FUDGE. I hope you all didn't run, but I am glad you are here so we can get started.

Mr. YANG. Well, thank you for waiting.

Chairwoman FUDGE. Absolutely. And since you are our last panel, we just know that you all are going to bring it, so we can just wrap this up and close up strong.

Let me just introduce our panelists we have. John Yang, is the president and Executive Director of Asian Americans Advancing Justice. At Advancing Justice, Mr. Yang leads the organization's efforts to fight for civil rights and empower Asian Americans to create more just America for all through public policy advocacy, education, and litigation. His extensive legal background enables Advancing Justice to address systemic policies, programs, and legislative attempts to discriminate against and marginalize Asian Americans and Pacific Islanders and other minority communities.

Arturo Vargas. Mr. Vargas is the Chief Executive Officer of the National Association of Latino Elected Officials, a membership organization of Latino policymakers and their supporters, governed by a 35-member board of directors. Mr. Vargas also serves as CEO of NALEO Educational Fund, an affiliated national nonprofit organization that strengthens American democracy by promoting the full participation of Latinos in civic life.

Mr. Saenz is the President and General Counsel of the Mexican American Legal Defense and Educational Fund, better known as MALDEF, where he leads the civil rights organization's offices in pursuing litigation, policy advocacy, and community education to promote the civil rights of Latinos living in the United States. Mr. Saenz rejoined MALDEF in August 2009, after spending 4 years as counsel to the Mayor of Los Angeles. Mr. Saenz previously spent 12 years at MALDEF, practicing civil rights law.

Welcome, sir.

And last but not least, Michelle Bishop is the disability advocacy specialist for voting rights at the National Disability Rights Network, where she is responsible for coordinating voting rights initiatives in every U.S. State, district, and territory, as well as providing training and technical assistance to NDRN's nationwide network regarding voting rights and access for voters with disabilities under the Help America Vote Act. Ms. Bishop also works in coalition with the civil rights community in Washington, D.C., to ensure strong Federal policy regarding voting rights and election administration.

I thank you all for being here. And as you know, the lighting system, as you have probably just seen it, when you begin speaking, the green light will come on. You will have five minutes. At one minute remaining, you will see the yellow light come on, and then you will see the red light on, which is going to indicate that you need to try to wrap up your testimony.

Mr. Yang, you are recognized for five minutes.

**STATEMENTS OF JOHN C. YANG, PRESIDENT AND EXECUTIVE DIRECTOR, ASIAN AMERICANS ADVANCING JUSTICE; ARTURO VARGAS, CHIEF EXECUTIVE OFFICER, NALEO EDUCATIONAL FUND; THOMAS SAENZ, PRESIDENT AND GENERAL COUNSEL, MALDEF; AND MICHELLE BISHOP, VOTING RIGHTS SPECIALIST, NATIONAL DISABILITY RIGHTS NETWORK**

**STATEMENT OF JOHN C. YANG**

Mr. YANG. Thank you very much.

Thank you very much, Chairwoman Fudge. And let me first start by offering my condolences for the loss of Representative Cummings. As a civil rights organization that seeks to advance the civil and human rights of Asian Americans and to promote a fair and just society for all Americans, Representative Cummings was certainly a champion for so many of our issues, and his loss is going to be a loss, obviously not just for this Congress, but for the entire Nation.

Chairwoman FUDGE. Thank you.

Mr. YANG. I really appreciate having—inviting us to testify here today on language access and the importance of this to Asian Americans in particular.

While the Voting Rights Act of 1965 has been—helps to ensure language access and assistance to Asian Americans, it is only one piece of the puzzle that we need to look at when making sure that Asian Americans are represented.

I think it is important to start off by recognizing the Asian American community. The Asian American community is the fastest growing community in the United States. Between the 2000 Decennial Census and the 2010 Decennial Census, the Asian American community has grown by 46 percent. Today, we represent about 22.6 million in the United States, which is a little bit over 6 percent of the American population.

With respect to voting, we have also increased dramatically in numbers over the years. Between the 2012 election and the 2016 election, we have increased by over 1 million voters.

It is also important to note that Asian Americans are not monolithic. Certainly, there are numerous Asian Americans in urban centers throughout the country, but our fastest growing populations are in Nevada, Arizona, North Carolina, and Georgia. And so the needs of Asian Americans oftentimes are very diverse.

With respect to language access, we represent over a hundred different languages from 60 different Asian ethnicities. So ensuring that Asian Americans have information in the language that they understand best is always a challenge. And, unfortunately, language minority voters are often denied much of the needed feder-

ally required assistance at the public level and face numerous barriers at the polls.

First, problems can arise when poll workers do not fully understand voting rights laws. Poll workers have oftentimes, unfortunately, been hostile to people that are not similar to their own backgrounds or have language access issues. Asian American voters are certainly not immune from those issues. When you look at some of the experiences that Asian American voters have had, oftentimes they are challenged with respect to their identification, whether they are a citizen or whether they belong at the polls.

I will be relatively brief and just offer some recommendations with respect to what can be done to help with respect to language assistance. With respect to language assistance, one of the things that we can do is to make sure that translated materials are available, accessible, and effective in conducting a comprehensive review of election materials to make sure that they really identify materials that go to the needed communities, that we use certified translators, that we use certified translation vendors to ensure that those translations are community oriented and using community-based organizations as well to ensure that they speak in a language—not only in a legal language that is appropriate, but in a community-based language and culture that is appropriate.

With respect to the actual polls and taking protections that are necessary, one of the things also is making sure that you have assistance under section 208 of the Voting Rights Act to ensure that people are allowed the assister of their choice. Now, election officials should provide bilingual poll workers with separate training on language assistance, some of which should be done in their covered languages. But regardless of whether jurisdictions are covered under section 203, every poll worker should be trained to understand the needs of a language minority voter. How the poll worker can best assist that voter and having maybe role-playing exercises to ensure that, not only English-speaking poll workers, as well as language poll workers, can really provide the assistance that they need. They know how to handle situations as they arise.

Certainly, the Election Assistance Commission can provide a role in that, providing perhaps a funding infrastructure that would allow for assistance, allow for best practices, to provide some of these exercises that I have described.

Certainly, jurisdictions have also, on a voluntary basis, provided language assistance, provided translated materials. We have seen that in Fairfax County, where even though technically it was not covered by Section 203, Fairfax County decided to offer language assistance to both a Korean-speaking population that fell short of section 203 coverage, as well as providing it to a Vietnamese-speaking population. These are the types of things that can be done on a voluntary basis, but certainly are very, very effective for our community.

Language barriers certainly remain for the Asian American community, and it is a fast-growing community. It is a community that is going to be transitioning to U.S.-born Asian Americans in a relatively short matter of time, that will also translate into more voters, people that want to be engaged in the electoral process. So I

would ask this Committee to consider all of the different ways in which that language assistance can be provided.

Thank you very much.

[The statement of Mr. Yang follows:]





**Testimony of  
John C. Yang  
President and Executive Director  
Asian Americans Advancing Justice – AAJC**

*For*

**Hearing on “Voting Rights and Election Administration in America”**

**US House of Representatives  
Committee on House Administration  
Subcommittee on Elections  
October 17, 2019**

### **Introduction**

The language barrier is one of the biggest impediments to the Asian American vote. Lagging behind non-Hispanic whites in voter participation, ensuring effective language assistance is paramount to closing that consistent gap. While the Voting Rights Act of 1965 (VRA) has been vital to ensuring language access and assistance to Asian Americans in national and local elections, and for increasing the community’s access to the ballot, more can be done to improve access to the ballot for limited English proficient Asian American voters. This testimony will detail the Asian American electorate and the language barriers facing Asian Americans as well as recommendations and best practices to providing language assistance. While Asian Americans are the nation’s fastest growing racial group and are quickly becoming a significant electoral force, the community will not be able to maximize its political power without access to the ballot.

### **Organizational Information**

Asian Americans Advancing Justice – AAJC (Advancing Justice – AAJC) is a member of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five civil rights nonprofit organizations that joined together in 2013 to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. The Advancing Justice affiliation is comprised of our nation’s oldest Asian American legal advocacy center located in San Francisco (Advancing Justice – ALC), our nation’s largest Asian American advocacy service organization located in Los Angeles (Advancing Justice – LA), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian

American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Additionally, over 160 local organizations are involved in Advancing Justice – AAJC’s Community Partners Network, serving communities in 33 states and the District of Columbia. Advancing Justice – AAJC was a key player in collaboration with other civil rights groups regarding the reauthorization of the Voting Rights Act in 2006. In the 2012 election, Advancing Justice conducted poll monitoring and voter protection efforts across the country, including in California, Florida, Georgia, Illinois, Texas, and Virginia. And since the 2012 election, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline, 888-API-VOTE that provides in-language assistance to voters who have questions about the election process or are experience problems while trying to vote.

### **Asian American electorate**

Since the passage of the 1965 Immigration Act and the end of race-based immigration quotas, Asian American communities in the United States have grown dramatically. According to Census 2010, Asian Americans are the nation’s fastest growing racial group, with a growth rate of 46% between 2000 and 2010, growing to over 17.3 million Asian Americans and making up 6 percent of the total population.<sup>1</sup> Today there are over 22.6 million Asian Americans living in the United States.<sup>2</sup>

Often viewed as a monolithic group, Asian Americans are exceedingly diverse with different needs. The country’s fastest growing Asian American ethnic groups were South Asian, with the Bangladeshi and Pakistani American populations doubling in size between 2000 and 2010.<sup>3</sup> Chinese Americans continue to be the largest Asian American ethnic group, numbering nearly 3.8 million nationwide in 2010, followed in size by Filipino, Indian, Vietnamese, and Korean Americans.<sup>4</sup>

Asian Americans are also geographically diverse and are growing fastest in non-traditional gateway communities. Asian American populations in Nevada, Arizona, North Carolina, and Georgia were the fastest growing nationwide between 2000 and 2010.<sup>5</sup> California’s Asian American population remained by far the country’s largest, with New York, Texas, New Jersey, and Hawai’i following in size.<sup>6</sup> Of the 19 states home to more than 225,000 Asian Americans,

<sup>1</sup> Asian Pac. Am. Legal Ctr. & Asian Am. Justice Ctr., *A Community of Contrasts: Asian Americans in the United States: 2011*, 6, 16, [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf) [hereinafter *Community of Contrasts*].

<sup>2</sup> U.S. Census Bureau, 2018 Population Estimates, Table PEPALLSN: Annual Estimates of the Resident Population by Sex, Single Year of Age, Race Alone or in Combination, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2018 (July 1, 2018).

<sup>3</sup> *Community of Contrasts* at 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.*

six are in the South (Texas, Florida, Virginia, Maryland, Georgia, and North Carolina) and four are in the Midwest (Illinois, Michigan, Minnesota, and Ohio).<sup>7</sup> The South was the fastest growing region for the Asian American population during the last decade.<sup>8</sup>

At the same time, we saw a parallel increase among Asian American voters. The number of eligible Asian Americans grew by over 2 million between 2012 and 2016, with almost an additional 1.14 million added to the electorate. This nearly doubles the average increase of 620,000 new voters in the prior three presidential cycles.<sup>9</sup> 2018 showed a continuation of these record increases, with an increase of over 1.6 million eligible Asian Americans in 2018, and an even higher increase in Asian Americans who actually registered and voted.<sup>10</sup> This represented a 24.4% increase in registered Asian Americans and 29.2% increase in Asian Americans who voted between the 2012 and 2016 presidential elections and a 21.3% increase and 43% increase respectively between the 2014 and 2018 midterm elections (*see table below*).<sup>11</sup> This growth will continue, with Asian American and Pacific Islander (AAPI) voters making up five percent of the national electorate by 2025 and 10 percent of the national electorate by 2044.<sup>12</sup>

**Table: Asian American Electorate: 2012-2018**

**Presidential Elections**

Year	Asian CVAP	Registered Asian	Asians Voted
2016	10,283,000	5,785,000	5,043,000
2012	8,254,000	4,649,000	3,904,000
Growth in #s	2,029,000	1,136,000	1,139,000
Growth by %	24.6%	24.4%	29.2%

**Midterm Elections**

Year	Asian CVAP	Registered Asian	Asians Voted
2018	11,128,000	5,898,000	4,519,000
2014	9,504,000	4,642,000	2,575,000

<sup>7</sup> *Id.*

<sup>8</sup> Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islander in the South: 2014*, 6, [https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/2014\\_Community%20of%20Contrasts.pdf](https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf).

<sup>9</sup> See U.S. Census Bureau, Current Population Survey, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2012, [https://www2.census.gov/programs-surveys/cps/tables/p20/568/table02\\_5.xls](https://www2.census.gov/programs-surveys/cps/tables/p20/568/table02_5.xls). See also U.S. Census Bureau, Current Population Survey, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2016, U.S. Census Bureau, [https://www2.census.gov/programs-surveys/cps/tables/p20/580/table02\\_5.xls](https://www2.census.gov/programs-surveys/cps/tables/p20/580/table02_5.xls).

<sup>10</sup> Author's calculations of U.S. Census Bureau data available on voter participation in presidential and midterm elections through its Current Population Survey.

<sup>11</sup> *Id.*

<sup>12</sup> Center for American Progress and AAPI Data, "State of Asian Americans and Pacific Islanders" (2014), <http://ampr.gs/AAPIreports2014>.

<i>Growth in #s</i>	<i>1,624,000</i>	<i>1,256,000</i>	<i>1,944,000</i>
<i>Growth by %</i>	<i>14.6%</i>	<i>21.3%</i>	<i>43.0%</i>

The growing Asian American electorate is also starting to influence election outcomes. Of the 27 congressional districts in 11 states where Asian American and Pacific Islander voters could have maximum impact (as identified leading into the 2018 elections), 19 districts had an AAPI electorate that was larger than the margin of victory.<sup>13</sup> The 2018 elections also saw 18 additional races where the AAPI electorate was greater than the margin of victory.<sup>14</sup> This meant that “[i]n total, AAPI voters represented a significant portion of the electorate in 37 congressional races across 17 different states.”<sup>15</sup> As our communities continue to grow and expand in new areas, they will have even more relevance as it relates to electoral outcomes.

Although there has been an increase in voter engagement by Asian Americans, voter discrimination, language barriers, lack of access to voter resources, and unfamiliarity with the voting process challenge Asian Americans’ ability to reach their full potential when it comes to civic engagement. There continues to be a consistent gap with White voters of 15-20% less in voter registration and turnout, election after election. For example, the last two presidential elections saw a 17% gap for voter registration and a 16% gap for voter turnout between Asian Americans and non-Hispanic whites.<sup>16</sup>

**TABLE: Asian American v. Non-Hispanic White Political Participation: Presidential Elections**

<b>Year/Race</b>	<b>% Registered</b>	<b>% Turnout</b>	<b>% Turnout of those Registered</b>
<b>2016</b>			
<i>Asian American</i>	56.3	49.0	87.2
<i>White</i>	73.9	65.3	88.3
<b>2012</b>			
<i>Asian American</i>	56.3	47.3	84.0
<i>White</i>	73.7	64.1	87.0
<b>Existing Gap</b>			
<b>2016</b>	17.6	16.3	1.1
<b>2012</b>	17.4	16.8	3.0

<sup>13</sup> These were districts where AAPIs represent at least 5 percent of eligible voters, and where the Cook Political Report had declared the race to be competitive. Sono Shah, *AAPI Voters in 2018 Congressional Elections: Bigger Impact than Anticipated*, AAPIData, Nov. 20, 2018, <http://aapidata.com/blog/aapi-voters-post18-cd/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Author’s calculations of U.S. Census Bureau data available on voter participation in presidential and midterm elections through its Current Population Survey.

TABLE: Asian American v. Non-Hispanic White Political Participation: Midterm Elections

Year/Race	% Registered	% Turnout	% Turnout of those Registered
2018			
Asian American	53.0	40.6	76.6
White	71.0	57.5	80.9
2014			
Asian American	48.8	27.1	55.5
White	68.1	45.8	67.2
Existing Gap			
2018	18.1	16.9	4.3
2014	19.3	18.7	11.7

### Barriers to Access

A major obstacle facing Asian American voters is the language barrier. Of approximately 291 million people in the United States over the age of five, 60 million people, or just over 20%, speak a language other than English at home.<sup>17</sup> Among those other languages, the top two categories are Spanish and Asian languages,<sup>18</sup> at 37 million and 11.8 million people, respectively.<sup>19</sup> This means, nationally, about 3 out of every 4 Asian Americans speak a language other than English at home and a third of the population is Limited English proficient (LEP)<sup>20</sup> -- that is, has some difficulty with the English language.<sup>21</sup> Voting can be intimidating and complex, even for native English speakers. It becomes that much more difficult for citizens whose first language is not English. Voting materials are written for a twelfth-grade level or higher of comprehension, which is much greater than that required for purposes of naturalization, making voting more challenging for voters with language barriers.<sup>22</sup>

Surveys conducted on Election Day show that language assistance is very important to Asian American voters. For example, 63 percent of Asian Americans surveyed in a 2012 post-election

<sup>17</sup> U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <http://www2.census.gov/library/data/tables/2008/demo/language-use/2009-2013-acs-lang-tables-nation.xls> (released Oct. 2015) ("Languages Spoken at Home").

<sup>18</sup> "Asian languages" captures the following U.S. Census Bureau categories: Asian and Pacific Island Languages, Hindi, Gujarati, Urdu, and Other Indic Languages. It excludes Armenian and Persian.

<sup>19</sup> Languages Spoken at Home.

<sup>20</sup> Community of Contrasts at 24, 26.

<sup>21</sup> The current definition of LEP is persons who speak English less than "very well." The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than "very well" are deemed LEP. See H.R. Rep. No. 102-655, at 8 (1992), as reprinted in 1992 U.S.C.A.N. 766, 772.

<sup>22</sup> Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act, 2-4* (2006) (unpublished manuscript) (on file with the author).

survey said in-language assistance would be helpful for them.<sup>23</sup> Thirty percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the November 2008 election. More than 60 percent of Vietnamese voters surveyed in Orange County for the November 2004 used language assistance to vote.

Unfortunately, language minority voters are often denied much-needed and federally required assistance at the polls and face numerous barriers at the polls. First, problems can arise from poll workers who do not fully understand voting rights laws. Specifically, poll workers have denied Asian American voters their right to an assistor of their choice under Section 208 of the VRA<sup>24</sup> or asked for ID when it is not needed.<sup>25</sup> For example, during the 2012 general election, a poll worker in New Orleans mistaken thought only LEP voters of languages covered by Section 203 of the VRA were entitled to assistance in voting under Section 208. Since Vietnamese was not a Section 203-covered language either for the county or the state, the poll worker denied LEP Vietnamese voters the assistance of their choice when voting.<sup>26</sup>

Poll workers have also been hostile to, or discriminated against, Asian American voters at the polls. For example, sometimes only Asian American voters have been singled out and asked for photo identification whether it was legally mandated or not. During the 2008 election, in Washington, D.C., an Asian American voter was required to present identification several times, while a white voter in line behind her was not similarly asked to provide identification.<sup>27</sup> Also in 2008, poll workers only asked a Korean American voter and his family, but no one else, to prove their identity in Centreville, VA.<sup>28</sup>

With the continued rapid growth of the Asian American population, additional barriers, including increased discrimination against Asian American voters, are also likely to occur. Racial tensions are often the result when groups of minorities grow rapidly in an area and where there is an increase in political relevance of the minority community.<sup>29</sup> This can lead to fear of and

<sup>23</sup> Asian Americans Advancing Justice, *Strength in Numbers: Infographics from the 2012 AAPI Post-Election Survey* (2013), <http://naasurvey.com/wp-content/uploads/2015/10/2012-aapi-post-election-national.pdf>.

<sup>24</sup> Section 208 of the VRA is the right to assistance of a voter's choice by reason of blindness, disability, or inability to read or write the right and is discussed below.

<sup>25</sup> Asian Am. Legal Def. and Educ. Fund, *Asian American Access to Democracy in the 2014 Elections*, 19, 26 (2014), <http://aaldef.org/2014AccessToDemocracyReport.pdf>; Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 14 (2013), <http://advancingjustice-aajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf> [hereinafter *Voices of Democracy*].

<sup>26</sup> Terry Ao Minnis & Mee Moua, *50 Years of the Voting Rights Act: The Asian American Perspective*, 16 (2015), <http://advancingjustice-aajc.org/sites/default/files/2016-09/50-years-of-VRA.pdf>.

<sup>27</sup> Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2008 Elections*, 25-26 (2009), <http://www.aaldef.org/docs/AALDEF-AA-Access-to-Democracy-2008.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> See generally Toni Monkovic, *Why Donald Trump Has Done Worse in Mostly White States*, New York Times, Mar. 8, 2016, [http://www.nytimes.com/2016/03/09/upshot/why-donald-trump-has-done-worse-in-mostly-white-states.html?\\_r=0](http://www.nytimes.com/2016/03/09/upshot/why-donald-trump-has-done-worse-in-mostly-white-states.html?_r=0) ("Political scientists have written about the importance of tipping points in ethnic strife or resentment around the globe. It occurs when one group grows big enough to potentially alter the power hierarchy."); see also Audrey Singer, Jill H. Wilson & Brooke DeRenzis, *Metropolitan Policy Program at Brookings, Immigrants, Politics, and Local Response in Suburban Washington* (2009), <https://www.brookings.edu/wp->

resentment toward Asian Americans by those in power, which can then result in hampering the Asian American community's exercising of their right to vote free of harassment and discrimination.

We expect to see an increase in challenges to Asian American voters likely to occur with the purpose of undermining the community's political voice, such as what happened during the 2004 primary elections in Bayou La Batre, Alabama. Supporters of a White incumbent, who faced a Vietnamese American opponent during the primaries, challenged the eligibility of only Asian Americans at the polls by falsely accusing them of not being U.S. citizens or city residents, or of having felony convictions.<sup>30</sup> The losing incumbent's rationale was "if they couldn't speak good English, they possibly weren't American citizens."<sup>31</sup> DOJ's investigation found the challenges racially motivated and prohibited interference from the challengers during the general election.<sup>32</sup> That year, Bayou La Batre elected its first Asian American to the City Council.<sup>33</sup> Similarly, in Harris County (Houston), Texas, during the 2004 Texas House of Representatives race, accusations of non-citizen voting were implied in the request for an investigation by the losing incumbent in the election resulting in the victory of Hubert Vo, a Vietnamese American.<sup>34</sup> While both recounts affirmed Vo's victory, making him the first Vietnamese American state representative in Texas history, his campaign voiced concern that such an investigation could intimidate Asian Americans from political participation altogether.<sup>35</sup>

#### a. Laws to Address Language Barriers to Voting

The Voting Rights Act of 1965 has proven to be an effective tool in breaking down language barriers and helping Asian American voters access the ballot across the country.

[content/uploads/2016/06/0225\\_immigration\\_singer.pdf](#) (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, New York Times, Feb. 20, 2009, [http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?\\_r=3&pagewanted=1](http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1) (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing); Ramona E. Romero & Cristóbal Joshua Alex, *Immigrants Becoming Targets of Attacks*, National Campaign to Restore Civil Rights, Jan. 26, 2009, <http://rollback.typepad.com/campaign/2009/01/it-has-happened-again----in-early-december-less-than-a-month-after-seven-teenagers-brutally-attacked-and-killed-marcelo-luc.html> (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift Is in Store*, Los Angeles Times, Apr. 12, 2007, <http://articles.latimes.com/2007/apr/12/local/me-chinohills12> (describing protest of Chino Hills residents to Asian market opening in their community where 39% of residents were Asian).

<sup>30</sup> See H.R. Rep. No. 109-478, at 45 (2006); *Challenged Asian Ballots in Council Race Stir Discrimination Concerns*, Associated Press, Aug. 30, 2004, at 2B.

<sup>31</sup> See DeWayne Wickham, *Why Renew Voting Rights Act? Ala. Town Provides Answer*, USA Today, Feb. 22, 2006, [http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act\\_x.htm](http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm) (quoting defeated City Council incumbent Jackie Ladnier).

<sup>32</sup> See *id.*

<sup>33</sup> See Press Release, U.S. Dep't of Justice, Justice Department to Monitor Elections in New York, Washington, and Alabama (Sept. 13, 2004), [http://www.justice.gov/opa/pr/2004/September/04\\_crt\\_615.htm](http://www.justice.gov/opa/pr/2004/September/04_crt_615.htm) ("In Bayou La Batre, Alabama, the Department will monitor the treatment of Vietnamese-American voters.").

<sup>34</sup> See *Decided Victory: Heflin's Camp Swelled Store of Disinformation*, Houston Chronicle, Feb. 9, 2005, <http://www.chron.com/opinion/editorials/article/Decided-victory-Heflin-s-camp-swelled-store-of-1640120.php>.

<sup>35</sup> See *id.*; Thao L. Ha, *The Vietnamese Texans*, in *Asian Texans: Our Histories and Our Lives*, 263, 284-85 (Irwin A. Tang ed., 2007).

## i. Section 203

Section 203 has been one of the most critical provisions in ensuring Asian Americans are able to cast their ballot. Section 203 was enacted during the 1975 reauthorization of the VRA because Congress recognized that certain minority citizens, due to limited English speaking abilities, experienced historical discrimination and disenfranchisement. Congress documented a “systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English,” and an “extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities.” Congress singled out Latinos, Asian Americans, American Indians, and Alaska Natives for protection under Section 203 VRA due to its finding that:

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation.

Section 203 was enacted to remedy racial discrimination in the voting process that results in the disenfranchisement of language minorities from the four covered language groups.<sup>36</sup>

When properly implemented, Section 203 increases civic engagement among Asian American citizens. Asian Americans had the highest increase of new voter registration between 1996 and 2004 at approximately 58.7 percent.<sup>37</sup> DOJ’s Section 203 enforcement helped increase voter registration and turnout. After DOJ filed a Section 203 lawsuit in San Diego County, California, voter registration among Hispanics and Filipinos rose by over 20 percent and Vietnamese registrations increased by 40 percent; the County agreed to voluntarily provide additional language assistance to Vietnamese who had just missed the Section 203 threshold mark.<sup>38</sup> And in Harris County, Texas, the turnout among Vietnamese eligible voters doubled following the DOJ’s efforts in 2004.<sup>39</sup> That same year, Harris County elected the first Vietnamese American to the Texas state legislature after the county began fully complying with Section 203. Also, in

<sup>36</sup> Congress limited Section 203 protections to these four language groups because it continually found that they have faced and continued to face significant voting discrimination because of their race and ethnicity. Other language groups were not included because Congress did not find evidence that it experienced similar sustained difficulties because of their race and ethnicity in voting when they enacted the provision. See Bilingual Election Requirements, 52 U.S.C. § 10503; S. Rep. No. 94-295, at 31 (1975). Section 2 helps to provide protections for language minority groups that fall outside of the four covered groups as discussed later in the chapter.

<sup>37</sup> James Thomas Tucker, *The Battle Over Bilingual Ballots*, 229 (2009).

<sup>38</sup> Alberto R. Gonzales, *Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act*, The United States Department of Justice (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

<sup>39</sup> *Id.*



2004, over 10,000 Vietnamese American voters registered in Orange County, which helped elect the first Vietnamese American to California's state legislature.<sup>40</sup>

Section 203 also led to an increase in political representation by "candidates of choice" as a direct result of the increased civic engagement of these groups. During the last reauthorization of the VRA in 2006, Congress noted a sharp rise in the number of Asian American elected officials in federal, state, and local offices. As noted in the House report, the total number of elected officials in 2004 was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.<sup>41</sup> Approximately 75 Asian American officials serve at the state legislative level. The VRA and particularly the passage of Section 203 have been instrumental in these gains. For example, the vast majority of Asian American elected officials at the time of the study, 75%, were elected in jurisdictions covered by Section 203 of the VRA.<sup>42</sup> In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.<sup>43</sup> In city councils, 79% of Asian Americans were elected from VRA-covered jurisdictions.<sup>44</sup> And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.<sup>45</sup>

Unfortunately, the promise of Section 203 in helping LEP citizens to vote has yet to be fully realized because of varying degrees of compliance by different jurisdictions. In a 2012 poll monitoring effort that spanned seven states and 900 voting precincts, Advancing Justice and our local partners found that:

- Poll workers were often unaware of the availability of translated materials, did not properly display the translated materials (with one-third of all polling sites monitored having low visibility or no display of materials), and exhibited an unwillingness to display translated materials when requested.
- Polling sites did not provide adequate notice of assistance available, including inadequate translated directional signs outside to guide voters to polling sites and poor or no display of "we speak" or "we can assist you" signs indicating language assistance available at the location.
- In almost all the jurisdictions monitored, there was a lack of bilingual poll workers. Almost half of the polling sites that did have bilingual poll workers failed to provide identification of bilingual poll workers and those bilingual poll workers failed to proactively approach voters needing language assistance.

<sup>40</sup> Martin Wisckol, *Little Saigon's Big Clout*, Orange County Register, Aug. 21, 2013, <http://www.ocregister.com/articles/vietnamese-188422-community-american.html>.

<sup>41</sup> Carol Hardy-Fanta, Christine Marie Sierra, Pei-te Lien, Dianne M. Pinderhughes, and Wartyna L. Davis, *Race, Gender and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States* 4 (Sept. 4, 2005), <http://www.gmcl.org/pdf/APS9-05-05.pdf>.

<sup>42</sup> *Id.* at 17.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 17-18.

<sup>45</sup> *Id.* at 18.

- Poll workers lacked knowledge about language assistance requirements and other voting laws, such as whether voters must present photo identification.

In 2016, the Census Bureau released an updated list of Section 203 jurisdictions based upon 2010–2014 American Community Survey data with parts of Alaska, California, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New York, Texas, Virginia and Washington covered for at least one Asian language. The newly-covered language groups were: Asian Indian in Middlesex County, NJ; Cambodian in Lowell City, MA and Los Angeles County, CA; Chinese in Contra Costa County, CA, San Diego County, CA, and Malden City, MA; and Vietnamese in Tarrant County, TX and Fairfax County, VA. Today, 45 Asian American populations located in 27 counties, boroughs, census areas or cities, including six new Asian American populations have been added to Section 203 coverage since the last list was released in 2011.<sup>46</sup> Seven Asian ethnic groups are covered: Asian Indian, Bangladeshi, Chinese, Filipino, Korean, Cambodian and Vietnamese. After the 2016 determinations, there were no longer any jurisdictions covered for Japanese (where previously there were two) and Maui County, HI was no longer covered for the Filipino community.

## ii. Section 208

Section 208 has been an important complement to Section 203 for Asian American voters. Because Section 203 does not apply nationwide, not all LEP voters can take advantage of these benefits. While Asian American populations are growing rapidly, and the Section 203 coverage of jurisdictions that must provide language assistance is increasing, there are still many LEP Asian Americans who do not have access to Section 203 language assistance.

Nevertheless, all citizens who have difficulty with English, no matter where they live or what their native language is, have the right through Section 208 to an assistor of their choice to help them in the voting booth.<sup>47</sup> The only limitation on this rule is that the assistor cannot be one's employer or union representative. The assistor can even be a teenage child or a non-U.S. citizen and can be for any language. Section 208's distinct advantage is its availability at every polling site throughout the nation.

Congress added Section 208 to the VRA in 1982 to ensure that "blind, disabled, or illiterate voters could receive assistance in a polling booth from a person of their own choosing[.]"<sup>48</sup> Congress found that citizens who either do not have written language ability or who are unable to read or write English proficiently were more susceptible to having their votes unduly

<sup>46</sup> The breakdown for Asian ethnic groups was: Chinese American populations in 18 jurisdictions; Filipino American populations in 8; Vietnamese American populations in 9; Korean American populations in 4; Indian American populations in 3; Bangladeshi American populations in 1; and Cambodian American population in two. <https://advancingjustice-la.org/sites/default/files/2016-Section-203-Fact-Sheet.pdf>

<sup>47</sup> *Voices of Democracy* at 5.

<sup>48</sup> S. Rep. No. 97-417 at 2 (1982).

influenced or manipulated, and thus were more likely to be discriminated against at the polls.<sup>49</sup> Congress also stressed the importance of the voter's freedom to choose his or her assistor, as opposed to having someone appointed by elections officials to assist the voter. Voters may feel apprehensive about casting a ballot in front of someone they do not know or trust, or could even be misled into voting for a candidate they did not intend to select.<sup>50</sup> Congress determined that the right to an assistor of choice is the only way to ensure that voters can exercise their right to vote without intimidation or manipulation.<sup>51</sup>

### iii. Section 2

Section 2 of the VRA applies nationwide and mandates that all jurisdictions avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.<sup>52</sup> In addition to being utilized in "vote dilution" challenges to at-large election systems and redistricting plans and "vote denial" challenges to restrictive voting practices, Section 2 has also been used to address the needs of LEP language minority voters. As previously mentioned, while Section 203 has been able to break down the language barriers for Asian American, Latino, American Indian and Alaska Native voters in certain jurisdictions, many language minority voters still face language barriers at the polls. Voters of other language groups not covered have not benefited from Section 203, whether because the community is not populous enough to trigger Section 203 coverage or because the community is not one of the four protected language groups under Section 203.<sup>53</sup> Section 2 provides another measure of protection for all language minorities by prohibiting voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group.

Section 2 has also been utilized to protect the voting rights of language minorities who do not reside in Section 203-covered jurisdictions, as well as language minority voters who fall outside of the four protected language groups (i.e., Latinos, Asian Americans, American Indians, and Alaskan Natives). For example, the Department of Justice (DOJ) brought a Section 2 case against the City of Boston on behalf of Chinese- and Vietnamese-speaking voters in 2005.<sup>54</sup> On July 29, 2005, DOJ filed a complaint against the City of Boston under Sections 2 and 203 of the VRA alleging that the City's election practices and procedures discriminated against Latinos, Chinese Americans, and Vietnamese Americans, in violation of section 2 of the VRA. The suit also alleged that the City violated section 203 by failing to make all election information available in Spanish. DOJ alleged that the City abridged the right of LEP members of language minority

<sup>49</sup> *Id.* at 62.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 52 U.S.C. § 10301.

<sup>53</sup> Other language groups have not been included in the Section 203 framework because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting. 52 U.S.C. § 10503; S. Rep. No. 94-295 at 31.

<sup>54</sup> *United States v. City of Boston, MA* (D. Mass. 2005). DOJ also brought a Section 203 enforcement claim against the City of Boston for noncompliance in providing language assistance in Spanish.

groups to vote by treating LEP Latino and Asian American voters disrespectfully; refusing to permit LEP Latino and Asian American voters to be assisted by an assistor of their choice; improperly influencing, coercing or ignoring the ballot choices of LEP Latino and Asian American voters; failing to make available bilingual personnel to provide effective assistance and information needed by minority language voters; and refusing or failing to provide provisional ballots to LEP Latino and Asian American voters. On October 18, 2005, the court issued an order that, among other requirements, mandated the provision of language assistance to Chinese and Vietnamese voters.<sup>55</sup>

DOJ also used Section 2 on behalf of language minority voters whose language is not covered under Section 203. For example, DOJ brought a Section 2 action on behalf of Arab American voters in Hamtramck, Michigan.<sup>56</sup> In 1999, an organization called “Citizens for Better Hamtramck” challenged voters (including Bengali Americans) who “looked” Arab, had Arab or Muslim sounding names, or had dark skin. The harassment included pulling voters from voting lines and forcing them to show passports or citizenship papers before they could vote, as well as forcing some of them to take an oath of allegiance even though they had appropriate citizenship documentation. As the result of an agreement with DOJ, the city agreed to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance for each of the 19 polling places where the voter challenges occurred.<sup>57</sup>

#### **Recommendations & Best Practices To Improve Language Assistance<sup>58</sup>**

##### *Section 203 Recommendations*

Covered jurisdictions can implement some best practices in their Section 203 efforts related to translated materials, bilingual poll workers, poll worker training, pre-election day activities and Election Day activities:

Jurisdictions should work to ensure translated materials are available, accessible and effective by conducting a comprehensive review of election materials to identify materials that should be (or still need to be) translated, using certified translation vendors for translations that includes a review process utilizing community-based organizations, and providing precincts with large tri-fold standing bulletin boards for materials’ display. Additionally, for character-based languages, jurisdictions should ensure complete translation of ballot information by using phonetic translations (transliterations) of candidate names.

<sup>55</sup> Consent Order, *United States v. City of Boston, Mass.*, (No. 05-11598, D. Mass., Oct. 18, 2005), [http://www.justice.gov/crt/about/vot/sec\\_203/documents/boston\\_cd2.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.pdf).

<sup>56</sup> *United States v. City of Hamtramck, Michigan* (E.D. Mich. 2000).

<sup>57</sup> *Id.*

<sup>58</sup> For more in-depth analysis on best practices for language assistance, please reference language access guides developed by Advancing Justice – AAJC, NALGO and the Fair Elections Center, available at <http://www.naleo.org/languageaccess>.

Prior to Election Day, covered jurisdictions should take a number of steps to ensure they are complying with Section 203 and providing appropriate language assistance to their voters. First, jurisdictions should establish an advisory committee consisting of representatives from community-based organizations that work with and/or serve language minority voters. Jurisdictions should also hire election staff, such as a language minority coordinator, to coordinate the jurisdiction's efforts to meet its Section 203 requirements. Jurisdictions should engage outside entities to assist with these efforts, including using ethnic media to publicize the availability of language assistance and conducting outreach to community members and language minority voters. If targeting poll sites for language assistance, jurisdictions should use sound methodology for identifying poll sites where language assistance is needed, including consultation with local leaders from the relevant language communities.

To ensure Election Day goes as smoothly as possible, jurisdictions should ensure they have the needed staff available and well-trained to address the needs of language assistance voters. Jurisdictions should recruit sufficient numbers of bilingual poll workers, as well as train all poll workers on language assistance and cultural sensitivity. Jurisdictions should also make sure poll workers understand all applicable voting laws, including federal obligations. To be able to handle issues that arise on Election Day, jurisdictions should establish a mechanism for handling complaints about poll workers lodged by language minority voters, including addressing and resolving Election Day problems on-the-spot, as well as setting up an Election Day troubleshooter team to check poll sites for, and resolve, issues such as missing bilingual poll workers or translated materials. Jurisdictions should also add multilingual capacity to their voter hotline.

#### *Section 208*

States should educate voters about their rights under Section 208 and state law, both before the election and at the polling locations. Informing voters in as many ways as possible about the right to assistance before Election Day will help LEP voters be more prepared when they come to the polls and will give them the confidence to vote knowing that someone they trust and who speaks their language will be with them through the voting process.

States should also take proactive steps to ensure their election officials and poll workers are well aware of these rights. Guidance from Secretaries of State to local election officials on implementing Section 208 requirements should be clearly articulated. Information on what Section 208 requires, how to manage requests for assistance, what to expect in these situations, and how state laws interact with this right would help local officials plan their poll worker trainings and set protocols for polling places.

#### *Poll worker training*

When a language-minority voter cannot communicate effectively with poll workers, the voter may not be able to cast a ballot. Bilingual poll workers stationed in polling locations with concentrations of language-minority voters could address that issue but only if they are

properly trained. Election officials should provide bilingual poll workers with separate training on language assistance, some of which should be done in the covered languages. Bilingual poll workers should be trained to provide proactive assistance, greeting voters and guiding them through the elections process. Trainings for bilingual poll workers should also include a review of all voting materials in all the languages in which they are provided to ensure not only that the materials is understood but that the bilingual poll worker will be able to provide clear, complete, and accurate translations to voters. Role-playing exercises in-language for common scenarios, such as voters showing up at the wrong precinct or bringing someone with them to provide assistance will help familiarize the bilingual poll workers with what to expect at the polls and how best to address the needs of the language minority voter. Additionally, all poll workers must be properly trained to ensure they are able to assist language minority voters in culturally and linguistically appropriate ways. Regardless of whether the jurisdiction is covered under Section 203, every poll worker should be trained in understanding the needs of language minority voters and how the poll worker can best to assist their needs from a customer-service standpoint. For example, every poll worker should be familiarized with Section 208 of the Voting Rights Act and walked through a role-playing exercise on how to properly assist a voter seeking to bring in assistance of their own choosing.

#### *Voluntary assistance*

Jurisdictions have proactively, and voluntarily, provided language assistance to any size group of language minority voters that they believe has a need for such assistance. For example, in the 2004 Section 203 enforcement action by DOJ against San Diego County on behalf of Filipino and Latino voters resulted in the county agreeing to provide voluntary language assistance to Vietnamese voters as they were 85 persons away from meeting the numerical threshold during the most recent determination at that time.<sup>59</sup> In 2015, after engagement by community advocates, the Cook County Clerk's Office initially, and the Chicago Board of Elections subsequently, agreed to provide Korean language assistance in Chicago's highest areas of need. This voluntary language assistance benefitted 37,000 Korean Americans in Cook County, over 40 percent of whom are limited-English proficient.<sup>60</sup> After the 2016 determinations were released, Fairfax County, Virginia realized that they just missed Section 203 coverage threshold for the Korean language. As a result, the Fairfax County Electoral Board decided to voluntarily provide Korean language assistance in addition to the Section 203-covered Vietnamese language assistance, resulting in assistance be available to the county's 35,000 Korean-speaking residents, where over half were LEP.<sup>61</sup>

Jurisdictions can also choose to provide language assistance to those who are not near the 203 threshold as well as to groups outside of the four covered Section 203-language groups. This

<sup>59</sup> Angelo N. Ancheta, *Language Assistance and Local Voting Rights Law*, 44 Ind. L. Rev. 161, 178 (2010).

<sup>60</sup> Asian Americans Advancing Justice – AAJC, National Association of Latino Elected and Appointed Officials, and The Fair Election Center, *Community Leaders' Guide to Providing Language Access in Elections* (2018), <https://d3n8a8pro7vnmx.cloudfront.net/naleo/pages/1433/attachments/original/1533687334/community-full-6.pdf>.

<sup>61</sup> *Id.*

becomes more critical as the language minority population grows across different communities. Anywhere there is a sizeable population of language minority speakers who have need for language assistance, jurisdictions can and should take steps to ensure these populations can effectively vote. For example, working with local language-minority-serving organizations, the Pennsylvania Department of State translated the State's voter registration form into five languages beyond Spanish (which was covered by Section 203 in three of Pennsylvania's jurisdictions) – French, Khmer, Korean, Russian, and Vietnamese. These forms were made available for download and print through the Department of State's election website. In 2016, Mayor de Blasio announced that New York City had translated the state voter registration form into eleven new languages – Russian, Urdu, Haitian Creole, French, Arabic, Albanian, Greek, Italian, Polish, Tagalog, and Yiddish – bringing the total number of translated forms to fifteen languages in addition to English.<sup>62</sup> This meant that 90 percent of the State's limited-English proficient population is now covered by the translated voter registration forms.

There could be federal support to encourage the provisions of language assistance. A funding infrastructure could be established to incentivize the voluntary provision of language assistance by jurisdictions that is administered through the Election Assistance Commission (EAC). For example, stipends could be provided to jurisdictions to expand their website to include translations, with the criteria for such expansion established by the EAC (e.g. translation protocol, the extent of translations, and so forth). The EAC could provide model poll worker training modules that are focused on assisting language minority voters, including in-language role-playing exercises for localities to utilize.

### **Conclusion**

Language barriers remain one of the greatest obstacles for Asian American voters in exercising their fundamental right to vote. The U.S. Census Bureau forecasts that the number of Asian immigrants will grow between now and 2040. It is likely that voter participation rates among the Asian American community, including of newly naturalized Asian Americans, will only increase. There will continue to be a need to ensure that proper language assistance is provided and that proactive measures are undertaken to meet the needs of the language minority population.

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<sup>62</sup> The translated forms are <http://www.nycfb.info/nyc-votes/registering>. Also, New York City is required to provide the translation in Russian pursuant to state law. N.Y. Elec. Law § 3-506.

Chairwoman FUDGE. Thank you.  
Mr. Vargas, you are recognized for 5 minutes.

#### **STATEMENT OF ARTURO VARGAS**

Mr. VARGAS. Thank you, Chairwoman Fudge, Representative Aguilar. Thank you for the opportunity to be here today, and we join in mourning the passing of Representative Elijah Cummings.

This organization recognizes that in spite of the guarantees that all Americans must have the same right to vote, our Nation has not yet attained the goal of full and equal participation in our democracy. In the past and the present, policies have been adopted that disenfranchise Latino and other underrepresented voters, sometimes on the basis of their linguistic abilities.

Linguistic accessibility has long been, and remains, a fundamentally important grantor of Latino voters' equal access to the ballot. A substantial number of Latinos eligible to vote are not yet fully fluent in English, and their ability to cast an informed, successful vote depends on their access to understandable materials and to persons providing assistance with whom they can communicate.

According to 2018 ACS one-year data, nearly 22 million adult U.S. citizens speak Spanish, and approximately 6.3 million of them are not fluent in English. Americans who are not yet fluent in English register and vote at lower rates because of the legacy of many decades of intentional efforts to exclude voters on the basis of their linguistic ability or perceived national origin, as well as ongoing negligence in administering language assistance and inattention to discouraging effects of some election administration procedures.

Although millions of potential Latino voters enjoy the presumed access to multilingual election information and materials and to Spanish-speaking poll workers, many are still indisputably underserved. Just during the 2018 election cycle, reports to the Election Protection coalition hotline, including our hotline, the VE-Y-VOTA hotline, which receives calls from voters in English and Spanish, included incidences of Spanish-speaking voters in jurisdictions with large speaking populations, including in Southern California, that they were not able to request or choose Spanish language ballots. And significant number of our callers had unmet need for live language assistance in locations, including Warren County, New Jersey, and Prince William County, Virginia.

Many jurisdictions have implemented sweeping and error-fraught methods of identifying potentially ineligible voters among those registered, which disproportionately inhibit language minority voters' participation in elections. For example, since 2010, a number of States have compared voter registration lists to information in other State and Federal databases that are not designed or useful for voting purposes and have erroneously singled out voters who are mostly naturalized citizens for purging or extraordinary demands for documentation.

The nationwide trend of polling place closures and realignments also threaten language minority voters' participation.

To combat these trends, Members of Congress should mandate the use of inclusive, administrative practices in Federal elections and incentivize election administrators to take proactive steps to



better serve language minority voters. Best practices to ensure election accessibility for which Congress could provide—by which Congress could provide financial support, include regular consultation with community institutions and leaders who represent language minority communities.

And I will add, this has been a very effective practice in the past for those of us who provide naturalization assistance services. We used to have a very healthy partnership with the USCIS, and troubleshoot with them on how to better meet the needs of legal permanent residents applying for U.S. citizenship. The same concept could be applied to working with local leaders in identifying best practices for making sure voting is accessible to all.

There should be regular training for all employees on the importance and contours of measures to ensure linguistic accessibility and adaptation of administrative practices to account for and avoid disparate negative impact on language minority voters.

Given the countervailing influence of an administration that is inclined to reduce or neglect language accessibility mandates, organization and congressional advocates of accessibility must be prepared to defend the basic necessity and utility of providing language assistance for our elections. As the number of Americans with diverse national origins and linguistic abilities grow, our effectiveness in engaging those citizens as active voters will increasingly determine the health of our democracy and the credibility of our government as a product of a truly representative political process.

Thank you.

[The statement of Mr. Vargas follows:]

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Mr. Arturo Vargas

<sup>1</sup>NALEO

## Written Testimony

Of

Arturo Vargas, Chief Executive Officer  
National Association of Latino Elected and Appointed  
Officials (NALEO) Educational FundBefore the Elections Subcommittee  
of the U.S. House of Representatives  
Committee on House Administration

Voting Rights and Election Administration in America

Washington, DC  
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Chair Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections: thank you for the opportunity to present testimony to you today regarding Latino voters' access to and participation in elections.

I am Arturo Vargas, Chief Executive Officer of NALEO Educational Fund, the leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,700 Latino elected and appointed officials nationwide, and includes Republicans, Democrats, and Independents.

For several decades, NALEO Educational Fund has been at the forefront of efforts to advance policies that protect Latino voting rights, and ensure that Latinos are fully engaged as voters and enjoy fair opportunities to choose their elected leaders. We have advocated passage of state and federal voting rights legislation including the reauthorization of key provisions of the Voting Rights Act (VRA). We have also provided direct assistance to voters encountering barriers to casting ballots through our year-round, bilingual hotline, 888-VE-Y-VOTA, and through nationwide dissemination of bilingual voting rights public service announcements, palm cards, and other materials. In 2018 alone, the 888-VE-Y-VOTA hotline received over 9,100 voting calls.

Portions of the following testimony are drawn from our 2018 series of reports published in partnership with the Fair Elections Center and Asian Americans Advancing Justice-AAJC, entitled *Community Leaders' Election Officials'*, and *Policymakers' Guide to Providing Language Access in Elections*.<sup>1</sup>

#### To Ensure Inclusion of All Americans, Elections Must Be Linguistically Accessible

Although all Americans have enjoyed the equal right to vote by law at least since ratification of the 19<sup>th</sup> Amendment in 1920 and enactment of the Indian Citizenship Act in 1924, our nation has not yet attained the goal of full and equal participation in democracy. Before enactment of the VRA, there were many explicitly and operationally discriminatory policies intended to surgically disenfranchise Latino and other historically underrepresented voters. For example, Article II, Section 1 of the California Constitution, adopted in 1894, conditioned the right to vote on ability to read English; the lead proponent of this provision stated in its defense, "We look with alarm upon the increased immigration of the illiterate and unassimilated elements...and believe that every agency should be invoked...to protect the purity of

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<sup>1</sup> Asian Americans Advancing Justice - AAJC, Fair Elections Center, and NALEO Educational Fund, *Community Leaders' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vnm.cloudfront.net/naleo/pages/1433/attachments/original/1533687334/community-full-6.pdf>; *Election Officials' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vnm.cloudfront.net/naleo/pages/1433/attachments/original/1533764841/election-official-full-6.pdf>; *Policymakers' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vnm.cloudfront.net/naleo/pages/1433/attachments/original/1533687336/policymaker-full5.pdf>. NALEO Educational Fund extends grateful thanks to our partners in producing these guides for permitting us to republish portions of that work in the present testimony, and in particular to the staff of the Fair Elections Center for coordinating compilation of the Guides.

the ballot-box from the corrupting influences of the disturbing elements."<sup>2</sup> In 1927, the Texas state legislature enacted an apparently facially neutral law that gave political parties the authority to determine qualifications for voting in primaries, in order to circumvent a court decision invalidating a state law excluding voters of color from primaries. Reasoning that political parties were private entities unlike the public legislature, courts initially approved of and gave force to the Texas Democratic Party's explicit prohibition on black and Latino participation in primary elections. *Grovey v. Townsend*, 295 U.S. 45 (1935).

At its inception, the VRA's only provision written to protect citizens who were not fully fluent in English from discrimination was § 4(e), 52 U.S.C. § 10303(e), which prohibits practices that deny registration or the vote because of inability to speak English to U.S. citizens educated in another language within the United States and its territories. This provision was inspired by Congress' awareness that Puerto Ricans, in particular the then-sizable Puerto Rican population in New York, experienced significant and intentional barriers to the vote that exploited some individuals' lack of fluency in English.<sup>3</sup>

By the time of the VRA's 10<sup>th</sup> anniversary and reauthorization in 1975, significant additional evidence had come to light of systemic discrimination against Latino and other language-minority voters, and both policymakers and academics were increasingly taking note of the problem. The U.S. Commission on Civil Rights' 1965 report on initial implementation of the VRA focused nearly exclusively on African American voters and the effect of literacy tests and other barriers on their exercise of the franchise. In contrast, its 1975 report on the state of voting rights contained extended discussion of the selection of polling locations and personnel inhospitable to Latino voters; purges of registration records done without provision of notice to voters in a language they could understand; and insistence on English-only signage and other election materials in the face of widespread need for translations.<sup>4</sup>

In 1975, Congress received testimony from numerous voters, such as Modesto Rodriguez of Pearsall, TX, who told Members that officials in his home town used tactics including issuance of subpoenas and filing of election fraud charges against illiterate Latino voters to successfully intimidate local residents into avoiding polling places. Election materials and assistance available only in English served as a de facto language test for voters in Pearsall, where many could not read or speak English: Mr. Rodriguez estimated that 60% of Spanish-speaking residents did not read English, and that 30% could not speak any English. As a result, fewer than half

<sup>2</sup> *Castro v. State of California*, 466 P.2d 244, 248 (Cal. 1970), Retrieved from: <https://www.courtlistener.com/opinion/1173738/castro-v-state-of-california/>

<sup>3</sup> See generally Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," 18 *National Black Law Journal* 201 (2004).

<sup>4</sup> U.S. Commission on Civil Rights, "The Voting Rights Act...the first months," 26, 75, <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v942.pdf> (last visited Sept. 26, 2015); U.S. Commission on Civil Rights, "The Voting Rights Act: Ten Years After," 74-75, 78, 86-87, 109, 114-16, <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v943a.pdf> (last visited Sept. 26, 2015).

of eligible Latino voters in the town were registered in 1975, compared to two-thirds of eligible white voters.<sup>5</sup>

In recognition that language-minority voters were targets of discriminatory measures meant to prevent them from participating in elections, Congress adopted Section 203 of the VRA, 52 U.S.C. § 10503, in 1975; and Section 208, 52 U.S.C. § 10508, in 1982. Section 208 ensures that any U.S. citizen of voting age less than fully fluent in English can access linguistic accommodations. It also ensures that voters exercise some control over the provision of assistance and can choose to receive help from a person whose language skills and respect for the confidentiality of the ballot they trust. These provisions complement Section 2 of the VRA, 52 U.S.C. § 10301, which prohibits practices or procedures that discriminate on the basis of race, color, or membership in a language-minority group. Together these provisions have helped to break down some of the barriers faced by citizens with limited English proficiency. The VRA has also inspired states and localities to take statutory and voluntary action to further expand language assistance beyond the minimum requirements of the Act.

Linguistic accessibility remains a fundamentally important guarantor of Latino voters' equal access to the ballot today. A substantial number of eligible Latino voters are not yet fully fluent in English, and their ability to vote knowledgeably and successfully depends upon their access to materials they can understand and persons providing assistance with whom they can communicate. According to 2018 American Community Survey 1-year data, nearly 22 million adult U.S. citizens speak Spanish, and approximately 6,320,000 of them are not fluent in English. An additional 5,089,000 adult citizens speak another language and are not fluent in English. These Americans have registered and voted at lower rates than their counterparts who are fluent in English, a legacy of many decades of intentional efforts to exclude potential members of the electorate on the basis of their linguistic preference or perceived national origin.

Disparities persist to the present. For example, the New York City Campaign Finance Board's report on the 2018 election noted that in the city, "neighborhoods with high percentages of LEP individuals were negatively correlated with voter turnout."<sup>6</sup> A 2017 report from the Tacoma-Pierce County, Washington Health Department on voter turnout found that larger populations of adults with limited English proficiency correlated negatively with voter participation, and that each one percent increase in the population of Spanish-speaking adults not fluent in English in a Census block group would likely result in a one percent decline in the voting rate.<sup>7</sup>

Americans who depend upon language assistance are becoming more diverse and more geographically dispersed, and these factors heighten the importance of

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<sup>5</sup> Ari Berman, *The Lost Promise of the Voting Rights Act*, The Atlantic, August 5, 2015, <http://www.theatlantic.com/politics/archive/2015/08/give-us-the-ballot-expanding-the-voting-rights-act/399128/> (last visited September 22, 2015).

<sup>6</sup> Katherine Garrity, *2018 - 2019 Voter Analysis Report 44*, 2019. Retrieved from: [https://www.nycctb.info/pdf/Voter\\_Analysis\\_Report\\_2019.pdf](https://www.nycctb.info/pdf/Voter_Analysis_Report_2019.pdf)

<sup>7</sup> Alex Klementiev and Melissa Trapp Petty, Tacoma-Pierce County Health Department, *Voter Turnout in Pierce County, WA: Analysis of Electoral and Population Data 12-13*, 2017. Retrieved from: <https://www.tpchd.org/home/showdocument?id=4337>

effective language assistance. Generally, families with immigrant origins, and naturalized citizens in particular, come from throughout the world to establish roots in the United States. During the most recent decade, the share of newly naturalized citizens from the top ten countries of origin fell from 57 to 52 percent, according to the Migration Policy Institute<sup>8</sup>, an indication that naturalized citizens come from an increasingly diverse cross-section of nations.

Americans with immigrant origins and other characteristics associated with higher rates of limited proficiency in English have increasingly moved to regions of the country that do not have a long history of linguistic diversity. Puerto Rican migration from the island to the mainland in the aftermath of Hurricane Maria is one of the most recent contributors to this trend: indicators including cell phone geolocation data and records of Facebook users' locations show concentrations of Puerto Rican residents settling both in longstanding population centers in central and south Florida and the New York City region, as well as in states and metropolitan areas like Atlanta, Georgia; southeastern Pennsylvania; northern Ohio; and along parts of New York's northern border with Canada.<sup>9</sup>

Elsewhere around the country, Americans with varied linguistic abilities have moved in search of work opportunities and to join expanding communities of people with similarly diverse national origins, as evidenced by the growing reach of coverage under Section 203. Between 2011 and 2016, the number of counties and cities required to provide voting materials and assistance in multiple languages increased by 15, and coverage extended to four new states: Idaho, Oklahoma, Iowa, and Georgia.<sup>10</sup>

#### High Quality Language Assistance Increases Latino Voters' Participation

Isolating the positive or negative impact of a particular practice on voters' attitudes about and engagement in elections is persistently difficult.<sup>11</sup> Nonetheless, many influential political scientists and voting rights experts agree that, insofar as they are properly implemented, language assistance requirements have had a tangible positive impact on language-minority communities' rates of participation in elections and governance. For example, researchers see this positive effect in increased presence of language minority community members in local office the longer a

<sup>8</sup> Brittany Blizzard and Jeanne Batalova, Migration Policy Institute, *Naturalization Trends in the United States*, 2019. Retrieved from: <https://www.migrationpolicy.org/article/naturalization-trends-united-states#Birth>

<sup>9</sup> Center for Puerto Rico Studies, *Puerto Rico One Year after Hurricane Maria*, 2018. Retrieved from: [https://centropr.hunter.cuny.edu/sites/default/files/data\\_briefs/Hurricane\\_maria\\_1YR.pdf](https://centropr.hunter.cuny.edu/sites/default/files/data_briefs/Hurricane_maria_1YR.pdf); Sujata Gupta, "Facebook data show how many people left Puerto Rico after Hurricane Maria," *Science News*, May 3, 2019, <https://www.sciencenews.org/article/facebook-data-show-how-many-people-left-puerto-rico-after-hurricane-maria>

<sup>10</sup> Asian Americans Advancing Justice-AAJC, NALEO Educational Fund, and Native American Rights Fund, *Voting Rights Act Coverage Update 1-2* (December 2016), <https://advancingjustice-aajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>

<sup>11</sup> Cf. Robert S. Erikson & Lorraine C. Minnite, "Modeling Problems in the Voter Identification - Voter Turnout Debate," 8 *Election L. J.* 85 (2009); Daniel Tokaji, "Applying Section 2 to the New Vote Denial," 50 *Harvard Civil Rights-Civil Liberties Law Review* 475-76 (2015).

jurisdiction has been subject to Section 203 and has hosted federal observers<sup>12</sup>, higher likelihood of being registered among Latinos residing in jurisdictions covered by Section 203<sup>13</sup>, increased Latino registration and voting rates in jurisdictions covered by Section 203 as compared to non-covered jurisdictions<sup>14</sup>, and increased language-minority community registration, voter turnout, and presence in office overall over the span of Section 203's existence.<sup>15</sup>

The progressively wider application of language assistance requirements is positively associated with increased voter participation by Latino, Asian American, American Indian and Alaska Native citizens.<sup>16</sup> For example, the Latino voter registration rate grew from 34.9 percent for the Congressional elections of 1974 to 53.7 percent in the fall of 2018.<sup>17</sup> Asian American voter registrations increased dramatically between 1996 and 2004, by approximately 58.7 percent, after a 1992 legislative amendment expanded availability of Asian language assistance.<sup>18</sup> Between 1972 and 1980, as language assistance requirements under Section 203 entered into effect, voter turnout on seven reservations in Arizona increased by more than 35 percent, while voter registration jumped 165 percent in Coconino County and 87 percent in Navajo County. According to Native American voting rights expert James T. Tucker, Native communities in New Mexico and Utah saw similar dramatic increases in participation during this same time frame.<sup>19</sup>

Increases in availability of language assistance in elections have also helped increase the presence of representatives of language-minority communities in elected office. During the 2006 reauthorization of the VRA, Congress found that more than 5,200 Latinos and almost 350 Asian Americans had been elected to office.<sup>20</sup> Native American candidates, whose communities had not traditionally been represented by their own members, were winning election to local school boards, county commissions and State legislatures in ever-increasing numbers.<sup>21</sup>

<sup>12</sup> Melissa J. Marschall and Amanda Rutherford, "Voting Rights for Whom? Examining the Effects of the Voting Rights Act on Latino Political Incorporation," 60 *American Journal of Political Science* 590 (July 2016).

<sup>13</sup> Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).

<sup>14</sup> Michael Jones-Correa, "Language Provisions Under the Voting Rights Act: Effectiveness and Implementation" (testimony presented to a public meeting of the Presidential Commission on Election Administration, Philadelphia, PA, September 4, 2013).

<sup>15</sup> James T. Tucker, "Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act," 10 *NYU Journal of Legislation and Public Policy* 206 (2006).

<sup>16</sup> H.R. Rep. No. 109-478, at 18-19.

<sup>17</sup> U.S. Census Bureau, *Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2018*. Retrieved from: <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>

<sup>18</sup> James T. Tucker, *THE BATTLE OVER BILINGUAL BALLOTS* 229 (Routledge: 2009).

<sup>19</sup> James T. Tucker, "Statement of Dr. James Thomas Tucker Before the Presidential Commission on Election Administration: Barriers to Language Minority Voters and How to Overcome Them" 2 (2013). Retrieved from: <https://www.eac.gov/assets/1/28/Jim-Tucker-Barriers-to-Language-Minority-Voters-and-How-to-Overcome-Them-Testimony-to-PCEA.pdf>

<sup>20</sup> H.R. REP. No. 109-478, at 19.

<sup>21</sup> *Id.* at 20.

Some experts have posited that language assistance has a positive effect beyond the practical value of helping to ensure that voters can navigate the voting system and cast an informed ballot. Some analysis suggests that language assistance has increased participation among native-born voters who are likely to be fluent in English. Although their fluency in English may permit them to vote without receiving language assistance, they are likely to derive a psychological benefit from a multilingual presence in the polls. These voters feel more comfortable and welcomed in polling places in which there is increased presence from language-minority communities, and visible provision of multilingual services.<sup>22</sup> Even this cultural value of language assistance plays a materially important role in encouraging underrepresented communities' civic participation, and thereby sustaining our democratic system.

In numerous ways, democracy benefits when jurisdictions commit to and invest in holding elections in which all their citizens can participate, regardless of their ability to read or speak English. The provision of language assistance effectively encourages members of historically underrepresented communities to participate in elections, and ensures that all individuals can vote comfortably and knowledgeably. By increasing parity and deepening relationships between public officials, the communities they represent, and the voters who elect them, effective language assistance efforts increase faith and trust in government; in turn, these sentiments help ensure that all citizens feel more secure that their voices will be heard in America's electoral process.

#### Election Administration Procedures and Methods Can Impair Language Minority Voters' Participation

Wherever there are voters who are not yet fully fluent in English, election administrators should employ time-tested language assistance tools to ensure elections' accessibility, whether or not applicable law mandates it. Election administrators who serve language minority communities must also devote attention to the effects of the choices they make throughout the process of holding elections and even in between election dates. Decisions about matters that do not seem to concern language assistance can themselves have a disproportionate discouraging impact on citizens from language minority communities.

#### *Inadequate Language Assistance*

Although millions of potential Latino voters enjoy access to multilingual election information and materials and to Spanish-speaking pollworkers and election administration employees, many communities of voters are still indisputably

<sup>22</sup> Rodolfo de la Garza and Louis de Sipio, "Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation after Twenty Years of Voting Rights Act Coverage," in *Pursuing Power: Latinos and the Political System*, ed. F. Chris Garcia (Notre Dame: University of Notre Dame Press, 1997), 72-126; S. Karthick Ramakrishnan, "Voters From Different Shores: Electoral Participation in Immigrant America" (Ph.D. diss., Princeton University, 2002); Rodolfo de la Garza, "Latino Politics," 7 *Annual Review of Political Science* 91 (2004); Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).



underserved. During the 2018 election cycle, anecdotal reports to Election Protection Coalition hotlines, including NALEO Educational Fund's 888-VE-Y-VOTA phonebank, included incidences of Spanish-speaking voters attempting unsuccessfully to request or choose Spanish ballots in jurisdictions with large Spanish-speaking populations in southern California, and shortages of bilingual personnel that forced voters into disproportionately long waits or difficulty attempting to communicate with monolingual pollworkers in California and Arizona. Voters from jurisdictions not yet required under the VRA to provide multilingual assistance nonetheless reported significant unmet need for language assistance in locations including Warren County, New Jersey and Prince William County, Virginia.

More broadly, successful private litigation has proven that contemporary voters still have unsatisfied needs for and entitlements to election materials in languages they can understand. For example, in 2016, a federal court ruled in favor of community advocates who challenged a Texas state law that unlawfully prescribed more stringent qualifications for interpreters than for individuals assisting voters with physical or mental handicaps.<sup>23</sup> Another court granted a preliminary injunction in 2019 in favor of plaintiffs who challenged the failure of several counties throughout Florida to ensure access to elections for expanded communities of eligible voters of Puerto Rican origin who are not yet fluent in English.<sup>24</sup> In view of these successes, election administrators legally obligated to provide or permit language assistance should proactively examine the effectiveness of their efforts periodically. Even in areas where there is no legal requirement to provide multilingual materials, election administrators should not presume that there is no need for a formal program of assistance. These administrators should employ polling place observations and community engagement to assess whether and how voters would use translations, interpretation and other language assistance.

#### *Overzealous Registration Purges*

Language assistance efforts constitute a strong start to the process of engaging Latino and other language minority voters, but election administrators cannot stop there. It is imperative that those responsible for the conduct of our elections stay vigilant to the unintended effects of administrative decisions for underrepresented communities. Certain contemporary trends in election administration, including aggressive efforts to cancel registrations on the basis of dubious evidence, and frequent reconfiguration of voting locations, are concerning because of the likelihood that they will disproportionately impair voting by members of language minority communities.

Now that they are more than twenty years removed from the National Voter Registration Act's landmark reforms of the voter registration maintenance process, jurisdictions have begun to test its boundaries and implement increasingly sweeping

<sup>23</sup> Order (Filed 8/12/16), *OCA-Greater Houston v. State of Texas*, No. 1:15-cv-00679-RP (W.D. Tex.), Retrieved from: <https://www.courtlistener.com/recap/gov.uscourts.txwd.765875.60.0.pdf>

<sup>24</sup> LatinoJustice PRLDEF, "Court Orders Expansion of Spanish Language Access in Florida for Upcoming Elections" (May 10, 2019). Retrieved from: <https://www.latinojustice.org/en/news/court-orders-expansion-spanish-language-access-florida-upcoming-elections>

and error-fraught methods of identifying potentially ineligible voters among those registered. For example, since 2010, a number of states have undertaken cross-comparisons of multiple databases to identify individuals who are registered to vote, but appear to be noncitizens in other state agency records. In the vast majority of cases, these individuals are naturalized citizens who first interacted with the state as legal permanent residents, and who did not know that the state would not automatically update its records when they became U.S. citizens.<sup>25</sup> Any such process that targets naturalized citizens is likely to have a disproportionate impact on Latinos, and in one representative instance in Florida, such an effort resulted in creation of a list of suspected noncitizens of whom 87 percent were people of color, and 58 percent were Latino, even though Latinos accounted for less than 20 percent of the state's eligible voters.<sup>26</sup>

It is alarming that jurisdictions continue to attempt registration purges based on information in state and federal databases that are not designed or useful for voting purposes, as Texas recently did<sup>27</sup>, despite widespread understanding of those databases' limitations. State agencies, especially drivers' license-issuing entities, have little or no reason to distinguish between long-term legal permanent residents, who are eligible for most public benefits and services, and U.S. citizens. Therefore, their records do not generally contain reliable information about residents' current citizenship status. In fact, agency records sometimes erroneously identify native-born American citizens as immigrants.<sup>28</sup> Moreover, state agencies create database records using electronically-captured information, transcription of handwritten documents, and manual data entry. Spelling and other errors inevitably appear in resulting records, and they can become consequential where jurisdictions employ overzealous methods for flagging potentially incorrect or ineligible registration requests, as Georgia attempted to do in 2018 with its exact-match requirement for new voter registrations.<sup>29</sup> Many potential Latino voters use both their mother's and

<sup>25</sup> Letter from Diana Kasdan, Democracy Counsel, Brennan Center for Justice at NYU School of Law and Deirdre Macnab, President, League of Women Voters of Florida, to the Hon. Ken Detzner, Secretary of State of Florida 4-6 (June 27, 2012), [https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/062712\\_Letter\\_to\\_Detzner.pdf](https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/062712_Letter_to_Detzner.pdf)

<sup>26</sup> Rachel Weiner, "Florida's Voter Purge Explained," *The Washington Post* (June 18, 2012). Retrieved from: [https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhhvNIV\\_blog.html](https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhhvNIV_blog.html)

<sup>27</sup> Amy B. Wang, "Texas agrees to stop effort to purge voter rolls," *The Washington Post* (April 26, 2019). Retrieved from: <https://www.washingtonpost.com/politics/2019/04/26/texas-agrees-stop-effort-purge-voter-rolls/>

<sup>28</sup> Marc Caputo, "How Rick Scott's noncitizen voter purge started small and then blew up," *Miami Herald* (June 12, 2012). Retrieved from: <https://www.miamiherald.com/news/politics-government/article1940542.html> (noting that Bill Internicola, a U.S.-born veteran, was among those wrongly singled out as a noncitizen when Florida cross-referenced its Highway Safety and Motor Vehicles agency database and voter registration database in 2011).

<sup>29</sup> Under this policy, new voter registration applications throughout the state were placed in suspense, and eventually discarded, if there were any discrepancies between them and parallel records in state ID and social security databases that voters failed to explain and correct. Differences as small and inconsequential as missing dashes or single-letter differences in spelling led to suspension of applications. Miriam Valverde, Politifact, "Georgia's 'exact match' law and the Abrams-Kemp governor's election, explained" (October 19, 2018). Retrieved from: <https://www.politifact.com/georgia/article/2018/oct/19/georgias-exact-match-law-and-its-impact-voters-gov/>

father's last names in a convention that is not familiar to non-Hispanic Americans, which is one of the reasons that Latino voters frequently find accidental discrepancies between records about them that various government agencies maintain.<sup>30</sup>

In recognition of state databases' weaknesses, states have also sought to verify registrants' citizenship through checks against the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) database. However, because its focus is on cataloguing people who have contact with the federal government as noncitizens, SAVE is far from a comprehensive list of U.S. citizens, and also omits some noncitizen residents. Native-born American citizens are not listed in it, nor are people who derived U.S. citizenship by law but have not sought a declaration of their citizenship from DHS, or undocumented people who have never come to the attention of immigration enforcement authorities. DHS itself cautions that the system was not designed to verify voter eligibility, and has taken steps to ensure that states that use the system for that purpose allow voters ample opportunity to correct any erroneous indication arising from a SAVE check that they might be noncitizens.<sup>31</sup>

Latino voters also are disproportionately vulnerable to wrongful denials of the vote when jurisdictions aggressively cancel the voter registrations of individuals who have failed to vote and to respond to official mailings. In Ohio, for example, county Boards of Elections use a registered voter's failure to vote in a single election as evidence that the voter has moved. In light of Latino and language minority voters' persistently lower rates of turnout, this process is virtually guaranteed to target

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<sup>30</sup> The experience of North Carolina voter Maria Sanchez is typical of this phenomenon. Ms. Sanchez's full given name is Maria del Carmen Sanchez Ennes, and Sanchez, her father's last name, is the last name she went by before her marriage. After marriage, Ms. Sanchez's North Carolina driver's license listed her married name, Maria Sanchez Thorpe, but mistakenly denoted "Sanchez" as her middle name. When she first obtained a Social Security Number as a child, moreover, her name was mistakenly recorded with "del" denoted as her middle name, and without any notation of "Carmen" or "Ennes." In 2007, when Ms. Sanchez attempted to renew her North Carolina driver's license, she was initially refused service because employees determined that the married name on her previously-existing driver's license record did not match the name on her U.S. passport: Maria del Carmen Sanchez. Unbelievably, the solution employees offered her was to obtain a divorce so that her legal name would revert to that reflected on her passport. Although she ultimately was able to renew her drivers' license, in 2015 Ms. Sanchez discovered that the name now on her driver's license did not match her name in voter registration records, and that she might be refused a ballot in future elections in which the state's new voter ID requirement applied on that basis. North Carolina voter registration records identify voters' races and ethnicities, but Ms. Sanchez was further dismayed to learn that her own registration record did not list her as Latina. Deposition Testimony recorded May 5, 2015, *North Carolina NAACP v. McCrory*, No. 1:13-cv-658 (M.D. N.C.).

<sup>31</sup> Mark K. Matthews, "Florida demands access to federal database to purge illegal voters," *Orlando Sentinel* (June 7, 2012). Retrieved from: [http://articles.orlandosentinel.com/2012-06-07/news/os-florida-voter-battle-20120607\\_1\\_voter-registration-voter-rolls-dhs](http://articles.orlandosentinel.com/2012-06-07/news/os-florida-voter-battle-20120607_1_voter-registration-voter-rolls-dhs); Department of Homeland Security, U.S. Citizenship and Immigration Services, and the Iowa Secretary of State, *Memorandum of Agreement Concerning the Use of the Systematic Alien Verification for Entitlements (SAVE) System to Verify Citizenship and Immigration Status of Registered Voters* § (B)(1)(m-n), Aug. 14, 2013, <https://sos.iowa.gov/elections/pdf/SAVEMOA.pdf>.

relatively higher proportions of the state's voters of color at its outset. Where a registrant has failed to vote for a two-year period, the voter receives a notice in the mail; if the voter does not respond to the notice or vote in the subsequent four-year period, the voter's name is removed from the registration rolls.

However, Ohio's mailed Confirmation Notice, which explains the steps voters must take to avoid removal from the rolls, is generally only provided in English. Meanwhile, more than one-third of Latinos nationwide speak a language other than English at home, and according to 2018 American Community Survey 1-year data from the Census Bureau, more than 132,000 eligible Ohio voters are not yet fully fluent in English. This means that Latinos and other minorities for whom English is a second language are far more likely to find themselves removed from the voter registration rolls in Ohio, and elsewhere, without explanation they can understand.

#### *Polling Place Closures*

For many voters, ability to access polling places still determines whether or not they can participate in elections. While the ability to vote-by-mail (VBM) or absentee ballots might appear to provide an easily accessible alternative to polling place voting, in fact, many voters face significant difficulties in casting VBM ballots. According to the National Conference of State Legislators, as of July 2019, 19 states still required voters to present one of a limited number of approved excuses in order to obtain an absentee or VBM ballot that need not be cast in-person at a polling place. For example, in Texas, only four categories of voters are eligible for VBM ballots: people 65 years or older, people with disabilities, people who will be outside their county of residence on Election Day and during all early voting periods, and people who are in jail but still eligible to vote. Even in states that offer no-excuse VBM voting to all, voting without visiting a polling place requires advance planning and preparation. Most states require voters to send in absentee ballot requests days, or weeks, in advance of Election Day, and some make no emergency provision for people who do not meet the deadline but cannot get to a polling place.

In-person voting is particularly important to Latino and other language minority voters. In many jurisdictions around the country, successfully completing administrative prerequisites for securing VBM ballots is a more difficult task for voters not yet fluent in English for the straightforward reason that forms and information are often not provided in any language other than English. In addition, voters with limited English proficiency enjoy greater access to in-language materials and assistance in polling places than when voting absentee. In many jurisdictions, voters can more easily identify bilingual workers and find in-language information in physical polling places than they do when voting remotely.

Given that so many voters need, or prefer, to vote in-person at a polling place, it is difficult to rationalize the extremely disturbing trend among a significant number of jurisdictions to reduce the number of polling places available to voters. For example, in just 757 counties formerly covered under Section 5 of the VRA, there were 1,688

fewer polling places in 2018 than in 2012.<sup>32</sup> Dramatic changes to the number and location of polling places that happen close in time to major elections have proven to be particularly confusing and frustrating for voters from language minority communities; thus, when administrators adopt polling place reductions without inviting public feedback or conducting significant community outreach, as is often the case, it is highly likely that there will be negative effects on vulnerable voters.

When jurisdictions have consolidated or relocated polling places in recent years, the aggregate distance from residence to a polling place has often increased for historically underrepresented communities of color. This results in part from the fact that segregation still exists within our nation and the localities where these communities reside. As a 2018 *Washington Post* headline stated, "America is more diverse than ever – but still segregated."<sup>33</sup> Americans are more likely than not to live near others who predominantly share the same race and ethnicity<sup>34</sup>, and according to the Brookings Institution, "[a]t the rate of progress we've seen since the 70s, 268 of our [largest] metro areas will not be integrated until the year 2120."<sup>35</sup> As a result, the disparate disruptions that polling place moves cause to different communities of voters have often fallen most heavily on the shoulders of segregated neighborhoods of voters with low participation rates who have also been the targets of decades of intentionally discriminatory election laws and practices.

For example, county boards of election across the state of North Carolina changed the locations of about one-third of early voting polling places in 2014. Researchers who calculated registered voters' resulting distance to travel to a new location found that the average white voter's distance from the nearest early voting site had increased by just 26 feet, while the average black voter's distance from the nearest early voting site had increased by a quarter of a mile.<sup>36</sup> In Alaska, numerous Native American voters live in rural, geographically isolated locations, and have found themselves at risk of being effectively barred from voting by proposed polling place closures and consolidations such as a series of changes proposed in 2008 that would have assigned some voters to sites they could only reach by plane.<sup>37</sup>

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<sup>32</sup> Leadership Conference Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* 10 (September 2019). Retrieved from: <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

<sup>33</sup> Aaron Williams and Armand Emamdjomeh, "America is more diverse than ever – but still segregated," *The Washington Post* (May 10, 2018). Retrieved from:

<https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/>

<sup>34</sup> Solomon Greene, Margery Austin Turner and Ruth Gourevitch, "Racial Residential Segregation and Neighborhood Disparities" (August 29, 2017). Retrieved from: <https://www.mobilitypartnership.org/publications/racial-residential-segregation-and-neighborhood-disparities>

<sup>35</sup> Dayna Bowen Matthew, Edward Rodrigue and Richard V. Reeves, Brookings Institute, "Time for justice: Tackling race inequalities in health and housing" (October 19, 2016). Retrieved from:

<https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/>

<sup>36</sup> William Busa, insightus, "North Carolina's Shell Game of Electoral Apartheid: How the Board of Elections Shoved Black Voters Away From the Ballot Box in 2014" (November 23, 2015). Retrieved from: [https://insight-us.org/fair\\_places.html](https://insight-us.org/fair_places.html)

<sup>37</sup> Amici Curiae Brief of the Alaska Federation of Natives, Alaska Native Voters and Tribes in Support of Respondents 21-23 (filed February 1, 2013), *Shelby County v. Holder*, No. 12-96. Retrieved from: [https://www.narf.org/bloglinks/shelby\\_county\\_brief.pdf](https://www.narf.org/bloglinks/shelby_county_brief.pdf)

In addition, persistent findings of disparate impact in wait times at polling places support the proposition that individual polling place consolidation decisions form a pattern that hurts underrepresented voters in the aggregate. When polling places close, election administrators often assign steady or increasing numbers of voters to fewer locations with static supplies of space, personnel, and equipment, and the action can create bottlenecks. Numerous studies have concluded that Latino and other voters of color wait longer at polling places today than non-Hispanic white voters, and are disproportionately likely to face a wait of 30 minutes or more. In 2019, professors who analyzed cell phone geolocation data for the period of the 2016 general election concluded that there was "substantial and significant evidence of racial disparities in voter wait times."<sup>38</sup> Their findings echo voters' subjective impressions: for example, respondents of color in MIT's 2016 Survey of the Performance of American Elections reported longer wait times, and higher likelihood of waiting more than ten minutes to vote, than their non-Hispanic white counterparts.<sup>39</sup> Responses to the 2006, 2008, 2012, and 2014 Cooperative Congressional Election Studies revealed, similarly, that the average voter of color in these elections waited almost twice as long to vote as the average non-Hispanic white voter.<sup>40</sup>

When polling place closures and realignments mean that fewer resources and employees are available to serve larger numbers of voters from language minority communities, lost votes are a direct result. Professor Charles Stewart estimates that in 2012 alone, approximately 500,000-730,000 votes were likely lost to voters' unwillingness or inability to appear in person and wait for as long as necessary to vote at a polling place.<sup>41</sup> In light of racial and ethnic disparities in access to a smoothly-functioning polling place, it is very likely that lost votes are disproportionately those of voters of color.

Linguistically Diverse Communities Need More Engagement Between Community Leaders and Public Officials, and More Widespread Adoption of Inclusive Election Administration Practices

NALEO Educational Fund and Latino elected and appointed officials throughout the country are extremely concerned about the increasing and sometimes unmet need for language assistance, and administrative trends that have a disparate negative effect on language minority voters' access to elections. These concerns are particularly salient in light of the fact that there is relatively less federal oversight of election administration, and less effort by some federal agencies to help states and localities engage language minority voters. For example, even as representatives of

<sup>38</sup> *Id.* at 9.

<sup>39</sup> MIT Election Lab, "Insights into Voting Wait Time from the 2016 Elections Performance Index" (September 10, 2018). Retrieved from: <https://medium.com/mit-election-lab/insights-into-voting-wait-time-from-the-2016-elections-performance-index-6693576e9b99>

<sup>40</sup> Stephen Pettigrew, "The Racial Gap in Wait Times: Why Minority Precincts Are Underserved by Local Election Officials," 132 *Political Science Quarterly* 3 (2017). Retrieved from: <http://www.stephenpettigrew.com/articles/pettigrew-2017-psq.pdf>

<sup>41</sup> Charles Stewart and Stephen Ansolabehere, "Waiting in Line to Vote" (July 28, 2013). Retrieved from: <https://www.eac.gov/documents/2017/02/24/waiting-in-line-to-vote-white-paper-stewart-ansolabehere/>

language minority communities have raised concerns about the comprehensiveness and effectiveness of assistance, especially in jurisdictions like Gwinnett County, Georgia that are newly covered under language assistance provisions<sup>42</sup>, there is no public evidence that the Department of Justice has devoted concomitant attention to sharing guidance with election administrators and observing the results of their efforts.

To ensure our nation's continued progress toward equal participation of all Americans in elections, regardless of race, ethnicity, or linguistic preference, election administrators must adopt a wide range of inclusive election practices. They must consult regularly with community institutions and leaders who represent language minority communities; train all employees regularly on the importance and contours of measures to ensure linguistic accessibility; and adapt administrative practices to account for and avoid disparate negative impact on language minority voters. Language minority community leaders and elected officials can play an integral role in demanding that election administrators implement these practices.

To effectively serve all voters, officials responsible for elections need pertinent information about their communities, including Census data concerning the residential location and socio-economic characteristics of U.S. citizens who are not fully fluent in English or who speak a language other than English at home. Because Census data are based on sampling and may not perfectly reflect the rates at which eligible voters prefer and choose in-language materials over those available in English, administrators also benefit from the knowledge they gain by requesting new voters' language preference when they register, and by sending existing voters multilingual postcards asking them to identify their preferred language.

Additionally, one of the best methods for determining the need for language assistance and best means of engaging language minority voters is to consult regularly with leaders of local language-minority communities. As the Department of Justice has explained: "The cornerstone of every successful program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English very well often rely on communication channels that differ from those used by English-speakers. Each community is different. The best-informed sources of information are people who are in the minority community and those who work with it regularly. Election officials should talk to them."<sup>43</sup>

Whether or not they provide formal language assistance, jurisdictions benefit from the closer relationships they build by forming Language Assistance Advisory Committees that meet throughout the year in order to institutionalize the process of collecting feedback from the community of voters who use multilingual materials and services. Members of these Advisory Committees typically include the leaders of

<sup>42</sup> LatinoJustice PRLDEF and GALEO, "LatinoJustice PRLDEF and GALEO Send Letters to Gwinnett County Municipalities Seeking Compliance with Section 203 of the Voting Rights Act" [Press Release] (July 21, 2017). Retrieved from: <http://galeo.org/latinojustice-prldef-galeo-send-letters-gwinnett-county-municipalities-seeking-compliance-section-203-voting-rights-act/>

<sup>43</sup> Dept. of Justice, *Language Minority Citizens*, <https://www.justice.gov/crt/language-minority-citizens> (last visited Mar. 19, 2018).

social service organizations, churches, social clubs, schools and parent-teacher organizations, in-language media outlets, chambers of commerce, and professional organizations. At their most effective, these efforts will result in election administrators obtaining invaluable feedback from both community leaders and a broad cross-section of potential voters, including unregistered individuals, those who cannot speak or read English, and naturalized and young citizens who lack voting experience. Building partnerships with community leaders also helps create a pipeline to a stronger language-minority community presence among the officials who implement and oversee elections.

Comprehensive pollworker and election employee training is a key component of successful election administration that fully engages all voters. In many jurisdictions, violations of language assistance requirements have frequently been discovered alongside hostile, intimidating, and coercive behavior directed at language-minority voters. Thus, even monolingual election workers need to be educated on the requirements for providing language assistance under federal and state law so that they will be sensitive to the needs of language-minority voters and not interfere with assistance.

Training programs for all election administration staff and poll workers should focus on language-minority voters' rights, with special emphasis on the universal right to assistance under Section 208 of the Voting Rights Act. Pollworkers must be trained to allow all voters requesting assistance to get it from the person of their choice, without regard to whether or not the assistor is eligible to vote him- or herself.

Training programs should equip all elections employees to recognize, actively combat, and better understand the negative and legal consequences of implicit and explicit bias. All poll workers should also be trained on culturally unique characteristics of language-minority populations that may pose problems if encountered by uninformed and unprepared individuals. For example, in jurisdictions that provide assistance in Spanish or serve significant communities of Latino voters, every election worker should understand that it is common for Latinos to use more than one surname. This practice makes it possible that voters may register under a different last name than the one they provide to a poll worker when they are checking in to vote on Election Day, and some poll workers are not familiar with this practice. Training on known causes of potential miscommunication like this can minimize the chances of a qualified, registered voter being turned away on Election Day.

Jurisdictions should provide pollworker training in person, in advance of Election Day, and should reinforce the training through self-guided written or video materials. Training programs for first-time poll workers may need to last longer than those designed for more experienced poll workers. The temporary nature of poll work and the modest pay usually associated with it make it difficult to secure workers' commitments for Election Day, and all the more difficult to secure workers' attendance at training programs. Therefore, jurisdictions should set aside funding to pay workers for the time they spend obtaining the necessary training to provide consistent, high quality service to all voters. At the conclusion of training, workers



should individually affirm that they are knowledgeable about language assistance rights and obligations, and should commit to treating each voter equally.

Election administrators who wait to be informed of problems with the provision of language assistance, or with the disfranchising consequences of administrative decisions about purging practices, polling place locations, and other administrative decisions, do so at peril of becoming subject to protracted, expensive litigation, and an oversight process that may feel onerous. Instead, jurisdictions should make it their standard practice to evaluate in advance of implementation the likely effects of administrative decisions on all voters, and particularly those voters who face heightened barriers to the ballot. Prospective disparate negative impact on underrepresented voters of color and language minority voters should mitigate extremely strongly against adoption of any procedure or plan for allocation of resources that would impose obstacles to the participation of voters from those communities.

Administrators must also actively monitor polling place and election operations, accept and investigate complaints, and discipline personnel who impede the provision of language assistance to and voting by language minority citizens. Administrators may, for example, solicit voters' individual comments with comment cards and electronic forms placed in election-related locations and on election websites. These cards and forms should ask voters to relate their experiences concerning availability of voting materials and live assistance, poll workers' linguistic abilities, waiting times for voting, and the civility of poll workers and other voting officials. Election officials should also collaborate with community groups to solicit feedback and better understand the experience and needs of their voters.

To support and further election administrators' efforts to extend elections' accessibility, we urge Members of Congress to support legislation and conduct oversight that sets and enforces inclusive administrative standards in federal elections. Such standards would enhance language minority voters' access to elections and investment in the political process by encompassing a wide range of important safeguards and practices, including: protections against cancellation of qualified federal voters' registration records; prohibitions against discriminatory or unfair polling place closures and other limits on voting opportunities in federal elections; and financial support and other incentives for administrators' active engagement with language minority voters.

Finally and unfortunately, given the countervailing influence of an Administration that is inclined to reduce or neglect language accessibility mandates<sup>44</sup>, organizational and Congressional advocates of accessibility must be prepared to defend the basic necessity and utility of providing language assistance for our elections. As the

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<sup>44</sup> E.g., Asian & Pacific Islander American Health Forum, "Trump Administration Rolls Back Health Care Rights Puts Protections for Language Access, Women and LGBT Persons at Risk" (May 24, 2019). Retrieved from: <https://www.apiahf.org/press-release/trump-administration-rolls-back-health-care-rights-puts-protections-for-language-access-women-and-lgbt-persons-at-risk/>; Tere Ramos, "When Access to Language Means Access to Justice" (June 2018). Retrieved from: <https://www.povertylaw.org/clearinghouse/articles/Ramos> (noting that, "The Trump administration's Justice Department has not been as active in Title VI enforcement.").

number of Americans of diverse national origins and linguistic abilities grows, our effectiveness in engaging those citizens as active voters will increasingly determine the health of our democracy, and the credibility of our government as the product of a truly representative political process. Otherwise put, our nation's values demand language assistance which helps ensure that our elections are open to all citizens, and that all of those citizens can cast an informed ballot. These elections will confer an invaluable benefit to all Americans who hold a stake in strengthening our government by, for, and of all the people.

Chairwoman FUDGE. Thank you.

Mr. Saenz, you are recognized for 5 minutes.

**STATEMENT OF THOMAS SAENZ**

Mr. SAENZ. Thank you, Madam Chair and members of the Subcommittee.

As president and general counsel of MALDEF, I lead a set of lawyers across the country who are regularly confronting barriers to access for Latino voters. Those barriers both occur at the polling place and in structures, including election structures, that prevent the Latino vote from having the effect that it would have. But today, I want to focus on a looming new challenge to the Latino community that seems to target naturalized citizen voters, and that grows out of this administration's campaign that puts 'Americans first or' citizens first, though that framework seems to leave out naturalized citizens.

We first saw this in the attempt to add a citizenship question to Census 2020. In doing so, the administration was clearly seeking to trigger a massive undercount of the Latino community, and the first effect of that massive undercount would be on voting rights. It would have resulted in underrepresentation of the Latino community, both in reapportionment, redistributing the seats in the House of Representatives among the States, and within each State in redistricting congressional seats, as well as State legislative and local legislative seats as well.

As we know, the Supreme Court, in an improbable victory, prevented the citizenship question from going on Census 2020, but the administration's campaign continues to impact and prevent naturalized Latino voters from participating. One example of this is in the executive order that accompanied the decision by the administration to give up attempting to re-add a citizenship question to Census 2020.

In that executive order, the President directed the Commerce Department to seek administrative records from both Federal and State sources to try to put together a database of citizenship around the country. We have now learned, through recent media reports, that one of the main mechanisms they will use to attempt to identify citizens is DMV records from around the country. The problem is, as we recently saw in a case litigated by MALDEF and others in Texas, is that DMV databases with respect to citizenship are notoriously inaccurate. The fact is that someone who goes to the DMV before becoming a citizen has no obligation or even any reason to report back to the DMV once they have naturalized and become a citizen. They would not have any occasion to go back to the DMV until they need to renew a driver's license, for example.

We saw this in Texas where Texas attempted to purge voters from the voter rolls, county by county, by directing registrars to use faulty DMV data to send notices to those who were not citizens when they went to the DMV and tell them that they were effectively being accused of being ineligible voters. Fortunately, the litigation prevented that from going forward. But we now see that the administration is using the same faulty databases to create a database of citizens with the intent that that then be used where a State or locality might choose to test the constitutional limits of

one person, one vote, and might choose to equalize population among districts based on something other than total population. Clearly, that use of faulty citizenship data would have a tremendous impact on the voting rights of Latinos, and it raises many concerns.

Accompanying those concerns are the ongoing rhetoric that comes from this administration that seems to target every Latino person and every immigrant in the country, regardless of whether that immigrant has naturalized or not. We are concerned that this ongoing rhetoric, including the invasions of privacy in using and accessing these inaccurate DMV records, could result in further voting rights challenges. We are concerned that it could result in unwarranted challenges to someone's eligibility to vote by vigilantes who listen to the rhetoric of this administration, from the White House and beyond, and decide that they are going to challenge particular voters, namely, Latino voters, or voters who don't speak English, or voters who appear to them to meet Donald Trump's definition of who is not an "American."

We see this looming threat to voting rights as potentially having application as early as next year, and we are concerned that it is a short step from the rhetoric that we hear today, to rhetoric that challenges the legal requirement of providing language assistance, bilingual assistance, materials in languages other than English, to voters. So we are concerned that as early as next year's election, we will see inappropriate challenges and diminution in providing those required materials. We will see challenges to the legitimacy, eligibility of voters who are naturalized but do not yet speak English, and these are access barriers that are new, and they are created entirely by the campaign that we see on a daily basis from the Trump Administration.

We think that this is a looming danger of voting rights concern that this Committee—that this Subcommittee should take up and address.

Thank you.

[The statement of Mr. Saenz follows:]



**Testimony of Thomas A. Saenz  
President and General Counsel, MALDEF**

**Before the Subcommittee on Elections of the Committee on House Administration**

**Hearing on  
Voting Rights and Election Administration in America**

**October 17, 2019**

Good afternoon. My name is Thomas A. Saenz, and I am president and general counsel of MALDEF (Mexican American Legal Defense and Educational Fund), which has, for over 51 years now, worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago; San Antonio, where we were founded; and Washington, D.C.

Since its founding, MALDEF has focused on securing equal voting rights for Latinos, and promoting increased civic engagement and participation within the Latino community, as among its top priorities. MALDEF played a significant role in securing the full protection of the federal Voting Rights Act (VRA) for the Latino community through the 1975 congressional reauthorization of the 1965 VRA. MALDEF has over the years litigated numerous cases under section 2, section 5, and section 203 of the VRA, challenging at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration restrictions, and failure to provide bilingual ballot materials. We have litigated significant cases challenging statewide redistricting in Arizona, California, Illinois, and Texas, and we have engaged in pre-litigation advocacy efforts, as well as litigation related to ballot access and local violations, in those states, as well as in Colorado, Georgia, Nevada, and New Mexico. As the growth of the Latino population expands, our work in voting rights increases as well.

Before the divided Supreme Court decision in *Shelby County v. Holder*, MALDEF relied heavily upon the application of the section 5 pre-clearance requirements – particularly in Arizona, Texas, and portions of California – to deter violations of Latino voting rights and to block any discriminatory proposals that were submitted for pre-clearance. These beneficial effects of pre-clearance – and others, including even the basic tracking of electoral changes with potential impacts on the right to vote – have been missing following *Shelby County* because of the Congress' failure to enact an effective new coverage formula after the 2013 Court decision.

As a rapidly growing population, Latinos are regularly and increasingly seen as a threat to those in political power. As a result of this perceived threat to incumbents, the Latino community regularly faces violations of the VRA in several election-related areas. Those in power, whether at state or local level, think about the perceived threat from the growing Latino voter pool in racial terms, even if that perspective is not explicitly acknowledged, and the violations of the VRA take conspicuously racialized forms even if justified in other terms – of seniority protection for incumbent legislators, of competitiveness, or of continuity of representation, for example.

One area where MALDEF continues to see and to challenge this phenomenon is in the failure – or better described, refusal – of map drawers to create new Latino-majority districts where the growth of the community and the extent of racially polarized voting warrant such districts. For example, this decade, as in previous decades, MALDEF has had to challenge the refusal of the Texas state legislature to recognize the growth of the state's Latino voter population by creating additional Latino-majority districts. Even with four additional congressional districts earned after the 2010 Census, following a decade when the Latino community accounted for the vast majority of the state's population growth, Texas initially drew none of the new congressional districts as a Latino-majority district. Our litigation, together with many others, to challenge Texas statewide redistricting in the case of *Perez v. Abbott*, only recently concluded, with two separate trips to the Supreme Court in the course of a case that lasted most of the decade. While an interim remedy has been in place, the length of this case's lifespan provides a prime example of the cost and inefficiency of litigation under Section 2 of the VRA, as compared to the streamlined pre-clearance process.

Even in California, viewed with some accuracy as a progressive bastion in policy areas including voting rights, the impulse to protect empowered incumbents has proved a formidable obstacle. After the 2011-12 redistricting cycle following the 2010 Census, MALDEF identified at least nine counties in California where the governing board of supervisors should have created an additional Latino-majority seat, and failed to do so. In a five-person body, the tendency to protect incumbents, even across party lines on a technically non-partisan board, appears to be overwhelming, if these California statewide results are any indication. After three failed attempts to secure California state legislation that would streamline litigation challenging such discrimination against minority voters, MALDEF commenced a VRA Section 2 challenge to one of those nine counties in *Luna v. Kern County Board of Supervisors*. That litigation, which proved hard-fought and expensive, did result in a post-trial victory and subsequent settlement creating a second, new Latino-majority supervisorial district.

At-large electoral systems have also continued to be an area where Latino voting rights are regularly threatened. The perpetuation or introduction of at-large electoral systems, in a context of racially-polarized voting, can ensure that those in power retain a near-complete stranglehold on local government until a minority group becomes a substantial majority of the eligible voter population. For this reason, many jurisdictions seem to cling to at-large systems

even when it results in heavy concentration of elected officials from a single neighborhood, or results in large electoral pools, with concomitantly expensive electoral campaigns that strongly favor incumbents over any and all challengers.

MALDEF's post-*Shelby County* case against Pasadena, Texas, involved the conversion of a city council comprised of eight members elected from districts, to a council with six district representatives and two seats elected at large. This change was plainly undertaken to prevent the growing Latino voting population from electing a majority of the city council; participation differentials virtually ensured that the white population would elect its choices for the at-large seats in elections characterized by a racially-polarized vote. The case went to trial, following which the district court judge held that not only would the change have the effect of unlawfully diluting the Latino vote, but it was made intentionally to accomplish that aim. This resulted in the first contested "bail in" order, requiring Pasadena to pre-clear future electoral changes. However, again, that favorable outcome followed lengthy and costly trial preparation and trial, all of which would likely have been avoided had the challenged change itself been subject to pre-clearance review, as it would have been before the *Shelby County* decision.

In California, 16 years ago, the legislature enacted the California Voting Rights Act (CVRA) to streamline challenges to at-large local elections in any jurisdiction experiencing racially-polarized voting – where the voting preferences of those from a minority group ordinarily diverge from the choices of voters who are not members of the minority group. In the years since the CVRA legislation, which was co-sponsored by MALDEF, took effect, dozens and dozens of local jurisdictions – cities, school districts, community college districts, and special districts – have converted to district elections. Almost without exception, these conversions have been accomplished in pre-litigation or early litigation settlements, prior to expensive discovery and trial preparation, once a challenger demonstrates racially-polarized voting, which is not only a central concern under the CVRA but under Section 2 of the federal VRA as well. However, by focusing on racially-polarized voting as the main determinative factor, the CVRA accomplishes the same aims with respect to at-large voting systems as the VRA, but at much lower cost and in much less time.

In the last two decades, the nation has witnessed an accelerating pattern of ballot-access restrictions enacted to address baseless myths of widespread voter fraud. Like Donald Trump's post-election false accusations of millions of improper "non-citizen" votes – all extraordinarily for his opponent, who won the popular vote by a significant number – many of these propagated fallacies have implicitly or explicitly targeted the growing Latino vote. Increasingly restrictive voter identification requirements, proof-of-citizenship requirements for new voter registrants, and restrictions on how and when voter registration drives may occur are all state electoral changes seemingly implemented to stem the growing Latino vote in Texas, Arizona, and other states.

As some of these attempts to restrict ballot access and to deter voter participation have been less effective than their architects would like -- both because of successful legal challenges and concentrated counter-organizing -- some states have turned to unwarranted voter purges. For example, MALDEF and others recently had to pursue litigation challenging a Texas attempt to remove voters from the rolls, and not incidentally to deter voter participation more broadly, by targeting naturalized-citizen voters through a completely faulty method of identifying potential ineligible voters. This focus on qualified, immigrant voters is an increasing danger in light of rhetoric from the White House that regularly, and without any factual basis, depicts immigrants as fraudulent voters.

In fact, the Trump administration has gone further in targeting naturalized-citizen voters through its ongoing campaign to put "Americans First." The despicable rhetoric that accompanies this campaign denies "American" status to folks who went through an arduous naturalization process after choosing to become citizens. The rhetoric has a known and intended effect of deterring participation by naturalized voters, while discouraging others to even undertake the increasingly difficult naturalization process.

Trump administration actions affecting Census 2020, including particularly the late addition of a citizenship question, fortunately now removed through court action, were designed to reduce the political power of the Latino community by triggering a massive undercount of that community in the Census. These efforts continue through a ludicrous effort to collect administrative records to derive broad-based citizenship data that would in turn be misused in the redistricting process. MALDEF has recently filed litigation to challenge this latest effort by the Trump administration to invade privacy, to create demonstrably false data, and to intimidate voting by naturalized citizens and those close to them.

Recent media reports indicate that the Commerce Department is actively seeking state department of motor vehicles (DMV) data on citizenship. Yet, as the Texas voter-purge litigation, described previously, amply demonstrates, such DMV data is rife with inaccuracies, particularly for naturalized citizens, who are not required to report their newly-obtained citizenship to their state DMV. These administration efforts will simply add to the subtle and direct discouragement of naturalized citizens' civic engagement that pervades the actions and rhetoric of Donald Trump and his appointees.

Of course, it is a short step from these negative efforts to disapproval and discouragement of the provision of bilingual elections materials, even though the provision of such materials is required by the Voting Rights Act. Our nation's increasing diversity means that over time more and more jurisdictions will meet the threshold for providing elections materials in a language other than English. This expanded coverage is not a reason to oppose the provision of bilingual materials, but further proof of the need to welcome and encourage immigrants to naturalize and naturalized citizens to vote. Failure to encourage such participation violates our values and principles as a democratic nation.



Yet, the Trump administration – joined by others who have other motives to reduce Latino and Asian American participation in elections – will undoubtedly target the provision of elections materials in other languages. This will in turn implicitly – and perhaps even explicitly – encourage unwarranted vigilante challenges to the participation of naturalized citizens and other Latinos and Asian Americans. This is not the time to shrink from efforts to encourage broad participation of all eligible citizens in voting, including those who may need bilingual assistance to cast a considered and meaningful vote.

Because the growth of the Latino community is too often today – and this will surely only increase in the future – assumed to be a threat to those currently holding political power in many jurisdictions, we will see increased challenges to voting accessibility for naturalized-citizen voters, as well as for all Latino voters. The Congress should act in anticipation of these efforts targeting growing minority voting communities by ensuring that incumbent officeholders do not limit or deter accessibility as a means of preserving themselves in power.

Chairwoman FUDGE. Thank you.  
Ms. Bishop, you are recognized for five minutes.

**STATEMENT OF MICHELLE BISHOP**

Ms. BISHOP. Chairwoman Fudge, Ranking Member Davis, Members of the Committee, thank you for the opportunity to testify today. And may I also thank Congressman Cummings, thank you so much for your service to this country, and rest in peace, sir.

My name is Michelle Bishop, and I am the voting rights specialist for the National Disability Rights Network. NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy, or P&A network.

According to the Census Bureau, up to 56.7 million Americans live with a disability, totaling approximately 19 percent of the non-institutionalized U.S. population. The Centers for Disease Control and Prevention and Pew Research Center believe that number is actually closer to 25 percent, or one in four Americans. Further, Rutgers University projected 35.4 million eligible voters with disabilities, or one-sixth of the total American electorate in 2016, and we are politically active. Pew reports that people with disabilities are more likely to pay attention to Presidential elections and to believe that the results matter.

Despite all of this, America's electoral system has a long history of excluding people with disabilities. Let's start with the obvious: polling places. The U.S. Government Accountability Office found in 2000 that only 16 percent of polling places had an accessible path of travel, 27 percent in 2008, and 40 percent in 2016. Forty percent being the all-time high means that less than half of polling places were accessible during the 2016 election.

As polling places are very slowly becoming more accessible, the voting stations within them are actually becoming less so. In 2008, 54 percent of voting booths were accessible. In 2016, only 35 percent. Architectural access and voting station access combined, only 17 percent of polling places were found to be fully accessible. America's polling places are inexcusably, woefully, and unjustly out of compliance with the Americans with Disabilities Act.

As if this weren't enough, the Leadership Conference on Civil and Human Rights recently found that 13 States closed an overwhelming 1,688 polling places in just 6 years, and uncovered an alarming trend: falsely blaming polling closures on the ADA. Jurisdictions offered lack of ADA compliance as a pretext for closures, despite their admitted lack of understanding of the ADA, failure to provide ADA surveys of the polling places in question, and grossly inflated cost estimates for updating polling places.

Disability rights advocates and the Department of Justice do not advocate for the closure of inaccessible polling places. Rather, we allow for temporary, same-day modifications, curbside voting as a stopgap measure, and other low-cost best practices. In a forthcoming report, NDRN examines the issue of polling place closures, ADA compliance, and DOJ enforcement in more depth.

Our report finds that voting jurisdictions that settled with the DOJ in the last several years are overwhelmingly not closing their polling places. Alternatively, jurisdictions that closed or attempted to close significant percentage of their polling places typically were

not investigated by the DOJ, could not provide accessibility surveys, and could not provide any evidence of coordination with their State's P&A or other disability advocacy organizations. The ADA and DOJ's enforcement of it are undeniably being used as a smoke screen for voter suppression.

These barriers have real consequences. Despite the size of the disability community and our demonstrated investment in elections, people with disabilities continue to vote at a lower rate than our nondisabled peers. In 2018, that difference in turnout was around 4.7 percent, 6 percent in 2016, and 5.7 percent in 2012, small percentages that actually equal several million voters.

Immediately preceding passage of the Help America Vote Act, the gap in voter participation was actually closer to 20 percent. The data shows a clear narrowing of the voter participation gap since HAVA's passage made voting drastically more accessible for people with disabilities.

To protect the right to vote for all Americans, Congress must first and foremost pass the Voting Rights Advancement Act. A fully restored Voting Rights Act would prevent questionable polling place closures that threaten access to the vote heading into the 2020 Presidential election.

Additionally, congressional funding is sorely needed to ensure that elections officials can continually acquire, maintain, and improve their polling locations and equipment. The territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center, a P&A, also need HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from HAVA is a simple and no-cost legislative fix.

Finally, each of the patchwork of Federal laws that ensures America's electoral system are accessible to all eligible voters must be enforced to their full capacity. America's democracy is only as strong as its ability to hear the voices of all Americans.

Thank you.

[The statement of Ms. Bishop follows:]



**Committee on House Administration - Subcommittee on Elections  
Voting Rights and Election Administration in America  
Thursday, October 17, 2019 at 10:00am**

**Voting Rights and Access to the Vote for People with Disabilities  
Michelle Bishop - Disability Advocacy Specialist for Voting Rights, National Disability Rights Network**

Chairperson Fudge and Ranking Member Davis, thank you for the opportunity to testify today regarding the current state of voting rights and access to the vote for people with disabilities.

**National Disability Rights Network and the Protection & Advocacy Systems**

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States. Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a federal mandate to “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places”<sup>1</sup> and are the leading experts on access to the vote for people with disabilities in the United States.

I am the Voting Rights Specialist for NDRN, where I am responsible for coordinating voting rights initiatives in every state, the District of Columbia, Puerto Rico, and other territories, as well as providing training and technical assistance to NDRN’s nationwide network regarding voting rights and access for voters with disabilities under HAVA. I also work in coalition with the civil rights community in Washington, DC to ensure strong federal policy regarding voting rights and election administration.

<sup>1</sup> <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

### Voters with Disabilities

The United States Census Bureau has reported up to 56.7 million people with disabilities live in the community, totaling approximately 19 percent of the non-institutionalized US population<sup>2</sup>. The Centers for Disease Control and Prevention and Pew Research Center believe that number is closer to 25 percent, or one in four Americans.<sup>3</sup><sup>4</sup> Further, the School of Management and Labor Relations at Rutgers University projected that there were 35.4 million people with disabilities eligible to vote in the United States, one-sixth of the total American electorate, during the 2016 Election.<sup>5</sup>

The disability community is diverse. People who identify as LGBTQIA+ are more likely to have a disability.<sup>6</sup> A quarter or more of American Indians/Alaska Natives and Black adults have a disability.<sup>7</sup> People with disabilities are disproportionately low-income, and are unemployed, underemployed, or not participating in the workforce at a rate of approximately three-fourths of the entire disability community.<sup>8</sup>

Additionally, people with disabilities are politically active. Pew reported that people with disabilities pay more attention to presidential elections and that election results matter more to people with disabilities when compared to people without disabilities.<sup>9</sup> Despite the size, diversity, and political commitment of the disability community, America's electoral system remains largely inaccessible and has a long history of excluding people with disabilities.

### Polling Place Accessibility

The United States Government Accountability Office (GAO) has studied polling place accessibility for almost 20 years. During an initial 2000 survey, the GAO found that only 16 percent of the polling places surveyed had an accessible path of travel, defined as from parking to the voting station.<sup>10</sup> This percentage increased to 27 percent in 2008<sup>11</sup> and to 40 percent in 2016<sup>12</sup>. 40 percent, being the all-time high, means that less than half of America's polling places were architecturally accessible during the 2016 election. Yet as polling places slowly become more accessible, the actual voting stations within them are becoming less accessible. In 2008, 46 percent of voting booths were inaccessible.<sup>13</sup> In 2016, inaccessible voting stations jumped to 65 percent.<sup>14</sup> Overall, voting booths were less likely to be set up to ensure voter privacy, set up for wheelchair access, have headphones readily apparent for audio balloting, or even be turned on for voters to use.<sup>15</sup> In 2016, GAO combined architectural access data with voting station data to find that only 17 percent of America's polling places could be considered fully

<sup>2</sup><https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

<sup>3</sup><https://www.cdc.gov/media/releases/2018/p0816-disability.html>

<sup>4</sup><https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

<sup>5</sup>[https://smlr.rutgers.edu/sites/default/files/documents/faculty\\_staff\\_docs/Kruse%20and%20Schur\\_Disability%20electorate%20projections%202016\\_9-8-16.pdf](https://smlr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.pdf)

<sup>6</sup><https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490559/>

<sup>7</sup><https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

<sup>8</sup><https://disabilitycompendium.org/annualreport>

<sup>9</sup><https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

<sup>10</sup><https://www.gao.gov/new.items/d02107.pdf>

<sup>11</sup><https://www.gao.gov/assets/300/296294.pdf>

<sup>12</sup><https://www.gao.gov/assets/690/687556.pdf>

<sup>13</sup><https://www.gao.gov/assets/300/296294.pdf>

<sup>14</sup><https://www.gao.gov/assets/690/687556.pdf>

<sup>15</sup><https://www.gao.gov/assets/690/687556.pdf>

accessible for voters with disabilities.<sup>16</sup> America's polling places are woefully, inexcusably, unjustly out of compliance with the Americans with Disabilities Act (ADA).

#### **Polling Places Closures**

Over the course of the last several election cycles, mass polling places closures have significantly impacted access for voters with disabilities. *In Democracy Diverted: Polling Place Closures and the Right to Vote*, the Leadership Conference on Civil and Human Rights found that thirteen states closed an overwhelming 1,688 polling sites in just six years.<sup>17</sup> The Leadership Conference also addressed an alarming trend occurring across the US - falsely blaming polling place closures on the ADA. Jurisdictions with mass poll closures in Mississippi, Georgia, and Louisiana offered "lack of ADA compliance" as a pretext for polling place closures, despite their admitted lack of understanding of the ADA's provisions, failure to provide ADA surveys of the polling places in question, and grossly inflated cost estimates for bringing polling places into compliance with the ADA.<sup>18</sup> Disability rights advocates and the Department of Justice (DOJ) do not advocate for the closure of inaccessible polling places, and this measure should always be used as a last resort. Rather, the DOJ has actively promoted, even in jurisdictions with which they have settled lawsuits for failure to comply with the ADA at polling locations, temporary same-day modifications, curbside voting as a stop-gap measure, and other low-cost best practices to ensure accessibility at polling places.<sup>19</sup>

In a forthcoming report, NDRN examines the issue of polling place closures, ADA compliance, and DOJ enforcement of the ADA in more depth. Our report finds that voting jurisdictions that settled with the DOJ in the last several years as a result of inaccessible polling places were overwhelming not closing their polling locations. Rather, they were working collaboratively with DOJ to find innovative solutions, including same-day modifications and developing low-cost solutions for permanently modifying inaccessible locations. Alternatively, jurisdictions that closed or attempted to close a significant percentage of their polling places citing the ADA typically were not under a settlement agreement or investigation by the DOJ and could not provide ADA accessibility surveys or any coordination with the state's P&A or other disability advocacy organizations to resolve access barriers. The ADA, and DOJ's enforcement of the ADA, are undeniably being used as a smokescreen for voter suppression.

#### **Impact of Voter Identification (ID) Laws**

According to the National Conference of State Legislatures, 35 states currently require individuals to show some form of ID at their polling places.<sup>20</sup> The Brennan Center for Justice indicates that over 22 states in 2017 saw the introduction of at least 39 pieces of legislation to impose voter ID requirements or impose even stricter requirements over existing ones.<sup>21</sup> Yet, the University of Wisconsin – Madison found that 6 percent of registrants that did not vote in 2016 were blocked by the lack of correct ID.<sup>22</sup> An additional 11.2 percent of eligible registrants were deterred from voting because of confusion surrounding the voter ID law.<sup>23</sup> Strict voter ID requirements create new hurdles to voter participation with the added effect of confusion as a deterrent to voters.

<sup>16</sup><https://www.gao.gov/assets/690/687556.pdf>

<sup>17</sup><http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

<sup>18</sup><http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

<sup>19</sup>[https://www.ada.gov/chicago\\_boe\\_sa.html](https://www.ada.gov/chicago_boe_sa.html)

<sup>20</sup><http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

<sup>21</sup><https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>

<sup>22</sup><https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

<sup>23</sup><https://elections.countyofdane.com/documents/pdf/VoterId/UW-Voter-ID-Study-Supporting-Info.pdf>

Rutgers has calculated that 7.5 percent of people with disabilities do not have a state-issued photo ID, compared to 4.8 percent of people without disabilities.<sup>24</sup> The difference is statistically significant. This disparity also extends to older adults – potential voters typically over-represented among people with disabilities. A report by the US Senate Special Committee on Aging and US Senate Committee on Rules and Administration asserts that older Americans are a sizable voting bloc - 30 percent of the voters in 2016 were 50-64 years old, 15 percent 65 and over.<sup>25</sup> Yet, 11 percent of adults (over 21 million citizens) do not have a valid, government-issued photo ID and nearly one in five Americans over 65 (approximately 8 million people) lacked a current, government-issued photo ID.<sup>26</sup>

The Brennan Center for Justice also found that 10 million voters (who are otherwise eligible) live over 10 miles from the closest office that can issue an ID that qualifies for voting purposes and is open more than two days per week.<sup>27</sup> While this would present a burden for any voter, people with disabilities and older adults are less likely to drive or have accessible public transportation options. The argument that people with disabilities who are disenfranchised by voter ID laws can simply obtain an ID has clearly not panned out in reality.

#### **Voter Participation of People with Disabilities**

Barriers to the vote for people with disabilities, such as polling place closures and voter ID laws, have real consequences in terms of voter participation. Despite the size of the disability community in the US and their demonstrated investment in elections, people with disabilities continue to turnout to vote at a lower rate than their non-disabled peers. In 2018, Rutgers University reported the difference in turnout between people with and without disabilities was 4.7 percent.<sup>28</sup> Rutgers found that voter turnout of people with disabilities lagged behind the non-disabled population with a difference of 6 percent in 2016<sup>29</sup> and 5.7 percent in 2012.<sup>30</sup> Although the extent of the gap in voter turnout has fluctuated over time, there is consistent suppressed turnout for voters with disabilities across the country. Similarly, there is no doubt that access to the vote and the ability to protect it through legislation promotes voter participation among people with disabilities. Rutgers reports that immediately preceding the passage of the Help America Vote Act, the gap in voter participation between those with and without disabilities was closer to 20 percent.<sup>31</sup> The data shows a clear, statistically significant narrowing of the voter participation gap since HAVA's passage made voting drastically more accessible for voters with disabilities.

#### **Role of Congress and the Federal Government**

As we move ahead, as a nation, in protecting the right to vote for all Americans - Congress must first and foremost, pass the Voting Rights Advancement Act. The ability of DOJ to detect election practices that

<sup>24</sup><https://smir.rutgers.edu/sites/default/files/images/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf>

<sup>25</sup><https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

<sup>26</sup><https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>

<sup>27</sup><https://www.brennancenter.org/our-work/research-reports/challenge-obtaining-voter-identification>

<sup>28</sup><https://smir.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>

<sup>29</sup>[https://smir.rutgers.edu/sites/default/files/documents/PressReleases/kruse\\_and\\_schur\\_-\\_2016\\_disability\\_turnout.pdf](https://smir.rutgers.edu/sites/default/files/documents/PressReleases/kruse_and_schur_-_2016_disability_turnout.pdf)

<sup>30</sup><https://smir.rutgers.edu/sites/default/files/images/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf>

<sup>31</sup><https://smir.rutgers.edu/sites/default/files/documents/PRQ%20disability%20and%20voter%20turnout%20article%20by%20Schur%20et%20al..pdf>

suppress voter turnout in jurisdictions with known discriminatory practices has been the first line of defense against voter suppression for over 50 years. For decades DOJ successfully prevented the enactment of laws with discriminatory intent and impact, and prevented the maze of state-based litigation that today promotes fear and confusion among elections administrators and the voters themselves. Arguably, a fully restored Voting Rights Act would prevent the restrictive voter ID laws and questionable polling places closures that threaten access to the vote heading into the 2020 presidential election. American voters deserve a fully functioning Voting Rights Act.

I would be remiss if I did not use this opportunity to also stress that Congressional funding is sorely needed to protect the rights of voters with disabilities. The United States government has an obligation to ensure that states, territories, and local jurisdictions can continually acquire, maintain, and improve polling locations and equipment. The territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center (P&A), must also begin to receive HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from PAVA is a simple, no cost legislative fix.

Finally, Congress and the DOJ must continue to stay vigilant and ensure US elections are being administered fairly and accurately. Ensuring access to voters with disabilities is essentially a patchwork of varied federal laws that protect the rights of people with disabilities, including the ADA, HAVA, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act, and the Voting Rights Act. Each of these laws must be enforced to their full capacity in order to ensure that America's polling places and electoral systems, as a whole, are accessible to all eligible voters. America's democracy is only as strong as its ability to hear the voices of all Americans.



Chairwoman FUDGE. Thank you. Thank you very much.

Mr. Aguilar, you are recognized for five minutes.

Mr. AGUILAR. Thank you, Madam Chair.

Mr. Yang, if I could start with you, and then kind of work our way down to Mr. Vargas and Mr. Saenz as well. And then, Ms. Bishop, I have something, a separate question for you.

You know, we talked about language assistance, and obviously there are best practices that seem pretty reasonable, you know, ballots in multiple languages. What are some other things that we can do? You mentioned poll worker training. What are some other ideas that we can do within the language-assistance frame that we could invest in and support in order to make a difference and ensure that people have access to the ballot?

Mr. YANG. Well, I think poll worker training, if I could expand on that a little bit, it is really developing training modules, because sort of sometimes when people think of poll worker training, they are thinking about making sure that they have translators or people that speak multiple languages that are serving as poll workers, and that is certainly one component of it. But the other component is just making sure that people that speak English that are working there, that still can recognize a situation as it develops and know how to handle it.

For example, if I am accompanying my mother to a polling station, then the fact that my mother doesn't speak English well, that poll worker has to understand that I am there to help and that that is within her right as a voter. And, unfortunately, there are a lot of poll workers, not through—and I am going to be generous here—not through any intent to discriminate, but do not understand the laws well enough. And so it is really having an infrastructure that has that learning—those learning modules in place.

Some of it is also, again, very, very simple. I am going to think about low-hanging fruit, is just having translations in trifolds that are sitting on counters that sort of make people feel comfortable, that say, oh, I can have an assister of my choice here. Oh, there are translated ballots, or there are translated materials available. People, citizens, especially new immigrants, oftentimes do not understand their rights. And so just making them comfortable with the process.

Certainly, for my organization and speaking, I think, for all immigrants, just as you are no less of a citizen because you have a disability, you are no less of a citizen because English is not your first language. And so our job is to find ways to make sure that people feel like they are equal citizens in democracy.

Mr. AGUILAR. Thank you.

Mr. Vargas.

Mr. VARGAS. Congressman, the fact is that there are many jurisdictions that get it right, and they have been providing language assistance to voters for years. And what we are concerned about is those places around the country that are newly being required to provide language assistance for the first time, and there is no need to really re-create the wheel if they can adopt best practices from other jurisdictions. And that is, I think, something that Congress could incentivize.

You know, how could a manual of best practices be provided to other jurisdictions who for the first time are being required to provide language assistance. So they don't repeat the same mistakes that have been committed before, and they provide the best access to voters who are newly covered under section 203.

Mr. AGUILAR. Thank you.

Mr. SAENZ. And like Mr. Vargas, I would focus on the fact that the jurisdictions that are covered by section 203 are regularly expanding, and I think we need to find a way to anticipate, which is not difficult, where the expansion will occur and begin working with those jurisdictions to connect them with successful jurisdictions in their own State or where they may be the first in a State, with those in other States.

I also think there is a broader effort about really educating the public about folks' rights, so that they understand that this is not illegitimate. You don't then have vigilante volunteers or others who would add their views that nothing like non-English assistance should be being provided. So I think there is a broader education effort that should start with where we know the next set of jurisdictions to be covered will be.

Mr. AGUILAR. Thank you, Mr. Saenz.

Ms. Bishop, I wanted to talk a little bit about, in your testimony, you talked about the Help America Vote Act and the participation gap among those voters with and without disabilities. You know, how has HAVA helped close the gap? You mentioned it was closer to 20 percent and then went down to, oh, below five. Can you talk a little bit about that?

Ms. BISHOP. Absolutely.

Prior to the Help America Vote Act, we were doing even less to make America's elections accessible to all—in fact, profoundly little. I am sure all of us in the room remember voting on punch card systems. Those are not only difficult for the average American to line up properly and use but virtually impossible for people with certain types of disabilities.

Many American voters with disabilities voted privately and independently for the very first time after HAVA was passed. And that includes Americans who began voting when they were 18 and weren't able to vote with privacy and independence until they were in their 60s and 70s, who spent their entire lives having to have somebody else mark their ballot for them because that ballot was not accessible.

In itself, the privacy and independence of your ballot should be a right. It is also a security feature of our elections, that I can trust—because I marked my ballot independently—that it has been marked in the way that I intend, rather than having to take a leap of faith as a voter who, potentially, is blind having to ask someone else to mark a ballot that I will never be able to see and know that someone marked the ballot the way that I intended.

And so it was a longstanding failure, I believe, of our electoral process, that we were not providing accessibility of the ballot to voters with disabilities.

Accessibility of polling places itself is a new issue. The Americans with Disabilities Act is the gold standard in making sure that polling places are accessible. It did not become law until 1990.

There is one law that predates that that was passed in the early 1980s, the Voting Accessibility for the Elderly and Handicapped Act, but that still was the early 1980s. Prior to that, we were doing virtually nothing to make sure that the electoral process was accessible to Americans with disabilities.

So HAVA represents an enormous leap forward in making sure that everyone is able to cast their ballots, and we absolutely believe that is a major factor in closing that gap, absolutely. If your electoral process is not accessible to you, that is sending a message that you are not welcome and that your vote does not matter.

Mr. AGUILAR. Thank you.

Chairwoman FUDGE. Thank you.

Ms. Bishop, let me just—I don't even know where to begin. I mean, we know the law. We know ADA exists. We know HAVA exists. What is their rationale for not complying with the law? This is what I am trying to figure out.

Ms. BISHOP. There are many. There are many reasons.

We hear very often—I work a lot with State and local elections officials, as do the organizations that are in our network, the P&As. We hear very often that it is difficult to find polling places that are compliant with the Americans with Disabilities Act.

They are not entirely wrong about that. Compliance with the ADA overall is lacking. There are not that many locations that are fully compliant. And they also have to be willing to serve as a polling place, which is voluntary. We hear that often.

We hear that finding polling places that are suitably located, as well, and a large enough number of them.

We also get accounts of poll workers who are not adequately trained and ready to interact with voters with disabilities when they come into the polling place. So they are not necessarily aware of all of the accommodations they are required to provide.

There is a widespread failure in the United States to really fully understand all the provisions of the Americans with Disabilities Act—in particular, how they apply to elections.

I consider it primarily an enforcement issue. And that is why we believe the Voting Rights Advancement Act is so important. The Department of Justice and organizations like the P&As have to be able to go out and push for that enforcement and that compliance with the ADA without the threat that the response will be to close large numbers of polling places. We don't make polling places accessible by closing them. We make them accessible by making them accessible.

But without the protections of preclearance in the Voting Rights Act, our job becomes extensively more difficult.

Chairwoman FUDGE. Thank you.

And to any of the gentlemen: I listened to each of you say that education and education of poll workers, et cetera, was extremely important. Who do you believe is responsible for that education and that outreach?

Mr. Vargas. Well, clearly, the election officials at the local level are responsible for that. And they should be held accountable to make sure that they provide that education for all the poll workers they employ.

We also know that many of them are challenged in finding enough poll workers with the language ability necessary to meet the needs in local communities.

So I think one of the areas where Congress could be helpful is to provide more incentives, to provide—to identify and help local elections officials recruit and train poll workers with the language abilities needed to help the voters in their jurisdictions.

Chairwoman FUDGE. So, now, let me just ask this question, since you are the CEO of NALEO. Do you all not, at points, just recommend to the local boards of elections, “We have these people who are willing to serve on election day or whatever to get trained; these are people who can accommodate the issues that we have”? Do you make those recommendations and they just don’t accept them, or how does that work?

Mr. VARGAS. We certainly do. And we also try to identify other strategies to expand the number of people who are eligible to be a poll worker. And, remember, for some folks, they have to give up a day of work.

Chairwoman FUDGE. Sure.

Mr. VARGAS. And that is not something that people are able to do, many times, if they are working folks, to give up a full day’s work and not get compensated by their employers.

Which is one of the reasons why we supported legislation in California to allow high school students to be able to work as poll workers. Even though they, themselves, may not have the right to vote yet, they did have the skill sets in order to help people through the voting process.

So there are other incentives and strategies that can be employed to do that.

Chairwoman FUDGE. Mr. Saenz, let me go back to this discussion about naturalized citizens. A citizen is a citizen. So what is it about our process that would single out someone that is a naturalized citizen?

Mr. SAENZ. So, because naturalized citizens are, of course, immigrants themselves, they have families that include folks who are still immigrants. They may still feel that they have vulnerabilities that they had as immigrants.

So, when you are confronted with rhetoric, as we see daily from the Trump Administration, that seems to discourage participation of immigrants in all elements of governance, there is no way that naturalized citizens are naturally immune from that. So there is a deterrent effect.

Chairwoman FUDGE. So you said they don’t go at all. They don’t even get to the point where they get to the polls.

Mr. SAENZ. In some cases, they would be deterred. They would have fears about their families. In other cases, they would be concerned that they, themselves, might be challenged, particularly if they are a citizen but a citizen who needs language assistance and language assistance in some way at the polling place.

But there is also, of course, this danger of accessing inaccurate data. Even though it is going to be used in aggregate, it still means that a naturalized citizen is aware that the Federal Government is seeking information from their State DMV that may inaccurately identify them as still a noncitizen. That, too, can have a deterrent

effect, or it can encourage others, who may be led by the rhetoric, to challenge that person's participation in elections.

So it all stems from practices and rhetoric from the administration that is not seeking accurate data, particularly with respect to naturalized citizens, that is invading privacy, that is raising those kinds of concerns, and that is diminishing the citizenship, if you will, of those who are not native-born citizens of this country.

Mr. YANG. If I could add just very briefly to that, I think that is exactly right.

With respect to the Asian-American community, about two-thirds of our community are immigrants, and over 90 percent, 92 percent of the Asian community are immigrants or children of immigrants. So, although, obviously, our community is naturalizing at a very quick, fast rate, the traditional trajectory is that there are going to be noncitizens within each of those households. So what Tom is saying is exactly right. It is within that household these fears that are being raised about what it means to be a noncitizen.

And we are not even talking about undocumented immigrants here. We are talking about legal, permanent residents that have every right to be here. For their children that may be of voting age, there are certain fears that are invoked about how much they want to put their family that includes all sorts of different types of immigrants into that public eye.

Chairwoman FUDGE. So what do you think that we can do to combat that?

Mr. SAENZ. Well, I think there has to be a counter-rhetoric, if you will, that can come from the Congress that can also help elected officials who want to make sure that there is widespread knowledge that everyone, including naturalized citizens, has every right to vote.

By the same token, I think that this Subcommittee should seriously look at whether there should be limits on the accessing of data known to be inaccurate to determine citizenship population, which is what is ongoing right now with the Commerce Department.

Now, MALDEF, together with Asian Americans Advancing Justice and others, have challenged that effort in court. But there also needs to be additional efforts to prevent accessing private data that is knowingly inaccurate and attempting to somehow say that is an indication of who are citizens and where our citizens are in the country.

Chairwoman FUDGE. You are challenging under what kind of an action?

Mr. SAENZ. So we have filed in Federal court in Maryland, challenging the Executive Order that involves accessing these administrative records under a number of claims, including the Administrative Procedure Act, but also including constitutional claims, that the same unconstitutional racial discriminatory intent that motivated the addition of the citizenship question, or the attempted addition of the citizenship question, is behind this effort as well.

Chairwoman FUDGE. Okay.

Mr. Aguilar, do you have anything else you want to—

Mr. AGUILAR. No, I am good.

Chairwoman FUDGE. Okay.

The last thing I want to ask you—and if you could just do it quickly—is, if there is one thing that you think we can have an effect on or one thing you want us to do, from this Committee’s perspective, that will make the situation better that you are experiencing, what would that one thing be?

Why don’t we start with Ms. Bishop.

Ms. BISHOP. Just one?

Chairwoman FUDGE. Just one. Your number one.

Mr. AGUILAR. Not all of our witnesses have answered the question with just one, so just—

Chairwoman FUDGE. Your number one.

Ms. BISHOP. I am trying to choose amongst so many things.

I think that one of the most important things that Congress can do to support making elections fully accessible to all is to provide funding. States need funding to upgrade their equipment, to upgrade their polling locations. The P&A network needs additional funding to do the work that we do to push them forward.

But I think we also—one of the things I have not yet mentioned today is research and development funding to support better solutions.

I mentioned earlier that, for the first time, many Americans with disabilities were able to vote privately and independently because of the Help America Vote Act. All of the voting systems we are using today could be both more accessible and more secure. We need effective research and development to develop better solutions that will solve both of those problems.

Elections equipment is not a big-money industry if you work in tech. If Congress is able to support those efforts, I do believe that we could develop voting solutions that are both more accessible and more secure, going forward.

Chairwoman FUDGE. Thank you.

Mr. Saenz.

Mr. SAENZ. I would cite what I just said, which is looking into this accessing of State databases that are known to be inaccurate. Because even accessing the data, as we saw with the short-lived election fraud task force, can have chilling effects on voters.

Chairwoman FUDGE. Thank you.

Mr. Vargas.

Mr. VARGAS. I would say a fully seated, staffed, and funded Election Assistance Commission.

Mr. YANG. I would ditto all of that.

And I guess I can’t overstate promoting best practices and, through that, education and transparency. It is those best practices, making sure that the State, especially all of you, have connections to local and State elected officials, local State representatives, make sure they understand this.

And holding them accountable. Now, obviously, there—what I mean by “holding them accountable,” it doesn’t necessarily mean, sort of, through the elected representative, but making sure that they understand the consequences of this. Because, again, what we are here trying to do is represent the American people.

Chairwoman FUDGE. Thank you.

And I thank you all. This has been a very interesting day, just to understand the myriad of things that are happening across this

country that make it more difficult for people to vote. I thank you for the work you do. I thank you for taking the time to come to testify today. And I hope that you will continue to fight the good fight.

Because, obviously, there are certain things we can do and certain things we cannot. But I appreciate your sharing with us what you are seeing on a daily basis, and it gives us some idea of what we can do as we look at legislation going forward.

Again, I thank you all so much for being here.

And, without objection, this Subcommittee stands adjourned.

[Whereupon, at 1:27 p.m., the Subcommittee was adjourned.]

BRENNAN  
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# Purges: A Growing Threat to the Right to Vote

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By Jonathan Brater, Kevin Morris,  
Myrna Pérez, and Christopher Deluzio



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## Introduction

**O**n April 19, 2016, thousands of eligible Brooklyn voters dutifully showed up to cast their ballots in the presidential primary, only to find their names missing from the voter lists. An investigation by the New York state attorney general found that New York City's Board of Elections had improperly deleted more than 200,000 names from the voter rolls.

In June 2016, the Arkansas secretary of state provided a list to the state's 75 county clerks suggesting that more than 7,700 names be removed from the rolls because of supposed felony convictions. That roster was highly inaccurate; it included people who had never been convicted of a felony, as well as persons with past convictions whose voting rights had been restored.

And in Virginia in 2013, nearly 39,000 voters were removed from the rolls when the state relied on a faulty database to delete voters who allegedly had moved out of the commonwealth. Error rates in some counties ran as high as 17 percent.

These voters were victims of purges — the sometimes-flawed process by 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, purges disenfranchise legitimate voters (often when it is too close to an election to rectify the mistake), causing confusion and delay at the polls.

Ahead of upcoming midterm elections, a new Brennan Center investigation has examined data for more than 6,600 jurisdictions that report purge rates to the Election Assistance Commission and calculated purge rates for 49 states.<sup>1</sup>

We found that between 2014 and 2016, states removed almost 16 million voters from the rolls, and every state in the country can and should do more to protect voters from improper purges.<sup>2</sup>

Almost 4 million more names were purged from the rolls between 2014 and 2016 than between 2006 and 2008.<sup>3</sup> This growth in the number of removed voters represented an increase of 33 percent — far outstripping growth in both total registered voters (18 percent) and total population (6 percent).

Most disturbingly, our research suggests great cause for concern that the Supreme Court's 2013 decision in *Shelby*

*County v. Holder* (which ended federal "preclearance," a Voting Rights Act provision that was enacted to apply extra scrutiny to jurisdictions with a history of racial discrimination) has had a profound and negative impact:

For the two election cycles between 2012 and 2016, jurisdictions no longer subject to federal preclearance had purge rates significantly higher than jurisdictions that did not have it in 2013. The Brennan Center calculates that *2 million fewer voters* would have been purged over those four years if jurisdictions previously subject to federal preclearance had purged at the same rate as those jurisdictions not subject to that provision in 2013.<sup>4</sup>

In Texas, for example, one of the states previously subject to federal preclearance, approximately 363,000 more voters were erased from the rolls in the first election cycle after *Shelby County* than in the comparable midterm election cycle immediately preceding it.<sup>5</sup> And Georgia purged twice as many voters — 1.5 million — between the 2012 and 2016 elections as it did between 2008 and 2012.

Meanwhile, the Justice Department has abdicated its assigned role in preventing overly aggressive purges. In fact, the Justice Department has sent letters to election officials inquiring about their purging practices — a move seen by many as laying the groundwork for claims that some jurisdictions are not sufficiently aggressive in clearing names off the rolls.

This new report follows an extensive analysis of this issue in a 2008 Brennan Center report entitled *Voter Purges*.<sup>6</sup> In that report, we uncovered evidence that election administrators were purging people based on error-ridden practices, that voters were purged secretly and without notice, and that there were limited protections against purges. In this year's report, we discovered that little about purge practices has improved and that a number of things have, in fact, gotten worse.

This study also found:

- **In the past five years, four states have engaged in illegal purges, and another four states have implemented unlawful purge rules.**

Federal standards for purges were set in the 1993 National Voter Registration Act (NVRA). Since 2013, Florida, New York, North Carolina, and Virginia have conducted illegal purges. Moreover, Brennan Center research has uncovered that four states (Alabama, Arizona, Indiana, and Maine) have written policies that by their terms violate the NVRA and provide for illegal purges. Alabama, Indiana, and Maine have policies for using data from a database called the Interstate Voter

Registration Crosscheck Program (Crosscheck) to immediately purge voters without providing the notice and waiting period required by federal law (Indiana's practice has been put on hold by a federal court). Arizona regulations permit Crosscheck purges during the 90 days prior to an election, a period during which federal law prohibits large-scale purges. These eight states are home to more than a quarter of registered voters across the nation.

▪ **States use inaccurate information.**

Although states have improved the way in which they use data to purge the voter rolls in some respects, several jurisdictions rely on faulty data to flag potentially ineligible voters. And some of the new sources of information that have come into widespread use since our 2008 report, such as Crosscheck, are especially problematic.

▪ **A new coterie of activist groups is pressing for aggressive purges.**

Most purging litigation brought by private litigants before 2008 contended that voter removal efforts were overly aggressive. Today, a different group of plaintiffs is hauling election officials into court, claiming that purging practices in their jurisdictions are not sufficiently zealous.

This report makes the following recommendations:

▪ **Enforce the NVRA's protections.**

The NVRA, one of the major federal laws governing how states and localities can conduct purges, permits voters and civic groups to sue election officials if they violate the law's provisions. Monitoring jurisdictions to ensure they are complying with the NVRA — and bringing litigation when necessary — is especially important in an era when election officials are under pressure to mount aggressive purges.

▪ **States should set purging standards that provide even more protections than the NVRA.**

The NVRA sets out federal standards for purges and requires that voters removed from the rolls for certain reasons be given notification. But these are minimum guidelines. States can and should do more to protect against disenfranchisement caused by improper purges — for example, providing public and individual notice before purging names from the rolls.

▪ **Pass automatic voter registration.**

Automatic voter registration is a popular reform that minimizes registration errors and allows for easy updates, making rolls more accurate and current.

## Methodology

We analyzed purge statutes, regulations, and other guidance in 49 states.<sup>7</sup> We interviewed 21 state or local election administrators in 18 states and reviewed documents from 20 states in response to public records requests.<sup>8</sup>

We also calculated state and county purge rates using voter registration data from the Election Administration and Voting Survey (EAVS), which is administered biennially by the U.S. Election Assistance Commission.<sup>9</sup> Our analysis used EAVS data from the 2008, 2010, 2012, 2014, and 2016 reports. In each two-year period, we calculated a jurisdiction's voter removal rate by dividing the number of *removed voters* by the sum of *registered voters* (i.e., both active and inactive registered voters) and *removed voters*.<sup>10</sup>

## The 2018 Purge Landscape

Between the 2014 and 2016 elections, roughly 16 million names nationwide were removed from voter rolls.<sup>11</sup> The federal law governing purges<sup>12</sup> allows a voter's name to be purged from the voter rolls on the following grounds: (1) disenfranchising criminal conviction; (2) mental incapacity; (3) death; and (4) change in residence. In addition to these criteria, individuals who were never eligible in the first place, such as someone under 18 or a noncitizen, may be removed. Voters may be removed at their own request (even if they remain eligible). While all 49 states with voter registration lists have affirmative policies to remove names from the rolls (typically for several or all of the four delineated categories), states vary in the manner in and frequency with which they conduct voter purges.<sup>13</sup>

▪ **Disenfranchising Conviction**

Except in Maine and Vermont, states disenfranchise at least some voters convicted of a crime for some period of time, which means that there are states that purge voters because of a criminal conviction. States have different policies about what causes a voter to become ineligible and different procedures for removing those who have been disenfranchised.<sup>14</sup> They also draw upon different lists to identify individuals with felony convictions, which may in turn be maintained with different levels of regularity and precision by courts or law-enforcement officials at the state or federal levels.

▪ **Mental Incapacity**

Though less ubiquitous than some other bases of removal, 28 states have specific rules requiring removal from the rolls of a person determined not to have mental capacity to vote.<sup>15</sup> Definitions vary, and reform attempts have had

some success limiting the instances in which those with alleged mental incapacity lose their right to vote.<sup>16</sup>

#### ▪ Death

Federal law mandates that states take steps to remove the deceased from the rolls. Yet there is no uniform standard among the various state laws detailing the sources of information to be consulted to determine which voters are deceased. Some jurisdictions use information from state agencies, some review obituaries, and some rely on the Social Security Administration's Death Master File.<sup>17</sup>

#### ▪ Residency Changes

States vary in how they perform list maintenance for changes of address. Some of that variation is in timing. Montana, for example, conducts address removals every odd-numbered year,<sup>18</sup> and Connecticut conducts address removals annually.<sup>19</sup> There is also variation in which source of information is used. Two common sources are drivers' license updates and the postal service's National Change of Address (NCOA) database, but states also utilize other sources, such as interstate databases, returned mailings, or voter inactivity.

#### ▪ Noncitizenship

While election officials generally remove names of persons when it is made known to them that a noncitizen has gotten on the rolls, at least six states also have laws that require state officials to use jury declarations, drivers' license information, and/or federal databases to actively identify noncitizens on the voter rolls, to remove names of noncitizens so identified, or both.<sup>20</sup>

## CURRENT FINDINGS

### Purge Rates Are Higher Than a Decade Ago

In the two-year period ending in 2008, the median jurisdiction purged 6.2 percent of its voters.<sup>21</sup> At one end of the spectrum in 2008, Salt Lake County, Utah, purged less than 0.1 percent of its voters, and at the other end of the spectrum, Milwaukee County, Wisconsin, purged more than 34 percent of its voters. Of the 2,534 counties that reported purge rates to the Election Assistance Commission in 2008, only 97 had purged more than 15 percent of its registered voters in a two-year period.

Between the federal elections of 2014 and 2016, almost 4 million more names were purged from the rolls than in 2006-08. In this same period, more than twice the number of counties — 205 — had purged more than 15 percent of their voters than between 2006 and 2008.

Although a higher removal rate is not inherently bad, more purging means increased potential for eligible voters

to be removed, especially given that we identified no state with the desired level of voter protections against purges.

### Purge Rates Increased More in Jurisdictions Previously Subject to Federal Preclearance

Prior to 2013, the Voting Rights Act required certain jurisdictions with a history of discriminatory election practices to obtain federal certification that any intended election change, including voter purge practices, would not harm minority voters and was not enacted with discriminatory intent. This monitoring process was known as "preclearance."<sup>22</sup> In 2013, however, the Supreme Court concluded in *Shelby County v. Holder*<sup>23</sup> that Congress had inappropriately determined which jurisdictions should be subject to preclearance. As a result, jurisdictions subject to (or "covered" by) preclearance requirements were freed from making the case that minority voters would not be harmed by a proposed election change.

Across the board, formerly covered jurisdictions increased their purge rates after 2012 more than noncovered jurisdictions. Before *Shelby County*, jurisdictions that were subject to preclearance requirements ("covered jurisdictions") had removal rates equal to other jurisdictions ("noncovered jurisdictions").<sup>24</sup> After 2013, the two groups

## FALLOUT FROM SHELBY COUNTY

Increases in purge rates in previously covered jurisdictions weren't the only changes after *Shelby County*.<sup>1</sup> Following the decision, many states and jurisdictions proceeded to enact or implement laws that would have been subject to preclearance. In fact, states formerly under preclearance requirements were more likely to pass legislation restricting their voting and election practices than the nation as a whole. Of the nine states once fully covered by the Voting Rights Act, seven have passed restrictive legislation since 2010. Of the 41 states not fully covered, only 18 passed restrictive laws over the same period. Two of these states (Florida and North Carolina) each had several counties subject to the Voting Rights Act.<sup>2</sup>

<sup>1</sup> *Shelby County v. Holder*, 570 U.S. 2 (2013).

<sup>2</sup> See Brennan Center for Justice, *New Voting Restrictions in America*, May 2017, [https://www.brennancenter.org/sites/default/files/analysis/New\\_Voting\\_Restrictions.pdf](https://www.brennancenter.org/sites/default/files/analysis/New_Voting_Restrictions.pdf). We include in this count legislation that was enacted and subsequently struck down by courts. See, e.g., *Applewhite v. Pennsylvania*, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) (striking down Pennsylvania voter ID law).

sharply diverged. For the 2012-14 and 2014-16 two-year election cycles, the removal rate for noncovered jurisdictions did not budge. The story was entirely different for covered jurisdictions, whose median removal rate was 2 percentage points higher after the *Shelby County* decision than the noncovered jurisdictions.<sup>25</sup> Though 2 percentage points may seem like a small number, more than 2 million fewer voters would have been removed if these counties had removal rates comparable to the rest of the country. Previously covered jurisdictions ended up removing more than 9 million voters between the presidential elections of 2012 and 2016. These increases were not concentrated in just a few small counties: 67 percent of residents in previously covered jurisdictions lived in areas where the removal rate increased, compared to just 46 percent of residents in non-covered jurisdictions. These calculations are restricted to jurisdictions that reported their data each year, but there is evidence that the same trend happened in counties that did not report each year, as our Texas analysis below shows.

The increase in removal rates in counties previously covered by the preclearance provision is not attributable to geographical or partisan factors (see footnote 25 for more information). We also conducted a difference-in-differences regression analysis<sup>26</sup> to see if population, minority presence, income, or other factors could explain the increase in removal rates in these counties. Even after controlling for these factors, a jurisdiction's former status under the Voting Rights Act was strongly associated with higher voter removal rates. Although this effect was larger in the two-year period coinciding with the lifting of the preclearance requirement, it continued even into the two-year period ending with the presidential election of 2016.

To be absolutely clear, our analysis cannot establish what percentage, if any, of these post-*Shelby County* purges were done erroneously. What we do know is that provisional ballots, which are given to voters who are missing from the voter rolls, had a statistically significant relationship to purge rates in previously covered jurisdictions.<sup>27</sup> This means that as the purge rates increased, so did the number of people who showed up to vote but were unable to do so, either because their names were not on the rolls or for some other reason.

Another factor is that between the presidential elections of 2012 and 2016, a handful of states implemented strict voter ID laws that required voters to cast provisional ballots if they did not have one of the limited number of accepted identifications. The implementation of these laws could, of course, have led to an increase in provisional ballot rates. (To isolate the impact of increased purge rates on provisional ballot rates, we performed a regression

analysis in which we controlled for the implementation of strict voter ID laws and other sociodemographic factors. The regression specification and a closer look at a few counties with big increases in purge rates and provisional ballots can be found in Appendix C.)

The changes were particularly notable in three states: Georgia, Texas, and Virginia.

In **Georgia**, 750,000 more names were purged between 2012 and 2016 than between 2008 and 2012. Although Georgia did not report provisional ballot rates in 2012, their provisional ballot rates in the federal elections of 2010 and 2014 correspondingly increased as the removal rates increased. Of the state's 159 counties, 156 reported increases in removal rates post-*Shelby County*. This included the state's 86 most populous counties. The increased purge rate occurred during a period when Georgia was criticized for several controversial voter registration practices. For example, Georgia was sued for blocking registration applications between 2013 and 2016 because information (including hyphens in names) did not match state databases precisely. Georgia agreed to cease the matching rule as a result of the lawsuit but then enacted legislation reinstating a very similar practice the next year.<sup>28</sup>

**Texas** did not report removal rates for the two years ending in 2012 and is thus excluded from our high-level analysis of the previously covered jurisdictions. Nonetheless, the state exhibited a substantial increase in removal rates when we compare the two-year periods ending with the federal elections of 2010 and 2014. Between 2012 and 2014, approximately 363,000 more voters were removed than in 2008-10.<sup>29</sup> Unsurprisingly, the provisional ballot rate also increased between the midterm elections of 2010 and 2014. Consistent with the broader trend, these increases were not driven only by small counties: Fourteen of the 20 most populous counties increased their removal rates. Of the 183 Texas counties that reported their removal rates in both periods, 121 saw an increase after the *Shelby County* decision. Among the Texas counties that consistently reported their data and increased their removal rate after the *Shelby County* decision, the median increase was 3.5 percent. This increased purge rate did not occur in isolation but was joined by restrictive voting legislation. In 2014, a federal district court ruled that the strict photo ID law that Texas passed in 2011 was motivated in part by a discriminatory purpose of reducing minority political participation.<sup>30</sup> The Court of Appeals of the 5<sup>th</sup> Circuit did not decide whether the law was motivated by discriminatory animus but did conclude it had a discriminatory effect.<sup>31</sup> In 2017, Texas passed a new voter ID law. Litigation regarding the new law is ongoing.



In **Virginia**, previously covered counties removed 379,019 more voters between 2012 and 2016 than between 2008 and 2012. Once again, the increase in purge rates in these counties was not driven by small counties purging more voters. All the previously covered counties except one increased removal rates after *Shelby County*. The one previously covered county that showed a decrease — Highland County — is the least populous county in the state, home to just 2,230 people. More than 99 percent of Virginia's voters live in counties that increased their removal rates after *Shelby County*. As later discussed in more detail, a contributing factor may have been a highly problematic purge process that Virginia mounted in 2013.

#### States Continue to Conduct Flawed Purges

Broadly speaking, purges go wrong for one of two basic reasons: bad information about who should be removed from the rolls or a bad method for removing them. There are tools to catch and correct these mistakes, some of which are legally mandated. For example, federal law sets forth some important and relevant safeguards, such as requiring that systematic purges — those in which voter rolls are compared with lists of potentially ineligible individuals to remove groups of voters at the same time — occur well in advance of an election. Another is making sure certain categories of voters get a notice and waiting period before removal.<sup>32</sup> Yet as both a legal and practical matter, many states lack sufficient safeguards to detect and correct problems so that any harm can be repaired in advance of an election.

Two states' recent experiences illustrate the basic reasons purges go wrong — Arkansas used bad information, while Texas used a bad method.

In June 2016, the Arkansas secretary of state sent county officials a list of more than 7,700 records from the Arkansas Crime Information Center (ACIC) of persons who were supposedly ineligible to vote and should be removed from the rolls.<sup>33</sup> (Those convicted of felonies in Arkansas lose their right to vote until their sentence is complete or they are pardoned.<sup>34</sup>) But the list included a high percentage of voters who were indeed eligible,<sup>35</sup> yet appeared on the list because they had had some involvement with the court system, such as a misdemeanor conviction or a divorce.<sup>36</sup> Also included were names of those whose voting rights had been restored.<sup>37</sup> The error became public in July 2016, and despite the public outcry, the records of fewer than 5,000 of the more than 7,700 erroneously listed voters had been corrected by September 2016.<sup>38</sup> Pulaski County, the largest county in the state, explained that the problem was flagged by the counties, not the state, and not all counties were able to correct errors.

Previously, the secretary of state had not been providing counties with regular updates of conviction data and, in the past, had been using the wrong source list for data on felony convictions. Once Arkansas switched to the list required by law, the secretary did an overly broad match and provided counties with inflated lists with bad matches. Pulaski County flagged the errors and was able to investigate the list, but some counties with insufficient resources simply sent purge notices to everyone on the list.<sup>39</sup>

Texas is an example of a bad purge caused by flawed data matching. In 2012, Texas officials conducted a purge of voters presumed to be dead. According to a representative from the Texas secretary of state's office, the purge was driven by a comparison of Texas voters' information to the Social Security Administration's Death Master File — the first time Texas had conducted such an exercise.<sup>40</sup> Matching to the Death Master File was required under a then-new Texas law (H.B. 174) mandating election officials to obtain such information about potentially deceased voters quarterly.<sup>41</sup>

While the 2008 Brennan Center report on voter purges showed that the Death Master File can contain errors,<sup>42</sup> the problem in Texas occurred because the state used what are called "weak" matches (meaning that the chances that the person identified was actually deceased were too low to be trusted) to target voters without conducting any further investigation.<sup>43</sup> For example, a voter whose date of birth and last four digits of their Social Security number matches a dead person's record would be a "weak" match.<sup>44</sup> On these grounds, a living Texas voter (and Air Force veteran) named James Harris, Jr., was flagged for removal because he shared information with an Arkansan, "James Harris," who had died in 1996.<sup>45</sup> According to one analysis, more than 68,000 of the 80,000 voters identified as possibly dead were weak matches.<sup>46</sup> This policy of flagging voters based on a weak match without further investigation was eventually changed when Texas settled litigation that had arisen on account of the bad purge.<sup>47</sup>

States south of the Mason-Dixon Line do not have a monopoly on bad purges. Before the April 2016 primary election, the New York City Board of Elections purged more than 200,000 voters, the majority of whom lived in Brooklyn. In 2014 and 2015, the Brooklyn Borough Office of the Board of Elections targeted for removal people who had not voted since the 2008 election.<sup>48</sup> New York City officials complied with the portion of federal law requiring them to *send* notice to affected voters but not with the part that required them to *wait* two federal elections before purging those who did not respond. Instead, the Board of Elections gave voters 14 days to respond, then

purged voters immediately. In the end, nearly 118,000 registrations were canceled when voters did not respond to these notices.<sup>49</sup> And through another process, an additional 100,000 voters were removed (also without the required waiting period) because New York City Board of Elections officials believed they had moved.<sup>50</sup> On Election Day, thousands of voters showed up at the polls only to learn their registrations had been erased. Moreover, these problems were not evenly distributed. One report found that 14 percent of voters in Hispanic-majority election districts were purged compared to 9 percent of voters in other districts.<sup>51</sup>

#### Federal Role in Voter Protection Diminished

The increased purge rates are a cause for concern because there are fewer federal protections against improper purges. The *Shelby County* decision has halted the preclearance provision, which had previously blocked election changes in certain jurisdictions unless it could be shown that the change would not make minority voters worse off and was not enacted with discriminatory intent.

And at least for now, voters have lost another important protector against improper purges: the Justice Department. Since 1993, the Justice Department has been charged with enforcing the National Voter Registration Act, the primary source of federal protection against inaccurate or overly broad purges.<sup>52</sup> While the Justice Department's purge history is mixed,<sup>53</sup> it brought pro-voter NVRA lawsuits during the Obama administration. Enforcement actions for violating the NVRA were undertaken against at least six states. In Florida and New York, the DOJ successfully challenged state purge practices.<sup>54</sup> In Florida, the Justice Department joined civic groups who successfully challenged the state's practice of conducting systematic purges just 90 days before an election.<sup>55</sup>

But the Trump administration has reversed course. For instance, in *Husted v. A. Philip Randolph Institute*, the Obama administration filed a brief in support of plaintiffs challenging an Ohio purging practice in which individuals who failed to vote in a single election received purge notices and were ultimately purged if they did not respond and did not vote in the next two federal elections. Failure to vote in a single election is poor evidence of ineligibility because not voting is common; for example, in the last midterm election, nearly 60 percent of Ohioans did not vote.<sup>56</sup> But when the case was pending before the U.S. Supreme Court in the summer of 2017, the Justice Department switched sides and supported Ohio.<sup>57</sup> On June 11, 2018, the Supreme Court ruled in favor of Ohio and the Justice Department's new position.<sup>58</sup>

Last summer, the Trump Justice Department also sent letters to 44 states demanding information about their voter purge practices.<sup>59</sup> Although the Justice Department has not taken further action so far, the suspicion is that the inquiries could be a precursor to enforcement actions to force states to purge more aggressively.<sup>60</sup>

#### New Flaws in Voter Purges

Three new risks have emerged in voter purges in recent years. One is the growth of interstate databases that purport to identify voters who have moved to a new state and are registered in both their current and former state. The two databases primarily used are the Interstate Voter Registration Crosscheck program (Crosscheck) and Electronic Registration Information Center (ERIC).

Launched in 2005 by the Kansas secretary of state, Crosscheck purports to identify voters who may have cast ballots in two different states in the same election. In 2017, 28 states participated in Crosscheck by sharing voter data with the system,<sup>61</sup> but not all of those states actively used, or use, Crosscheck to remove voters. The number of participating states in 2018 is still to be determined because a number of states are assessing their participation.

Another data-matching initiative, ERIC, began with assistance from the Pew Charitable Trusts in 2012. Twenty-four states and the District of Columbia are or will soon be members of ERIC.<sup>62</sup>

The second risky development is the increasing number of states scouring their rolls to identify alleged noncitizens registered to vote: The number of states with statutes specifically mandating searching for and removing noncitizens from the rolls has increased from two to six since 2008. Of course, noncitizens are not permitted to vote in federal and state elections, but the sources states rely upon to determine voter citizenship, such as driver's license lists, are not highly accurate. Moreover, the primary policy justification for aggressive purges aimed at removing noncitizens from the rolls — supposed widespread noncitizen voting — is not supported by the facts, a Brennan Center study of the 2016 election found. The study looked at 42 jurisdictions in 12 states, including eight of the 10 jurisdictions with the nation's largest noncitizen populations. Out of the 23.5 million votes cast in these jurisdictions, election officials referred only 30 instances of *suspected* noncitizen voting, or .0001 percent of the total.<sup>63</sup>

Finally, several conservative activist groups have sued state and local jurisdictions in recent years seeking to force them to purge their rolls more aggressively. For instance,

last September the Public Interest Legal Foundation noted that it had brought nine suits in six states in the past two years alleging lax vigilance of voter rolls. That tally was included in a press release announcing that the group had put 248 counties in 24 states “on notice” that they were risking litigation if they could not demonstrate “effective voter roll maintenance.”<sup>64</sup>

#### Interstate Voter Registration Crosscheck Program (Crosscheck)

Purges based on a change of address have long been complicated and error prone. When the Brennan Center looked at purges a decade ago, it found that states primarily used the National Change of Address database compiled by the U.S. Postal Service to identify movers

(as well as driver’s license information).<sup>65</sup> But states have begun using other databases that go beyond the traditional sources of change-of-address information. Our research shows these new interstate databases have serious weaknesses that can lead to widespread and inaccurate purges.

When it began in 2005, the Kansas-based Crosscheck program had only four members.<sup>66</sup> In 2017, the most recent year data was shared, 28 states submitted data to the program.<sup>67</sup> Crosscheck’s purpose is to identify possible “double voters” — an imprecise term that could be used to refer to people who have registrations in two states or who actually *voted* in an election in multiple states. While it is not uncommon for those who have recently moved to be registered in multiple places, actual double voting is rare. In 2017, Crosscheck examined the records of 98 million

### CROSSCHECK IN THE CROSSHAIRS

Crosscheck’s flaws put approximately 100 million voters in its database at potential risk, but some individuals are more vulnerable than others. Because of the loose matching criteria used by the program, parents and children with the same name are at greater risk of being confused with each other. Voters with common names are also more likely to match with different individuals for obvious reasons, but a less-obvious concern is the disproportionate effect this has on minority voters. 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.<sup>1</sup>

Crosscheck creates matches based on first name, last name, and birthday. Shared names and birthdays

are fairly common. In fact, if you were to gather 23 or more people in the same place, there is a greater than 50 percent chance that two people would share a birthday (day and month).<sup>2</sup> Even adding in the year doesn’t make an enormous difference: In a group of 180 people, it’s more likely than not that two people will have been born on the exact same day.<sup>3</sup>

Of course, adding in first and last names substantially decreases the rate at which people look the same on paper. It doesn’t, however, lower that rate sufficiently to make Crosscheck anywhere near accurate. When looking at records of millions of people, matching birthdates and names can still return thousands of inaccurate matches. This is true not only because of the so-called birthday problem but also because

of the variation in the popularity of names. Jennifer, for instance, was the most common name for women born in the 1970s<sup>4</sup> but was the 191st most common name for women born between 2010 and 2017.<sup>5</sup> On average, 160 Jennifers were born every single day in the U.S. between 1970 and 1979. Among these, there were doubtless many who shared surnames common among Americans.

The program also hurts frequent movers such as college students and military personnel, who are more likely to be wrongly flagged by the database following a recent move. Because Crosscheck’s data of registration data is unreliable, those who move more frequently are more likely to be wrongly identified as having moved out of the state that purges them.<sup>6</sup>

- 1 Non-white people are more likely to have common shared names. For instance, 16.3 percent of Hispanic people and 13 percent of black people have one of the 10 most common surnames, compared to 4.5 percent of white people. Joshua Comenetz, “Frequently Occurring Surnames in the 2010 Census,” U.S. Census Bureau, October 2016, available at <https://www2.census.gov/topics/genalogy/2010/surnames/surnames.pdf>.
- 2 Michael P. McDonald and Justin Levitt, “Seeing Double Voting: An Extension of the Birthday Problem,” *Election Law Journal* 7, (2007): 111–122, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=997888](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888).
- 3 Sharad Goel et al., “One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections” (working paper, Stanford University, 2017) 3, <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.
- 4 “Top names of the 1970s,” Social Security Administration, accessed June 15, 2018, <https://www.ssa.gov/oact/babynames/decades/names1970s.html>.
- 5 “Top names of the period 2010 - 2017,” Social Security Administration, accessed June 15, 2018, <https://www.ssa.gov/oact/babynames/decades/names2010s.html>.
- 6 Sharad Goel et al., “One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections” (working paper, Stanford University, 2017) appendix-22, <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.

voters<sup>68</sup> and produced 7.2 million “matches” representing 3.6 million voters supposedly registered in two states.<sup>69</sup>

Crosscheck compares the voter registration list of each participating state against the voter registration lists of the other participating states and flags all records that have the same first name, last name, and date of birth.<sup>70</sup> But in groups as large as statewide (or multistate) voter registration lists, the statistical odds of two registrants having the same name and birth date is sufficiently high as to be problematic.<sup>71</sup> A 2017 study led by Stanford professor Sharad Goel found that if applied nationwide, Crosscheck would “impede 300 legal votes for every double vote prevented.”<sup>72</sup> Moreover, the study found that “there is almost no chance that double votes could affect the outcome of a national election.”<sup>73</sup> One of Crosscheck’s problems is that it does not have reliable registration dates, which means that an election official cannot competently determine which of the two places a voter is registered is more recent and therefore which state should remove the voter.

Virginia had a major problem with Crosscheck five years ago when it tried to purge nearly 39,000 voters. Crosscheck relies on little information before concluding that registration records in different states belong to the same person. Virginia sent counties the roster of voters for removal without checking its accuracy, and counties were not furnished with any guidance about the data or sufficient time to conduct a thorough review.<sup>74</sup> Eligible voters were wrongly flagged as having moved from Virginia to another state when they had in fact moved from another state to Virginia.<sup>75</sup> Error rates in some counties ran as high as 17 percent.<sup>76</sup> Counties did not begin spotting errors until some had begun removing voters. At the urging of civic groups, the state issued new guidance on the use of Crosscheck data but not until thousands of voters had been purged right before a statewide election.<sup>77</sup>

Especially troubling is that at least four states have policies or regulations on the books providing for the use of Crosscheck in an illegal manner. Alabama,<sup>78</sup> Indiana,<sup>79</sup> and Maine<sup>80</sup> regulations allow counties to use Crosscheck to immediately purge voters from the rolls, without providing these voters notice and a two-election waiting period before deleting them as required by the NVRA.<sup>81</sup> And Arizona regulations permit removing voters based on Crosscheck in some instances within 90 days of a federal election,<sup>82</sup> which is not allowed under the NVRA for systematic purges such as those using Crosscheck.

Not all participating states are actively using Crosscheck data to identify and remove potentially ineligible voters.

In recent years, at least eight states have left the program altogether and no longer share data with or receive data from Crosscheck.<sup>83</sup> Additionally, seven other states have curtailed their use of Crosscheck data by not using it for the purposes of voter-list maintenance.<sup>84</sup> Instead, these states either do nothing with the data they receive or use it solely to identify people who appear to have *voted* (not merely registered) in multiple states.

In the midst of publicity around lax security protocols with Crosscheck<sup>85</sup> and news earlier this year that Crosscheck would review its security protocols and postpone uploading data,<sup>86</sup> Illinois announced that it would no longer transmit data to Crosscheck.<sup>87</sup> A state official was quoted as saying, “we will transmit no data to Crosscheck until security issues are addressed to our satisfaction.”<sup>88</sup> A South Carolina official expressed a similar sentiment, explaining that the state stopped using data “due to issues with verification and concerns about cybersecurity.”<sup>89</sup> According to an attorney representing the state of Indiana in litigation related to the state’s use of Crosscheck, as of May 2 of this year, Crosscheck was not accepting data from participating states while a review of security processes remained in progress.<sup>90</sup>

#### Electronic Registration Information Center (ERIC)

The Electronic Registration Information Center is a program that uses voter registration data, motor vehicle licensing information, Social Security Administration data, and National Change of Address information to identify voters who may have moved. Begun six years ago, 24 states plus the District of Columbia are enrolled in the program (or soon will be).<sup>91</sup> To participate in ERIC, states must submit extensive voter data, including full address, driver’s license or state ID number, last four digits of social security number, date of birth, voter registration activity dates, current record status, eligibility documentation, phone number, and email address.<sup>92</sup> Election officials in ERIC-participating states told us they provide notice and a two-election waiting period before removing voters.<sup>93</sup>

Election officials reported that ERIC also helps them identify potential voters who have moved into their jurisdictions but have not registered.<sup>94</sup> And one analysis of ERIC’s first year of operation showed increases in registrations in ERIC states relative to non-ERIC states.<sup>95</sup>

Although most of the election administrators that we interviewed reported positive experiences with ERIC, the new data source has its limits. Administrators from Maryland and Illinois, for example, reported that it could be difficult to determine a voter’s most recent address, which is a problem for frequent movers.<sup>96</sup> This absence of precise

information means that, even though ERIC is generally processed at the state level, it is local officials who must identify errors and determine which registration is more current — the one in the relevant jurisdiction or a registration in another state.<sup>97</sup> Wisconsin, meanwhile, reported that although ERIC was helpful in updating more than 25,000 registration addresses in 2017 and 2018, it also resulted in more than 1,300 voters signing “supplemental poll lists” at a spring 2018 election, indicating that they had not in fact moved and were wrongly flagged.<sup>98</sup>

#### Efforts to Purge Noncitizens Are More Frequent and Often Rely on Flawed Data

The Brennan Center’s 2008 study found that attempts to purge noncitizens were rare. Back then only two states, Texas and Virginia, had laws mandating specific procedures for identifying noncitizens.<sup>99</sup> In the last decade, four more states — Georgia, Iowa, Minnesota, and Tennessee — have passed laws requiring removal of noncitizens.<sup>100</sup> More states are likely to pass such laws because of pressure to aggressively search for and delete noncitizen registrations.

As is true with other purges, the information relied upon to purge alleged noncitizens can be inaccurate. For example, at least 14 states have sought access to the federal Systematic Alien Verification for Entitlements (SAVE) program,<sup>101</sup> which checks several databases to ascertain the residence or citizenship status of people who have contacted benefit-granting agencies.<sup>102</sup> Some states, such as Virginia, were granted access. However, states found the database is useful only if an election administrator has someone’s alien identification number, information election officials typically do not possess.<sup>103</sup>

Some states use driver’s license data to purge noncitizens. Minnesota, Tennessee, and Virginia have statutes mandating this approach. Generally, driver’s license data is deployed in one of two ways.<sup>104</sup> One involves review of documents the registrant provided to the driver’s license office when obtaining a license. If a person showed a Permanent Resident Card, the presumption is that the registrant is a noncitizen and should be removed from the rolls. The problem, however, is that a person can lawfully not update their driver’s license information for many years, in which time they may have become a citizen.<sup>105</sup>

States may also scour their voter lists for those who did not check the box indicating that they were a citizen on their driver’s license application or renewal. Virginia has a specific statutory provision requiring this; Maryland does not but still engages in the practice.<sup>106</sup> Not surprisingly, election officials told us that sometimes citizens fail to check the citizenship box.<sup>107</sup>

In addition, at least three states (Georgia, Louisiana, and Texas) remove voters if they decline jury service on the grounds of noncitizenship.<sup>108</sup> But election officials told the Brennan Center in a 2017 report on noncitizen voting that eligible voters have been known to assert they are noncitizens solely for the purpose of evading jury duty. While illegal, these declarations are not necessarily indicative that a noncitizen has been registered to vote.<sup>109</sup>

#### Activist Groups Pressing for More Aggressive Purges

Another new dynamic is activist groups agitating for election officials to purge the rolls more aggressively. In the past, litigation was often used by groups seeking to protect voters *against* bad voter purges. For example, civic groups prevented voters from being illegally purged in Michigan in 2008,<sup>110</sup> Colorado in 2010,<sup>111</sup> and Florida in 2012.<sup>112</sup>

From 1998 through 2007, most of the litigation seeking purges was brought by the Justice Department — which made voter purges a priority in the midst of a failed nationwide voter fraud hunt<sup>113</sup> — whereas private plaintiffs typically brought suits because they were worried eligible people would be improperly purged. From 2008 to the present however, more than half of the 32 federal purge-related lawsuits brought by private parties have been filed by plaintiffs who believed that jurisdictions are not purging enough names from the rolls.<sup>114</sup>

In nine cases brought by private parties since 2012, election officials agreed to undertake more aggressive list maintenance.<sup>115</sup> One of the defendants in these cases was Noxubee County, a poor, rural, majority-Black county in eastern Mississippi that was sued by the American Civil Rights Union (ACRU, not to be confused with the American Civil Liberties Union).

“They went after minority counties who didn’t have the financial resources to push back,” said Willie M. Miller, the Election Commissioner for Noxubee County’s fourth district.<sup>116</sup> As of this writing, the ACRU is suing Starr County and the State of Texas<sup>117</sup> for failing to purge aggressively enough, and the like-minded Judicial Watch has brought litigation in California.<sup>118</sup>

Unfortunately, this litigation has consequences. The ACRU lawsuit against Noxubee County resulted in about 1,500 (more than 12 percent) of its 9,000 voters being made inactive.<sup>119</sup> Being designated as inactive is the first stage of the removal process. The waiting period of two federal elections has yet to expire, so it’s unclear at this juncture how many voters will ultimately be removed.<sup>120</sup> Similarly, Judicial Watch’s 2012 suit against Indiana<sup>121</sup>

arguably led to the state undertaking more aggressive list maintenance. Before the suit was dismissed, Indiana announced that it had sent an “address confirmation mailing to all voters” and undertook other purging initiatives that led to more than 480,000 canceled registrations after the 2016 election.<sup>122</sup> Judicial Watch boasted that their lawsuit “forced” Indiana to undertake additional purge practices;<sup>123</sup> Indiana first sent out the required federal notices in 2014, then purged voters who did not respond and did not vote in 2014 or 2016.

Litigation is but one element of a broader strategy by these groups to force purges. In 2016, the Public Interest Legal Foundation published a report entitled “Alien Invasion

in Virginia,” complete with a flying saucer on the cover. Extrapolating from a small sample, the missive misleadingly suggested thousands of votes had been cast by noncitizens,<sup>124</sup> a claim election officials dispute.<sup>125</sup> The Foundation’s pressure may have had an impact: Six hundred ninety-three alleged noncitizens were purged in the 2016 reporting period, but that number more than doubled to 1,686 in the 2017 period.<sup>126</sup> The purge has spawned yet more litigation, with several voters complaining that they were wrongly deleted, and the Public Interest Legal Foundation has been sued for defamation and illegal voter intimidation.<sup>127</sup> Election fraud vigilantes have also brought mass challenges to voters’ registrations, including in North Carolina, where a judge blocked the practice.<sup>128</sup>

## CHALLENGES CONTINUE

In at least 15 states, “challenge” laws permit challenges to the validity of a voter’s registration prior to Election Day (additional states allow challenges to eligibility at the time of voting only).<sup>1</sup> These challenge laws, which are designed to allow for questioning the eligibility of registered voters on a case-by-case basis, have been used recently in several states to try to systematically remove voters from the rolls, functioning effectively as a purge that can operate outside the NVRA’s protections. The use of challenge laws as back doors for purging is legally dubious and increases the risk of wrongful removals; precisely what has happened in some states.

Colorado’s former secretary of state, Scott Gessler, matched the voter rolls against driver’s license lists to produce a large (and inflated) list of potential noncitizens. He then attempted to use his state’s challenger

laws to remove voters en masse. After much public criticism, Gessler abandoned the effort.<sup>2</sup>

In Hancock County, Georgia, the majority-white Board of Elections used challenge procedures in the weeks leading up to a 2015 municipal election to challenge 174 voters — nearly 20 percent of the town of Sparta’s electorate. The majority of the challenged voters were Black. Some of the challenges were based on as little evidence as a discrepancy between a voter registration address and an address record in a flawed driver’s license database. Other challenges were based on second-hand claims that a voter had moved out of the county.<sup>3</sup> After being sued, the county agreed to reinstate wrongfully challenged voters who had been removed from registration lists.<sup>4</sup>

Iowa’s former secretary of state, Matt Schultz, tried to use challenges

to remove suspected noncitizens from the rolls, but he was blocked by a court.<sup>5</sup>

And in North Carolina, a federal court ruled in 2016 that local boards of elections likely violated the NVRA (52 U.S.C. § 20507(c) (2)(A)) when they systematically purged hundreds of voters through citizen-initiated challenge procedures fewer than 90 days before the general election. The judge based her ruling on the systematic purge occurring within the prohibited window, but she also remarked that the challenge process, which allows voters to be removed if they do not show up at a hearing upon being challenged based on second-hand evidence of a move, seemed “insane.”<sup>6</sup> Nevertheless, state lawmakers expressly rejected legislation that would have made it more difficult to sustain a voter challenge on this basis.<sup>7</sup>

- 1 Nicholas Riley, *Voter Challengers* (New York: Brennan Center for Justice, August 2012), [https://www.brennancenter.org/sites/default/files/legacy/publications/Voter\\_Challengers.pdf](https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf).
- 2 “Scott Gessler Decides Not To Proceed With Voter Purge After All,” *HuffPost*, September 12, 2012, <https://www.huffpost.com/2012/09/10/scott-gessler-decides-not-to-proceed-with-voter-purge-after-all>.
- 3 Complaint, *Georgia NAACP et al v. Hancock County Bd. Of Elec. and Registration*, No. 5:15-cv-00414 (M.D. Ga. Filed Nov. 3, 2015), <https://lawyerscommittee.org/wp-content/>.
- 4 Kathleen Foody, “Georgia County Agrees to Restore Black Voters’ Rights,” *Associated Press*, March 8, 2017, <https://www.usnews.com/news/best-states/georgia/articles/2017-03-08/georgia-county-to-restore-black-voters-rights-under-us-law>; uploads/2016/01/Hancock-Co-Complaint.pdf.
- 5 *Ruling, Am. Civ. Liberties Union v. Schultz*, No. CV00931 (Iowa D. Polk March 5, 2014).
- 6 “North Carolina Voter Challenge Process Seems ‘Insane,’ Judge Says,” *Associated Press*, November 2, 2016, <https://www.cbsnews.com/news/north-carolina-voter-challenge-process-seems-insane-judge-says/>.
- 7 H. 303, Sess. 2017 (N.C. 2017), <https://www2.ncleg.net/BillLookup/2017/H303>.

## Solutions

While no one disputes the rolls should be accurate, voters should be protected from wrongful purges. There are several ways to safeguard voters from overly aggressive list maintenance:

- **Enforce the National Voting Registration Act's Protections.**

The NVRA permits an aggrieved voter to sue if a jurisdiction has been informed of a possible violation and does not correct it in a set period of time. Litigation to enforce the NVRA is especially crucial in a time when the Justice Department is unlikely to enforce voter protections and outside groups are agitating for more aggressive purges. Of course, most voters do not have the expertise or resources to bring such litigation. Therefore it is critically important that civil rights and other pro-voter organizations rigorously monitor purge activity and have the wherewithal to sue when necessary.

- **States Should Enact Laws That Provide Even More Protections than the National Voter Registration Act.**

While the NVRA includes critical voter protections, states should do more. For example, the NVRA requires that voters suspected of moving from the jurisdiction receive notice of their possible removal. Not surprisingly, most states do not provide notice beyond what is federally required. For example, most states do not provide notice to voters purged based on death or a disenfranchising conviction, and many of those states that do provide notice in these circumstances do so only after the fact. States should surpass these minimal standards. No matter the reason, all voters should be informed in advance of their possible deletion and should be provided easy mechanisms for correcting errors on or before Election Day.

- **Enact Automatic Voter Registration.**

Automatic voter registration is a popular reform that minimizes errors, saves money, and increases registration of eligible citizens. Automatic voter registration has two key features: (1) eligible citizens are registered unless they affirmatively decline; and (2) voter registration information is electronically transferred from a government office to election officials instead of relying on pen and paper. Currently, 12 states plus the District of Columbia have approved automatic voter registration.<sup>129</sup> In addition to adding more voters to the rolls, automatic voter registration also catches more address updates, reducing the need for change-of-address voter purges.

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## Endnotes

- 1 In the two-year election cycle ending in 2008, the Brennan Center found the median jurisdiction purged 6.2 percent of voters. For the two years ending in 2016, this study finds that the purge rate of the median jurisdiction had increased to 7.8 percent. We examined 49 states because North Dakota has no advance voter registration requirement and thus does not have required voter registration lists to purge. The state does keep records of individuals who vote, but it is not necessary to be on any registration list at the time of voting to cast ballots. Although there are other impediments to voting in North Dakota, including a strict photo ID law, voters do not face barriers related to voter registration in the state.
- 2 We assessed 49 states on the following criteria: First, whether the state used the Interstate Voter Registration Cross-check program in a way that is problematic or not compliant with the NVRA. We found five states deficient in this category. Second, whether the state makes readily available lists of purged voters. We found 49 states deficient in this category (at least 10 states have statutory requirements for making some names of purged voters available, but all fail to do so in practice). Third, whether states provide prior notice to all voters purged on the basis of death, felony conviction, or noncitizenship. We found 49 states deficient in this category (21 states have statutory requirements whereby voters purged on the basis of death or felony conviction receive notice before or after the purge, but no state requires prior notice to voters purged for both categories). For additional recommendations to guard against unlawful or problematic voter purges and why they are important, see Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), 25-31, <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>.
- 3 Calculated from total numbers reported to the Elections Assistance Commission in 2008 and 2016. Compare U.S. Election Assistance Commission, 2008 Election Administration and Voting Survey, <https://www.eac.gov/research-and-data/2008-election-administration-voting-survey/>, and U.S. Election Assistance Commission, 2016 Election Administration and Voting Survey, <https://www.eac.gov/research-and-data/2016-election-administration-voting-survey/>.
- 4 These previously covered areas had median purge rates of 9.5 percent, while noncovered jurisdictions had median purge rates of 7.5 percent.
- 5 The median county purge rate in the 2008-10 election cycle was 8.4 percent. But in the election cycle including the *Shelby County* decision, 2012-14, the purge rate jumped 26 percent to a median county purge rate of 10.6 percent.
- 6 Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>.
- 7 Omitting North Dakota, as explained above.
- 8 We served public records requests on election officials and their offices at the state and local levels in 22 states and sought interviews with election officials in 45. The numbers referenced in the text refer to respondents.
- 9 U.S. Election Assistance Commission, *2016 Election Administration & Voting Survey*, June 2017, <https://www.eac.gov/research-and-data/election-administration-voting-survey/>.
- 10 Not all jurisdictions report their data consistently. Whenever we make comparisons across time periods, we restrict our sample to the counties reporting consistently. For instance, 2,394 jurisdictions report removal data for each of the two-year periods ending in 2010, 2012, 2014, and 2016. Our analysis exploring the impact of the end of the preclearance condition of the Voting Rights Act looks only at these counties to ensure an apples-to-apples comparison.
- 11 U.S. Election Assistance Commission, *2016 Election Administration & Voting Survey*, June 2017, <https://www.eac.gov/research-and-data/election-administration-voting-survey/>. Sixteen million is in fact a conservative estimate because it includes only voters removed from jurisdictions who reported their data to the EAC in 2016. It therefore does not include voters removed during some problematic purges such as that in Kings County (Brooklyn), NY (discussed above).
- 12 National Voter Registration Act of 1993, H.R. 2, 103<sup>rd</sup> Cong. (1993), 52 U.S.C. § 20507, is the main source of



federal requirements. For more information on federal law around purges, see Appendix A.

- 13 Some states are not required to follow the National Voter Registration Act. The NVRA exempts the following states from its purge protocols because those states had Election-Day registration or lacked voter-registration requirements on or after August 1, 1994: Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. National Voter Registration Act of 1993, H.R. 2, 103<sup>rd</sup> Cong. (1993) 52 U.S.C. § 20504(b). This reflects Congress's assessment that purge consequences are much less grave in a state that permits anyone eligible who is not on the registration rolls to register and vote on Election Day.
- 14 "Criminal Disenfranchisement Laws Across the United States," Brennan Center for Justice, last modified April 18, 2018, <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.
- 15 Ala. Code § 17-4-3(a) (requiring removal "whenever...a person registered to vote in that county has...been declared mentally incompetent"); Ariz. Rev. Stat. Ann. § 16-165(C) (requiring removal "[w]hen proceedings...result in a person being declared incapable of taking care of himself and managing his property, and for whom a guardian of the person and estate is appointed, result in such person being committed as an insane person"); Del. Code Ann. tit. 15, §§ 1701(a), 1702 (requiring removal of "person adjudged mentally incompetent...[which] refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment"); Fla. Stat. Ann. § 98.075(4) (requiring removal for "registered voters who have been adjudicated mentally incapacitated with respect to voting and who have not had their voting rights restored"); Ga. Code Ann. § 21-2-231(b) (requiring removal "[of those] who were declared mentally incompetent during the preceding calendar month in the county and whose voting rights were removed"); Haw. Rev. Stat. Ann. § 11-23(a) (requiring removal "[of person] adjudicate[ed] as an incapacitated person under the provisions of chapter 560...[if] after the investigation the clerk finds that the person...lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting"); Iowa Code Ann. § 48A.30(1)(e) (requiring removal "[if] [t]he clerk of the district court or the state registrar sends notice that the registered voter has been declared a person who is incompetent to vote under state law"); Ky. Rev. Stat. Ann. § 116.113(2) (requiring removal "[u]pon receipt of notification from the circuit clerk that a person has been declared incompetent"); La. Stat. Ann. § 18:172 (requiring removal "[after] judgment of full interdiction or a limited interdiction for mental incompetence which specifically suspends the right to register and vote and which has become definitive"); Code Me. R. tit. 29-250 Ch. 505, § 1(B) (requiring removal "[if] the municipality receives notice indicating that a registrant has been placed under guardianship due to mental illness"); Md. Code Ann., Elec. Law §§ 3-102(b)(2), 3-501 (requiring removal "[if person] is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process"); Minn. Stat. Ann. § 201.145 (requiring removal "[of persons] under a guardianship in which a court order revokes the ward's right to vote or where the court has found the individual to be legally incompetent to vote"); Miss. Code Ann. § 23-15-153(1) (requiring removal "[of voters who have] received an adjudication of non compos mentis"); Mo. Ann. Stat. § 115.199 (requiring removal "of voters...adjudged incapacitated"); Mont. Code Ann. § 13-2-402(3) (requiring removal "[if] the elector is of unsound mind as established by a court"); Neb. Rev. Stat. Ann. §§ 32-313(1), 32-326 (requiring removal "[of person] who is non compos mentis"); Nev. Rev. Stat. Ann. § 293.540(2)(b) (requiring removal "[if] the county clerk is provided a certified copy of a court order stating that the court specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process"); N.M. Stat. Ann. § 1-4-26 (requiring removal "[w]hen in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico"); N.Y. Elec. Law § 5-400(1)(c) (requiring removal "[of voter who] has been adjudicated an incompetent"); Ohio Rev. Code Ann. § 3503.18(B) (requiring removal of persons "who have been adjudicated incompetent for the purpose of voting, as provided in section 5122.301 of the Revised Code"); Okla. Stat. Ann. tit. 26, § 4-120.5 (requiring removal "of all persons who have been adjudged incapacitated"); S.C. Code Ann. § 7-5-340(1)(b) (requiring removal "if the elector is adjudicated mentally incompetent by a court of competent jurisdiction"); S.D. Codified Laws § 12-4-18 (requiring removal "of persons declared mentally incompetent"); Tex. Elec. Code Ann. § 16.031(a)(3) (requiring removal "on receipt of...an abstract of a final judgment of the voter's total mental incapacity, partial mental incapacity without the right to vote...or disqualification under Section 16.002"); Wash. Rev. Code Ann. § 29A.08.515 (requiring removal "[u]pon receiving official notice that a court has imposed a guardianship for an incapacitated person and has

determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW"); W.Va. Code, § 3-2-23(3) (requiring removal "[u]pon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence"); Wis. Stat. Ann. §§ 6.03, 6.48, 6.935 (requiring removal "[through challenge] [of a]ny person who is incapable of understanding the objective of the elective process or who is under guardianship, unless the court has determined that the person is competent to exercise the right to vote"); W.S.1977 §§ 22-3-102(a)(iv), 22-3-115(a)(iv) (requiring removal "[of person] currently adjudicated mentally incompetent"). Additional states provide for loss of eligibility on these grounds but do not specifically describe the manner of removal. See Michelle Bishop, "Disability Is No Reason to Strip a Person's Voting Rights," *HuffPost*, May 12, 2018, [https://www.huffingtonpost.com/entry/opinion-bishop-disability-voters\\_us\\_5af5b085e4b0e57cd9f9042f](https://www.huffingtonpost.com/entry/opinion-bishop-disability-voters_us_5af5b085e4b0e57cd9f9042f).

- 16 See *Doe v. Rowe*, 156 F. Supp.2d 35 (D. Me. 2001); *Minnesota Voters Alliance v. Ritchie*, 890 F.S. 2d 1106 (August 17, 2012); in re Guardianship of Brian W. Erickson, 4th Judicial District, Dist. Ct., Probate/Mental Health Division (October 12, 2012); see also Matt Vasilogambros, "Thousands Lose Right to Vote Under 'Incompetence' Laws," *HuffPost*, March 21, 2018, [https://www.huffingtonpost.com/entry/thousands-lose-right-to-vote-under-incompetence-laws\\_us\\_5ab25f7ce4b004fe24699810](https://www.huffingtonpost.com/entry/thousands-lose-right-to-vote-under-incompetence-laws_us_5ab25f7ce4b004fe24699810).
- 17 E.g., Alaska Stat. Ann. § 15.07.130(c) (requiring use of information from bureau of vital statistics); Wash. Rev. Code Ann. § 29A.08.510(2) (permitting use of obituaries); Tex. Elec. Code Ann. § 16.001 (requiring use of Social Security Administration information).
- 18 Montana Code Ann. § 13-2-220.
- 19 Conn. Gen. Stat. § 9-32.
- 20 Ga. Code Ann. § 21-1-231(a.1)(b) (requiring clerk of superior court to forward noncitizen jury declinations and requiring election officials to remove names from voter list, La. Stat. Ann. § 18:178 (requiring clerk of the court to provide names of individuals who respond to jury notices saying they are noncitizens to Department of State); Minn Stat. Ann. § 201.145 (requiring county auditor to send to county attorney list of names of individuals who are registered to vote and not citizens); Tenn. Code Ann. § 2-2-141 (requiring coordinator of elections to compare registration list with Department of Safety database to ensure non-United States citizens are not registered to vote); Tex. Elec. Code Ann. § 16.0332 (requiring registrar to initiate voter removal process for voters for whom the registrar receives a notice of disqualification or excusal from jury service because of citizenship status); Va. Code Ann. § 24.2-404(A)(4) (requiring registrars to delete record of registered voters known not to be a citizen from reports of Department of Motor Vehicles or Systematic Alien Verification for Entitlements Program).
- 21 Throughout this document we report median removal rates. The median is the appropriate measure of central tendency because of how the removal rate data are distributed. Because some jurisdictions have very high removal rates, while most are clustered close to the lower bound of zero, using the mean would artificially bias reported numbers upward.
- 22 "About Section 5 of the Voting Rights Act," The United States Department of Justice, accessed May 24, 2018, <https://www.justice.gov/crt/about-section-5-voting-rights-act>.
- 23 *Shelby County v. Holder*, 570 U.S. 2 (2013).
- 24 Between the presidential elections of 2008 and 2012, the median two-year removal rate for both previously covered and noncovered jurisdictions was 7.5 percent. Throughout this section, we limit our analysis to jurisdictions that reported removal rates for each of the two-year periods ending 2010, 2012, 2014, and 2016. Kings County, New York, for instance, did not report removal rates for the two years ending 2016 and thus is excluded from the entire pre/post *Shelby* analysis. It is important to note that this does not meaningfully impact our analysis: The median removal rate in 2016 for counties that reported their data each year was 7.9 percent compared to 7.6 percent for jurisdictions that reported their data in 2016 but also failed to do so in at least one other year. To maintain consistency with discussions of two-year removal rates elsewhere in this report, we continue to use two-year removal rates here. For instance, Escambia County, Florida, removed 0.42 percent of its voters between 2008 and 2010, and 0.42 percent again between 2010 and 2012. Here we call their median *two-year* removal rate 0.42 percent. Their four-year removal rate would, of course, be higher. We group the data into four-year buckets because of the natural variation in removal rates between presidential and nonpresidential election cycles.

- 25 Formerly covered jurisdictions are disproportionately located in the southeastern part of the country. We considered the possibility that the increased purge rate is attributable to some regional factor or factors aside from the lifting of the preclearance requirements. To control for this, we repeated the above analysis but restricted our sample to just those states in the Southeast (AL, FL, GA, KY, MS, NC, SC, TN, VA, and WV). Among jurisdictions in the Southeast that consistently reported their data, 461 counties were covered under the Voting Rights Act and 388 were not. We found that even within the Southeast, formerly covered jurisdictions increased their purge rates more than their noncovered peers. In fact, noncovered jurisdictions in the Southeast did not increase their removal rates between the two periods. The increase in removal rates in previously covered jurisdictions in this region mirrored those of the group of covered jurisdictions as a whole:

	Federal Election 2008-12	Federal Election 2012-16
Previously Covered	7.2%	9.7%
Not Covered	6.6%	6.6%

Nor can the difference in purge rate be explained by differences in partisan tendency. Formerly covered counties are more Republican-leaning than the nation as a whole. Within counties that reported data consistently to the EAC, President Donald Trump received 51 percent of the ballots cast in counties that required preclearance prior to Shelby, but just 46 percent of the ballots cast in noncovered jurisdictions. To test the possibility that Republican-leaning counties were more likely to increase their removal rates regardless of their status under the Voting Rights Act, we compared the 409 previously covered jurisdictions that Trump received more votes than Hillary Clinton to the 1,594 noncovered jurisdictions in which he did so.

	Federal Election 2008-12	Federal Election 2012-16
Previously Covered	7.3%	9.4%
Not Covered	7.5%	7.4%

Removal rates in noncovered jurisdictions that Trump won did not increase their removal rates at all. Trump-supporting jurisdictions that were previously covered, however, increased their removal rates substantially. Clearly, the increase in removal rates among the jurisdictions that were covered under the VRA was not a function of an electorate likely to support Donald Trump. Sources: *Townhall.com*, <https://townhall.com/election/2016/president/>; and *South Eastern Division of the Association of American Geographers*, <http://sedaag.org>.

- 26 See Appendix B.
- 27 See Appendix C. While not a perfect predictor because there are many reasons why a voter might cast a provisional ballot, our finding that high provisional ballot numbers are probative as to the existence of a purge are corroborated by other experts in the field. See, for example, U.S. Commission on Civil Rights, *Briefing Report: Department of Justice Voting Rights Enforcement for the 2008 U.S. Presidential Election* (Washington: July 2009) (summarizing testimony of Dan Tokaji), <http://www.usccr.gov/pubs/DOJ/VotingRights2008PresidentialElection.pdf>.
- 28 Tim Reid and Grant Smith, "Missing Hyphens Will Make It Hard for Some People to Vote in U.S. Election," *Reuters*, April 11, 2018, <https://www.reuters.com/article/us-usa-election-laws/missing-hyphens-will-make-it-hard-for-some-people-to-vote-in-u-s-election-idUSKBN1H11PX>. Georgia's practice of purging voters on the basis of not voting was also challenged. See *Georgia State Conf. of the NAACP v. Kemp*, No. 2:16-cv-219, filed Sept. 14, 2016 (N.D. Ga.); *Common Cause v. Kemp*, No. 1:16-cv-00452, filed Feb. 10, 2016 (N.D. Ga.). See also Tony Pugh, "Georgia Secretary of State Fighting Accusations of Disenfranchising Minority Voters," *McClatchy*, October 7, 2016, <http://www.mcclatchydc.com/news/politics-government/article106692837.html>; Regina Willis, "More Than 380,000 Georgia Voters Receive 'Purge Notice,'" *Rewire.News*, July 21, 2017, <https://rewire.news/article/2017/07/21/more-380000-georgia-voters-received-purge-notice/>.
- 29 Overall, 54% of voters lived in counties in which the removal rate increased. Numbers are drawn from counties that reported data in both 2010 and 2014, a set representing 94% of total Texas voters.
- 30 *Veasey v. Perry*, 71 F.Supp.3d 627 (S.D. Tex. 2014).

- 31 *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc) *cert. denied*, 137 S. Ct. 612 (2017).
- 32 National Voter Registration Act of 1993, H.R. 2, 103<sup>rd</sup> Cong. (1993), 52 U.S.C. § 20507(b), (c)(2), (d)(2).
- 33 Holly Dickson (Legal Director, Arkansas Civil Liberties Union Foundation) to Hon. Mark Martin (Arkansas Secretary of State), October 31, 2016, 3, [https://www.acluarkansas.org/sites/default/files/field\\_documents/369.pdf](https://www.acluarkansas.org/sites/default/files/field_documents/369.pdf); John Lyon, “Hutchinson: Clerks Should Lean Toward Letting People Vote,” *Arkansas News*, August 4, 2016, <http://www.arkansasnews.com/news/20160804/hutchinson-clerks-should-lean-toward-letting-people-vote>.
- 34 In Arkansas, those convicted of a felony are ineligible to vote “unless the person’s sentence has been discharged or the person has been pardoned.” Ark. Const. Amend. 51, § 9(a)(1).
- 35 More than 4,000 people were incorrectly included on the list. See John Lyon, “Hutchinson: Clerks Should Lean Toward Letting People Vote,” *Arkansas News*, August 4, 2016, <http://www.arkansasnews.com/news/20160804/hutchinson-clerks-should-lean-toward-letting-people-vote>. Pulaski County found that at least 300 of the 1,800 Pulaski County residents on the list belonged to people who were “completely innocent.” Matthew Mershon, “Pulaski Co. Clerk Says Sec. of State Needs to Take Responsibility in Possible Voter Purge,” *KATV*, August 13, 2016, <http://katv.com/news/local/pulaski-co-clerk-says-sec-of-state-needs-to-take-responsibility-in-possible-voter-purge>.
- 36 See Benjamin Hardy, “Data Mix-Up from Ark. Secretary of State Purges Unknown Number of Eligible Voters,” *Arkansas Blog*, *Arkansas Times*, July 25, 2016, <https://www.arktimes.com/ArkansasBlog/archives/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters>; Brenda Blagg, “Taking a Vote: State Botches Inmate Report to County Clerks,” *Between the Lines*, *Northwest Arkansas Democrat-Gazette*, July 27, 2016.
- 37 See Benjamin Hardy, “Data Mix-Up from Ark. Secretary of State Purges Unknown Number of Eligible Voters,” *Arkansas Blog*, *Arkansas Times*, July 25, 2016, <https://www.arktimes.com/ArkansasBlog/archives/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters>.
- 38 See Brian Fannery, “20,000 Cases Erroneously Listed Felonies,” *Arkansas Democrat-Gazette*, Sep. 3, 2016, <https://www.pressreader.com/usa/arkansas-democrat-gazette/20160903/281496455722563>.
- 39 Jason Kennedy (Assistant Chief Deputy Clerk, Pulaski County, Arkansas), interview by Brennan Center for Justice, June 8, 2018.
- 40 See Julián Aguilar, “Voter Purge Bill Raises Concerns After Living Flagged as Possibly Dead,” *The Texas Tribune*, September 12, 2012, <https://www.texastribune.org/2012/09/12/concerns-raised-after-living-voters-flagged-dead/>.
- 41 2011 Tex. Sess. Law Serv. Ch. 683 (H.B. 174), <https://capitol.texas.gov/tlodocs/82R/billtext/pdf/HB00174E.pdf#navpanes=0>.
- 42 See Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), 20 <https://www.brennan-center.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>.
- 43 See Defendant Andrade’s Notice Of Withdrawal, Plea To The Jurisdiction, And Motion To Dissolve The Temporary Restraining Order, *Moore v. Morton*, No. D-1-GN-12-002923 (Dist. Ct. Travis Cnty. Tex. Sept. 21, 2012). See also Chuck Lindell, “State Settles Lawsuit on ‘Dead’ Voter Purge,” *American-Statesman*, October 3, 2012, <https://www.statesman.com/news/state--regional-govt--politics/state-settles-lawsuit-dead-voter-purge/n1zTG10Yiyobma3AIT7QSJ/>.
- 44 Corrie MacLaggan, “Texas Voter Purge Lawsuit Ends with Clarification Memo on Process for Clearing Rolls,” *Reuters*, October 3, 2012, [https://www.huffingtonpost.com/2012/10/03/texas-voter-purge-lawsuit\\_n\\_1937564.html](https://www.huffingtonpost.com/2012/10/03/texas-voter-purge-lawsuit_n_1937564.html).
- 45 Lise Olsen, “Texas’ voter purge made repeated errors,” *Houston Chronicle*, November 2, 2012, <https://www.chron.com/news/politics/article/Texas-voter-purge-made-repeated-errors-4001767.php>.
- 46 *Ibid.*
- 47 See Notice to the Court of Rule 11 Agreement, *Moore v. Morton*, No. D-1-GN-12-002923 (Dist. Ct. Travis Cnty. Tex. Oct. 3, 2012); see also Chuck Lindell, “State Settles Lawsuit on ‘Dead’ Voter Purge,” *American-Statesman*, October 3, 2012, <https://www.statesman.com/news/state--regional-govt--politics/state-settles-lawsuit-dead-voter-purge/n1zTG10Yiyobma3AIT7QSJ/>.

- 48 See Marjorie Landa, *Audit Report on the Board of Elections' Controls over the Maintenance of Voters' Records and Poll Access* (New York: City of New York Office of the Comptroller, November 2017), 9, <https://comptroller.nyc.gov/reports/audit-report-on-the-board-of-elections-controls-over-the-maintenance-of-voters-records-and-poll-access/>.
- 49 Ibid.
- 50 New York State Office of the Attorney General, "A.G. Schneiderman Moves to Intervene in Lawsuit Against NYC Board of Elections Regarding Voter Registration Purges," news release, January 27, 2017, <https://ag.ny.gov/press-release/ag-schneiderman-moves-intervene-lawsuit-against-nyc-board-elections-regarding-voter>.
- 51 Brigid Bergin, John Keefe, and Jenny Ye, "Brooklyn Voter Purge Hit Hispanics Hardest," *WNYC*, June 21, 2016, <https://www.wnyc.org/story/brooklyn-voter-purge-hit-hispanics-hardest/>.
- 52 The other major federal statute regulating voter purges is the Help America Vote Act of 2002 (HAVA) 52 U.S.C. § 21083(a). The law reaffirms requirements of the NVRA and contains additional regulations for the maintenance of voter lists, requires states to set up unique identifying numbers for registered voters, requires states to attempt to verify the validity of information submitted by voter registration applicants, and ensures certain voters, including those missing from the voter rolls, can cast provisional ballots.
- 53 Under the Bush Administration, the DOJ filed several suits against jurisdictions for failing to purge enough voters. Office of the Inspector General, U.S. Department of Justice, *A Review of the Operations of the Voting Section of the Civil Rights Division* (2013), 97, <https://oig.justice.gov/reports/2013/s1303.pdf>. See also Steven Rosenfeld, "Voter Purging: A Legal Way for Republicans to Swing Elections?" *AlterNet*, September 11, 2017, <http://web.archive.org/web/20071118161151/http://www.alternet.org/story/62133/>. The Department also pressured a U.S. Attorney to sue Missouri, even though St. Louis had improperly purged 50,000 voters only 4 years earlier. After that U.S. Attorney refused, he was fired. Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?" June 30, 2017, <https://www.brennancenter.org/blog/purge-ten-years-later>.
- 54 See, e.g., "Cases Raising Claims Under the National Voter Registration Act," U.S. Department of Justice, last modified October 16, 2015, <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act>; U.S. Attorney's Office, Eastern District of New York, "United States Announces Settlement with New York City Board of Elections Resolving Improper Removal of Voters from Registration Rolls," news release, October 31, 2017, <https://www.justice.gov/usao-edny/pr/united-states-announces-settlement-new-york-city-board-elections-resolving-improper>; U.S. Department of Justice, Office of Public Affairs, "State of Connecticut Agrees to Resolve Claims of National Voter Registration Act Violations," news release, August 5, 2016, <https://www.justice.gov/opa/pr/state-connecticut-agrees-resolve-claims-national-voter-registration-act-violations>; U.S. Department of Justice, Office of Public Affairs, "State of Alabama Agrees to Resolve Claims of National Voter Registration Act Violations," news release, November 13, 2015, <https://www.justice.gov/opa/pr/state-alabama-agrees-resolve-claims-national-voter-registration-act-violations>; see also *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1343–48 (11th Cir. 2014) (finding Florida's purge violated the NVRA's prohibition on systematic purges within 90 days of a federal election).
- 55 Ibid.
- 56 Brief for the League of Women Voters et al as Amicus Curiae supporting Respondents 17, *Husted v. A. Philip Randolph Institute*, No. 16-980 (2017).
- 57 Brief for the United States as Amicus Curiae supporting Petitioner, *Husted v. A. Philip Randolph Institute*, No. 16-980 (2017).
- 58 See "Husted v. A. Philip Randolph Institute," Brennan Center for Justice, last modified June 11, 2018, <https://www.brennancenter.org/legal-work/husted-v-philip-randolph-institute-0>.
- 59 See Pam Fessler, "Advocates Worry Trump Administration Wants to Revamp Motor Voter Law," *NPR*, July 8, 2017, <https://www.npr.org/2017/07/08/536006813/advocates-worry-trump-administration-wants-to-revamp-motor-voter-law>; Jonathan Brater, Brennan Center for Justice, "The Purge: Ten Years Later?," June 30, 2017, <https://www.brennancenter.org/blog/purge-ten-years-later>. For an example of the letters, see <https://assets.documentcloud.org/documents/3881818/SOS-Letter.pdf>.
- 60 For example, Vanita Gupta (CEO of the Leadership Conference on Civil and Human Rights and former head of DOJ's civil rights division under President Barack Obama) said that, "[i]t is not normal for the Department of

Justice to ask for voting data from all states covered by the National Voter Registration Act. It's likely that this is instead the beginning of an effort to force unwarranted voter purges." Sam Levine, "This DOJ Letter May Be More Alarming Than Trump Commission's Request For Voter Data," *HuffPost*, July 5, 2017, [https://www.huffingtonpost.com/entry/departments-justice-voter-purge-us\\_595d22b1e4b0da2c7326c38b](https://www.huffingtonpost.com/entry/departments-justice-voter-purge-us_595d22b1e4b0da2c7326c38b). See also Leon Neyfakh, "How Trump's DOJ Will Try to Purge Voter Rolls," *Slate*, July 11, 2017, [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2017/07/how\\_trump\\_s\\_doj\\_will\\_try\\_to\\_purge\\_voter\\_rolls.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/07/how_trump_s_doj_will_try_to_purge_voter_rolls.html) (describing DOJ letters as "a first step toward bringing back a George W. Bush-era strategy of forcing states to aggressively purge their voter rolls under threat of litigation"). The Department did intervene in a lawsuit filed against Kentucky by a private plaintiff organization seeking more aggressive purging. *Judicial Watch, Inc. v. Grimes*, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.).

- 61 Kansas State Rep. Keith Esau, "Interstate Voter Registration Crosscheck Program" (PowerPoint presentation, National Conference of State Legislators, Williamsburg, VA, June 15, 2017), 5, [http://www.ncsl.org/Portals/1/Documents/Elections/Kansas\\_VR\\_Crosscheck\\_Program.pdf](http://www.ncsl.org/Portals/1/Documents/Elections/Kansas_VR_Crosscheck_Program.pdf).
- 62 "ERIC," Electronic Registration Information Center, accessed May 24, 2018, <http://www.ericstates.org/>.
- 63 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), [https://www.brennancenter.org/sites/default/files/publications/2017\\_Non-citizenVoting\\_Final.pdf](https://www.brennancenter.org/sites/default/files/publications/2017_Non-citizenVoting_Final.pdf).
- 64 Public Interest Legal Foundation, "248 Counties Have More Registered Voters Than Live Adults," news release, September 25, 2017, <https://publicinterestlegal.org/blog/248-counties-registered-voters-live-adults/>. The Brennan Center for Justice and other civil rights groups contacted the same jurisdictions to notify them that some information provided by the organization was misleading. Brennan Center for Justice, "Civil Rights Groups Launch National Effort to Combat Alarming Voter Purge Attempt," news release, November 22, 2017, <https://www.brennancenter.org/press-release/civil-rights-groups-launch-national-effort-combat-alarming-voter-purge-attempt>.
- 65 See Myrna Pérez, *Voter Purges* (New York: Brennan Center for Justice, September 2008), <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf>.
- 66 Missouri, Iowa, Nebraska, and Kansas. See Memorandum of Understanding Between the State of Iowa, Nebraska, and Kansas For the Improvement of Election Administration, December 2005 (on file with the Brennan Center for Justice).
- 67 These states were Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. This information is derived from a spreadsheet obtained from officials in Idaho via public records request (on file with the Brennan Center for Justice).
- 68 Ibid.
- 69 Ibid. Some of these matches could also include individuals matched in more than 2 states, so the number of individuals could be lower than 3.6 million.
- 70 Interstate Voter Registration Crosscheck Program, *2017 Participation Guide*, January 2017, [goo.gl/zbsygh](http://goo.gl/zbsygh).
- 71 See *infra* text box describing limitations of name and birthdate matching.
- 72 Sharad Goel et al., "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections" (working paper, Stanford University et al., 2017), 3, 26, <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>.
- 73 Ibid. 27.
- 74 See Jonathan Brater, Brennan Center for Justice, "Virginia Offers Lessons for Voter List Maintenance," November 25, 2013, <https://www.brennancenter.org/analysis/virginia-offers-lessons-voter-list-maintenance>.
- 75 See Jim Nolan, "Chesterfield Registrar Delays Purge of Voter Rolls," *Richmond Times-Dispatch*, October 9, 2013, [http://www.richmond.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article\\_162e36b5-0be7-5dc8-af9f-48876a167b43.html](http://www.richmond.com/news/local/chesterfield/chesterfield-registrar-delays-purge-of-voter-rolls/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html).

- 76 Ibid.
- 77 See Matthew Barakat, “Va. Removes 40K From Voter Rolls Over Democrats’ Objections,” *Richmond Times-Dispatch*, October 17, 2013, [http://www.richmond.com/news/state-regional/va-removes-k-from-voter-rolls-over-democrats-objections/article\\_2d111de4-49de-523b-bd9c-5d93b7c0a00e.html](http://www.richmond.com/news/state-regional/va-removes-k-from-voter-rolls-over-democrats-objections/article_2d111de4-49de-523b-bd9c-5d93b7c0a00e.html). Virginia subsequently began to release reports explaining, among other things, the way Crosscheck data was used. They found that only 10 percent of Crosscheck matches were usable for list maintenance. Virginia Department of Elections, *Annual List Maintenance Report*, 2017, 5, <https://www.elections.virginia.gov/Files/maintenance-reports/2017SBEListMaintenanceReport.pdf>.
- 78 Alabama law exempts county boards from the requirement that they contact voters to verify suspected address changes when another state provides notice that “the elector registered to vote in another jurisdiction, within or without the State of Alabama, at a date subsequent to the date the elector registered to vote in the jurisdiction of the county board of registrars.” Ibid. at § 17-4-38.1(c). An Election Handbook provided by the Alabama Secretary of State’s office indicates that such notice is sufficient to disqualify and remove the voter when a “registration official from another state notifies registrars in writing that the voter has registered elsewhere.” Alabama Law Institute, *Alabama Election Handbook: Eighteenth Edition* (2017), 262. But in a December 1, 2016 email obtained through a public records request, the Secretary of State’s Supervisor of Voter Registration provided county registrars a list of voters that Crosscheck suggested had “registered to vote in another state more recently” than in Alabama and directed the registrars to review the list and “take the action you would normally take as if you received notice directly from another state.” Clay Helms (Supervisor of Voter Registration, Office of Alabama Secretary of State), email to local registrars, December 1, 2016, on file with authors. In an interview, Alabama confirmed that the state has considered Crosscheck data as information provided directly from another state; although the state does filter the data to rule out some mismatches, it does not require a notice and waiting-period process. Alabama, which uses ERIC, has not determined whether it will use Crosscheck in future years. John Bennett (Deputy Chief of Staff/Communications Director, Alabama Secretary of State’s Office), interview by Brennan Center for Justice, June 15, 2018.
- 79 Indiana Code § 3-7-38.2-5(d). The Brennan Center is suing Indiana over this matter. *Indiana NAACP & League of Women Voters of Indiana v. Lawson*, No. 1:17-cv-2897 (S.D. Ind.). Indiana’s law does not provide notice as required by the NVRA. See Indiana Code § 3-7-38.2-5(d). On June 8, 2018, a federal judge issued a preliminary injunction against the law, meaning it is temporarily blocked. Order Granting Plaintiffs’ Motion for Preliminary Injunction, *Indiana NAACP & League of Women Voters of Indiana v. Lawson*, No. 1:17-cv-2897 (S.D. Ind.). Available at [https://www.brennancenter.org/sites/default/files/legal-work/2018-06-18\\_Order\\_Granteeing\\_Plaintiffs%27\\_Motion\\_for\\_Preliminary\\_Injunction.PDF](https://www.brennancenter.org/sites/default/files/legal-work/2018-06-18_Order_Granteeing_Plaintiffs%27_Motion_for_Preliminary_Injunction.PDF).
- 80 “2017 Maine Crosscheck Data Review Plan” (providing, “If the matched data shows that the Maine voter record is older than the other state’s voting record, then the Maine record will be cancelled. No notice to the voter is required”). Document produced in response to public records request issued by Brennan Center for Justice and on file with authors.
- 81 Idaho also removes voters immediately, but its practice permitting immediate removal of individuals flagged by Crosscheck without notice or a waiting period does not violate federal law because Idaho is exempt from the NVRA, and therefore does not have to abide by the NVRA notice and waiting period requirements.
- 82 State of Arizona, *Elections Procedures Manual*, 2018 Edition, 104, <http://live-az-sos.pantheon.io/sites/default/files/2018%200330%20State%20of%20Arizona%20Elections%20Procedures%20Manual.pdf> (allowing removal within 90 days in the case of a “true match,” which could, but need not, involve direct confirmation from the voter). Arizona declined to be interviewed for this report but informed the Brennan Center that it no longer participates in Crosscheck. Eric Spencer (State Election Director), email to Brennan Center for Justice, June 14, 2018, on file with the Brennan Center. The state did participate in the last Crosscheck match in 2017, and its 2018 election manual provides for removal through Crosscheck.
- 83 These states are Alaska, Florida, Kentucky, Massachusetts, New York, Oregon, Pennsylvania, and Washington. See Jonathan Brater, Brennan Center for Justice, “The Purge: Ten Years Later,” June 30, 2017, <https://www.brennancenter.org/blog/purge-ten-years-later>. In addition to those states, Arizona informed the Brennan Center that it is no longer participating in Crosscheck. Eric Spencer (State Election Director, Arizona), email to Brennan Center for Justice, June 14, 2018, on file with the Brennan Center.
- 84 According to the Center for Investigative Reporting, those 7 states are: Colorado, Georgia, Louisiana, Nevada,

- North Carolina, South Carolina, and West Virginia. See Aaron Sankin, “Crosscheck is ineffective and insecure. But states aren’t withdrawing,” *Reveal*, March 26, 2018, <https://www.revealnews.org/blog/crosscheck-is-ineffective-and-insecure-but-states-arent-withdrawing/>.
- 85 For a discussion of some of these security lapses, see, for example, Jonathan Brater, Brennan Center for Justice, “The Purge: Ten Years Later?,” June 30, 2017, <https://www.brennancenter.org/blog/purge-ten-years-later>; Dell Cameron, “As Crosscheck Moves to Secure Voter Data, Hacking Fears Grow Among Experts and Politicians,” *Gizmodo*, January 24, 2018, <https://gizmodo.com/as-crosscheck-moves-to-secure-voter-data-hacking-fears-1822344007>.
- 86 See *Testimony on the Interstate Crosscheck Program*, Kan. H. Comm. on Elections, January 17, 2018 (testimony of Bryan A. Caskey, Director of Elections), [http://www.kslegislature.org/li/b2017\\_18/committees/ctte\\_h\\_electns\\_1/documents/testimony/20180117\\_01.pdf](http://www.kslegislature.org/li/b2017_18/committees/ctte_h_electns_1/documents/testimony/20180117_01.pdf); Allison Kite, “Kobach’s Office Will Delay Data Uploads for Crosscheck Voter System to Accommodate Security Review,” *The Topeka Capital-Journal*, January 17, 2018, <http://www.cjonline.com/news/20180117/kobachs-office-will-delay-data-uploads-for-crosscheck-voter-system-to-accommodate-security-review>.
- 87 Sophia Tareen, “Illinois Delays Sending Voter Data to Multi-State Program,” *Associated Press*, January 16, 2018, <https://www.usnews.com/news/best-states/illinois/articles/2018-01-16/illinois-delays-sending-voter-data-to-multi-state-program>.
- 88 Ibid.
- 89 Aaron Sankin, “Crosscheck Is Ineffective and Insecure. But States Aren’t Withdrawing,” *Reveal*, March 26, 2018, <https://www.revealnews.org/blog/crosscheck-is-ineffective-and-insecure-but-states-arent-withdrawing/>.
- 90 See Transcript of Oral Argument at 49:7-50:13, In. NAACP & League of Women Voters of In. v. Lawson, No. 1:17-cv-2897 (S.D. Ind., May 2, 2018).
- 91 “ERIC,” Electronic Registration Information Center, accessed May 24, 2018, <http://www.ericstates.org/>.
- 92 Electronic Registration Information Center, Inc., *Bylaws*, December 2016, 21, [http://www.ericstates.org/images/documents/ERIC\\_Bylaws\\_12-16-2016.pdf](http://www.ericstates.org/images/documents/ERIC_Bylaws_12-16-2016.pdf); Tim Harper, Bipartisan Policy Center, “Florida Joins the ERIC Club – and Brings 14 Million New Eligible Voters,” March 20, 2018, <https://bipartisanpolicy.org/blog/florida-joins-the-eric-club-and-brings-14-million-new-eligible-voters/>. Kentucky informed the Brennan Center in June 2018 that the state would soon be joining ERIC, and agreed to use ERIC data for voter list maintenance in court settlement. Jared Dearing (Executive Director, State Board of Elections), interview by Brennan Center for Justice, June 14, 2018; *Judicial Watch, Inc. v. Grimes*, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky).
- 93 See, e.g., Matt Dietrich (Public Information Officer, Illinois State Board of Elections), interview by Brennan Center for Justice, May 8, 2018; Wayne Thorley (Deputy Secretary of State for Elections, Nevada Secretary of State) and Justus Wendland (HAVA Administrator, Nevada Secretary of State), interview by Brennan Center for Justice, May 18, 2018; see also Colo. Rev. Stat. § 1-2-605(7).
- 94 For example, Alabama credited ERIC with helping to increase voter registration in the state. John Bennett (Deputy Chief of Staff/Communications Director, Alabama Secretary of State), interview by Brennan Center for Justice, June 15, 2018.
- 95 Gary Bland and Barry C. Burden, *Electronic Registration Information Center (ERIC) Stage 1 Evaluation* (RTI International, December 2013), 1, [https://www.rti.org/sites/default/files/resources/eric\\_stage1report\\_pewfinal\\_12-3-13.pdf](https://www.rti.org/sites/default/files/resources/eric_stage1report_pewfinal_12-3-13.pdf). In ERIC’s first year of operation, “ERIC states showed a net improvement in new registration of 0.87 percentage points over non-ERIC states.”
- 96 Roger Stritt (Voter Registration Manager of Operations, Maryland State Board of Elections), interview by Brennan Center for Justice, May 8, 2018; Kyle Thomas (Director, Voting and Registration Systems, Illinois State Board of Elections), interview by Brennan Center for Justice, May 10, 2018.
- 97 Kyle Thomas (Director, Voting and Registration Systems, Illinois State Board of Elections), interview by Brennan Center for Justice, May 10, 2018.
- 98 Memorandum from Meagan Wolfe, Interim Administrator (Prepared by Sarah Whitt, WisVote IT Lead, and Jodi Kitts, WisVote Specialist) to Wisconsin Election Commission Members, May 24, 2018, provided to Brennan Cen-



- ter by Wisconsin Elections Commission (on file with Brennan Center). Wisconsin implemented the supplemental poll lists after some voters experienced problems at a February 2018 election. Through the use of the supplemental poll lists, these voters were able to reactivate their registrations at the polls and vote, rather than having to re-register. Sarah Whitt (WisVote Functional Lead, Wisconsin Elections Commission), interview by Brennan Center for Justice, June 4, 2018.
- 99 Act of May 18, 2006, 2006 Va. Laws Ch. 940 (S.B. 313), § 1 (codified as amended at Va. Code Ann. §§ 24.2-404 & 24.2-427); Act of June 11, 1997, 1997 Tex. Sess. Law. Serv. Ch. 640 (H.B. 1645), § 1 (codified as amended at Tex. Elec. Code Ann. § 16.0332).
  - 100 Act of Apr. 30, 2009, 2009 Georgia Laws Act 86 (H.B. 549), § 1 (amending Ga. Code Ann. § 21-2-231, to require removal of registration of every person that declined jury duty based on noncitizenship); Act of May 5, 2017, Act 2017 (87 G.A.) ch. 110, H.F. 516, § 4 (amending Iowa Code Ann. § 48A.30 to require cancellation of voter registration of every person that submits documentation to prove noncitizenship for purpose of disqualifying themselves from jury duty); Act of Apr. 1, 2010, 2010 Minn. Sess. Law Serv. Ch. 201 (H.F. 3108), § 12 (adding Minn. Stat. Ann. § 201.158, which requires county auditors to challenge the registration of every registered voter who is identified as a noncitizen by the commissioner of public safety) (later repealed and re-codified as amended at Minn. Stat. Ann. § 201.145); Act of May 23, 2011, 2011 Tennessee Laws Pub. Ch. 235 (S.B. 352), § 1 (adding Tenn. Code Ann. § 2-2-141, requiring coordinator of elections to begin removal proceedings for registered voters identified as noncitizens in the Department of Safety database).
  - 101 Janelle Ross, “Voter Roll Purges Could Spread to At Least 12 States,” *HuffPost*, July 31, 2012, [https://www.huffingtonpost.com/2012/07/31/voter-roll-purge\\_n\\_1721192.html](https://www.huffingtonpost.com/2012/07/31/voter-roll-purge_n_1721192.html).
  - 102 “About SAVE,” U.S. Citizenship and Immigration Services, last modified September 8, 2016, <https://www.uscis.gov/save/about-save>.
  - 103 “SAVE Verification Process,” U.S. Citizenship and Immigration Services, last modified June 15, 2016, <https://www.uscis.gov/save/about-save/verification-process>; Edgardo Cortes and Liz Howard (Virginia State Board of Elections), interview by Brennan Center for Justice, August 9, 2017.
  - 104 Minn. Stat. Ann. § 201.145; Tenn. Code Ann. § 2-2-141; Va. Code Ann. § 24.2-427.
  - 105 See Marc Levy, “State Disputes Claim 100K Noncitizens Registered to Vote,” *AP News*, March 1, 2018, <https://www.apnews.com/033c89a4d0d646d386a63117c0c72a11>. Relatedly, a Wyoming official told us that when the state investigated a list of potential noncitizens produced from state Department of Transportation records, the state did not determine that there were any noncitizens on the rolls and found that many purported noncitizens had subsequently naturalized and were thus eligible to vote. Jennifer Trabing (Election Policy and Planning Analyst, Elections Division, Wyoming Secretary of State’s Office), interview by Brennan Center for Justice, May 9, 2018.
  - 106 Va. Code Ann. § 24.2-410.1; Roger Stitt (Voter Registration Manager of Operations, Maryland State Board of Elections), interview by Brennan Center for Justice, May 8, 2018.
  - 107 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), [https://www.brennancenter.org/sites/default/files/publications/2017\\_Non-citizenVoting\\_Final.pdf](https://www.brennancenter.org/sites/default/files/publications/2017_Non-citizenVoting_Final.pdf) (“Other times, noted one administrator, a citizen will forget to check the ‘citizen’ box when filling out a driver’s license form and that will trigger a process which could end in a citizen’s registration being canceled, and also artificially inflate the number of alleged noncitizens who are on the registration rolls.”).
  - 108 Ga. Code Ann. § 21-2-231; La. Stat. Ann. § 18:178; Tex. Elec. Code Ann. § 16.0332.
  - 109 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), [https://www.brennancenter.org/sites/default/files/publications/2017\\_Non-citizenVoting\\_Final.pdf](https://www.brennancenter.org/sites/default/files/publications/2017_Non-citizenVoting_Final.pdf) (“Several interviewees described how eligible Americans sometimes check a box on a jury service form claiming not to be citizens because they do not want to serve on the jury. ‘One way for people to get out of jury duty is they can say they’re a noncitizen and fill out a card saying they’re not a citizen,’ explained Jacquelyn Callanen, Elections Administrator in Bexar County, Texas.”)
  - 110 U.S. Student Ass’n Found. v. Land, 2:08-CV-14019, filed September 17, 2008 (E.D. Mich).

- 111 “Common Cause of Colorado, et al. v. Buescher,” Brennan Center for Justice, last modified January 22, 2010, <https://www.brennancenter.org/legal-work/common-cause-colorado-et-al-v-buescher>.
- 112 Arcia v. Fla. Sec’y of State, 772 F.3d 1335, 1343–48 (11th Cir. 2014).
- 113 Adam Gitlin and Wendy Wesier, *The Justice Department’s Voter Fraud Scandal: Lessons* (New York: Brennan Center for Justice, January 2017), [https://www.brennancenter.org/sites/default/files/publications/Justice\\_Department\\_Voter\\_Fraud\\_Scandal\\_Lessons.pdf](https://www.brennancenter.org/sites/default/files/publications/Justice_Department_Voter_Fraud_Scandal_Lessons.pdf).
- 114 Compare *Judicial Watch, Inc. v. Logan*, 2:17-cv-08948, filed December 13, 2017 (C.D. Cal.), *Judicial Watch, Inc. v. Grimes*, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.); *Voter Integrity Project NC, Inc. v. Wake Cty. Bd. of Elections*, 5:16-cv-00683, filed July 18, 2016 (E.D.N.C.); *Bellitto v. Snipes*, 0:16-cv-61474, filed June 27, 2016 (S.D. Fla.); *Va. Voter’s Alliance, Inc. v. Leider*, 1:16-cv-00394, filed April 7, 2016 (E.D. Va.); *American Civil Rights Union v. Philadelphia City Commissioners*, 2:16-cv-01507, filed April 4, 2016 (E.D. Pa.); *American Civil Rights Union v. Rodriguez*, 7:16-cv-00103, filed March 4, 2016 (S.D. Tex.); *American Civil Rights Union v. Noxubee Cty.*, 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.); *American Civil Rights Union v. Clarke Cty.*, 2:15-cv-00101, filed July 27, 2015 (S.D. Miss.); *American Civil Rights Union v. Martinez-Rivera*, 2:14-cv-00026, filed March 27, 2014 (W.D. Tex.); *American Civil Rights Union v. McDonald*, 2:14-cv-00012, filed Jan. 27, 2014 (W.D. Tex.); *True the Vote v. Stewart*, 1:13-cv-03369, filed December 12, 2013 (D. Colo.) (voluntarily dismissed); *True the Vote v. Wintz* 1:13-cv-03368, filed December 12, 2013 (D. Colo.) (voluntarily dismissed); *American Civil Rights Union v. Jefferson Davis Cty.*, 2:13-cv-00087, filed April 26, 2013 (S.D. Miss.); *American Civil Rights Union v. Walthall Cty.*, 2:13-cv-00086, filed April 26, 2013 (S.D. Miss.); *Judicial Watch, Inc. v. Husted*, 2:12-cv-00792, filed August 30, 2012 (S.D. Ohio); *Judicial Watch, Inc. v. King*, 1:12-cv-00800, filed June 11, 2012 (S.D. Ind.), with *Common Cause Indiana v. Lawson*, 1:17-cv-03963, filed October 27, 2017 (S.D. Ind.); *Indiana NAACP v. Lawson*, 1:17-cv-02897, filed August 23, 2017 (S.D. Ind.); *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, 1:16-cv-1274, filed October 31, 2016 (M.D.N.C.); *Husted v. A. Philip Randolph Institute*, 2:16-cv-00303, filed April 6, 2016 (S.D. Ohio); *Common Cause v. Kemp*, 1:16-cv-00452, filed February 10, 2016 (N.D. Ga.); *Ga. State Conf. of the NAACP v. Hancock Cty. Bd. of Elections and Registration*, 5:15-cv-00414, filed November 3, 2015 (M.D. Ga.); *The Democratic Party of Va. v. Va. State Bd. of Elections*, 1:13-cv-1218, filed October 1, 2013 (E.D. Va.); *LULAC v. Harris Cty.*, 4:12-cv-03035, filed October 11, 2012 (S.D. Tex.); *Colón-Marrero v. Conty-Pérez*, 12-cv-1749, filed September 12, 2012 (D.C.P.R.); *Arcia v. Detzner*, 1:12-cv-22282, filed June 19, 2012 (S.D. Fla.); *Mi Familia Vota Education Fund v. Detzner*, 8:12-cv-1294, filed June 8, 2012 (M.D. Fla.); *Janis v. Nelson*, 5:09-cv-05019, filed on February 18, 2009 (D.S.D.); *Common Cause of Colorado v. Buescher*, 1:08-cv-02321, filed October 25, 2008 (D. Colo.); *Mont. Democratic Party v. Eaton*, 9:08-cv-00141, filed October 6, 2008 (D. Mont.); *U.S. Student Ass’n Found. v. Land*, 2:08-cv-14019, filed September 17, 2008 (E.D. Mich.).
- 115 *Judicial Watch, Inc. v. Grimes*, 3:17-cv-00094, filed November 14, 2017 (E.D. Ky.); *Voter Integrity Project NC, Inc. v. Wake County Board of Elections*, 5:16-cv-00683, filed July 18, 2016 (E.D.N.C.); *American Civil Rights Union v. Noxubee County*, 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.); *American Civil Rights Union v. Clarke County*, 2:15-cv-00101, filed July 27, 2015 (S.D. Miss.); *American Civil Rights Union v. Martinez-Rivera*, 2:14-cv-00026, filed March 27, 2014 (W.D. Tex.); *American Civil Rights Union v. McDonald*, 2:14-cv-00012, filed Jan. 27, 2014 (W.D. Tex.); *American Civil Rights Union v. Jefferson Davis County*, 2:13-cv-00087, filed April 26, 2013 (S.D. Miss.); *American Civil Rights Union v. Walthall County*, 2:13-cv-00086, filed April 26, 2013 (S.D. Miss.); *Judicial Watch, Inc. v. Husted*, 2:12-cv-00792, filed August 30, 2012 (S.D. Ohio).
- 116 Willie M. Miller (Noxubee County District 4 Election Commissioner), interview by Brennan Center for Justice, May 29, 2018.
- 117 *American Civil Rights Union v. Rodriguez*, 7:16-cv-00103, filed Mar. 4, 2016 (S.D. Tex.).
- 118 *Judicial Watch, Inc. v. Logan*, 2:17-cv-08948, filed December 13, 2017 (C.D. Cal.).
- 119 *American Civil Rights Union v. Noxubee County*, 3:15-cv-00815, filed November 12, 2015 (S.D. Miss.).
- 120 Sylvester Tate (Noxubee County District 1 Election Commissioner) and Willie Miller (Noxubee County District 4 Election Commissioner), interview by Brennan Center for Justice, May 29, 2018.
- 121 *Judicial Watch, Inc. v. King*, 1:12-CV-00800, filed June 11, 2012 (S.D. Ind.).

- 122 Indiana Secretary of State, “Hoosier Voters to Receive Postcard with Election Information in the Mail,” news release, June 19, 2014, [goo.gl/Xy2cbp](https://goo.gl/Xy2cbp); see also Max Greenwood, “Indiana Purges Nearly 500,000 from Voter Rolls,” *The Hill*, April 20, 2017, <http://thehill.com/blogs/ballot-box/329659-indiana-purges-nearly-half-a-million-from-voter-rolls>; Indiana Secretary of State, “Indiana Prepares for Future Elections by Cleaning Up Its Voter Roll,” news release, April 18, 2017, <https://goo.gl/9dFzps>.
- 123 Judicial Watch, “Judicial Watch, True the Vote Historic Indiana Lawsuit Forces Statewide Clean-Up of Voter Registration Lists, Permanent Changes in Election Law Procedures,” news release, August 7, 2014, <https://www.judicial-watch.org/press-room/press-releases/judicial-watch-true-vote-historic-indiana-lawsuit-forces-statewide-clean-voter-registration-lists-permanent-changes-election-law-procedures/>.
- 124 Public Interest Legal Foundation, *Alien Invasion in Virginia*, September 2016, [https://publicinterestlegal.org/files/Report\\_Alien-Invasion-in-Virginia.pdf](https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf); see also Public Interest Legal Foundation, *Alien Invasion II*, May 2017, <https://publicinterestlegal.org/files/Alien-Invasion-II-FINAL.pdf>.
- 125 Christopher Famighetti, Douglas Keith, and Myrna Pérez, *Noncitizen Voting: The Missing Millions* (New York: Brennan Center for Justice, May 2017), [https://www.brennancenter.org/sites/default/files/publications/2017\\_Non-citizenVoting\\_Final.pdf](https://www.brennancenter.org/sites/default/files/publications/2017_Non-citizenVoting_Final.pdf).
- 126 These noncitizen removal figures are derived from Virginia’s annual list maintenance reports. Virginia Department of Elections, *Annual List Maintenance Report*, 2015, <https://www.elections.virginia.gov/Files/maintenance-reports/2015SBEListMaintenancereport.pdf>; Virginia Department of Elections, *Annual List Maintenance Report*, 2016, <https://www.elections.virginia.gov/Files/maintenance-reports/2016SBEListMaintenancereport.pdf>; Virginia Department of Elections, *Annual List Maintenance Report*, 2017, <https://www.elections.virginia.gov/Files/maintenance-reports/2017SBEListMaintenancereport.pdf>.
- 127 League of United Latin American Citizens of Richmond v. Public Interest Legal Foundation 1:18-cv-00432-LO-IDD V.A.E.D., <https://www.southerncoalition.org/wp-content/uploads/2017/01/LULAC-of-Richmond-v.-PILF.pdf>. See also Pema Levy, “Member of Trump’s Voter Fraud Commission Sued for Voter Intimidation,” *Mother Jones*, April 12, 2018, <https://www.motherjones.com/politics/2018/04/member-of-trumps-voter-fraud-commission-sued-for-voter-intimidation/>; Pema Levy, “Trump Election Commissioner Used Dubious Data to Allege an ‘Alien Invasion,’” *Mother Jones*, July 18, 2017, <https://www.motherjones.com/politics/2017/07/trump-election-commissioner-used-dubious-data-to-allege-an-alien-invasion/>; Stephen Dinan, “American Kicked Off Virginia Voter Rolls as ‘Declared Non-Citizen,’” *The Washington Times*, June 18, 2017, <https://www.washingtontimes.com/news/2017/jun/18/maureen-erickson-kicked-off-virginia-voting-rolls-/>.
- 128 See *supra* text box on challenges.
- 129 Alaska, California, Colorado, District of Columbia, Georgia, Illinois, Maryland, New Jersey, Oregon, Rhode Island, Vermont, Washington, West Virginia. For a detailed description of the status of implementation of automatic voter registration in these states see “Automatic Voter Registration,” Brennan Center for Justice, last modified April 17, 2018, <https://www.brennancenter.org/analysis/automatic-voter-registration>.

## Appendix A: Federal Statutory Regulation of Voter Purge Practices

Purge practices are regulated by a combination of federal and state law. Below is a summary of federal statutes:

### VOTING RIGHTS ACT

As a general matter, the Voting Rights Act (VRA), 52 U.S.C. § 10301 et seq. prohibits discrimination in voting. The Supreme Court has held that this prohibition applies to purges.<sup>1</sup> Prior to 2013, certain jurisdictions were required to seek federal preclearance of purge practices before they were implemented.<sup>2</sup> However, the formula by which these jurisdictions were covered was invalidated in *Shelby County v. Holder*,<sup>3</sup> effectively ending preclearance until Congress issues a new formula. Purge practices must still comply with Section 2 of the VRA, which bans discriminatory voting practices.<sup>4</sup>

### NATIONAL VOTER REGISTRATION ACT

The National Voter Registration Act (NVRA) is the most comprehensive federal law regulating voter purges and applies to 44 states. Six states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt because they had election day registration or no voter registration as of the date provided by the NVRA. These exemptions make sense because purge consequences are much less grave in a state that permits anyone eligible who is not on the registration rolls to register and to vote on Election Day (or does not require them to register in order to vote).

The law discusses five categories of removal from voter rolls: (1) request of the registrant; (2) disenfranchising criminal conviction; (3) mental incapacity; (4) death; and (5) change in residence.<sup>5</sup> The NVRA sets forth a series of specific requirements that apply to purges of registrants believed to have changed residence.<sup>6</sup>

The law also contains a series of additional proscriptions on state practices. For example, it provides that list maintenance must be uniform, nondiscriminatory, and in accordance with the Voting Rights Act.<sup>7</sup> It also prohibits *systematic* voter purges (those programs that remove groups of voters at once) within 90 days of a federal election.<sup>8</sup> The Act also has provisions that apply on Election Day if a voter has changed address. Voters who have moved within a jurisdiction are permitted to vote at either their new or old polling place (states get to choose), while purged voters — mistakenly believed to have moved — who show up on Election Day have the right to correct the error and cast a ballot that will count.<sup>9</sup>

### HELP AMERICA VOTE ACT

The Help America Vote Act of 2002 (HAVA) reaffirms the requirements of the NVRA and contains additional regulations for voter list maintenance.<sup>10</sup> For example, HAVA requires states to create statewide voter registration databases with unique identifiers for registered voters.<sup>11</sup> The law also requires states to attempt to verify the validity of information submitted by voter registration applicants.<sup>12</sup> HAVA also ensures that certain voters, including those who do not appear on poll books, are permitted to vote provisional ballots at minimum.<sup>13</sup>

<sup>1</sup> *Young v. Fordice*, 520 U.S. 273 (1997).

<sup>2</sup> 52 U.S.C. § 10304.

<sup>3</sup> 570 U.S.C. 2 (2013).

<sup>4</sup> 52 U.S.C. § 10301(a).

<sup>5</sup> 52 U.S.C. § 20507(a).

<sup>6</sup> See 52 U.S.C. § 20507(d)(1).

<sup>7</sup> 52 U.S.C. § 20507(b)(1).

<sup>8</sup> 52 U.S.C. § 20507(c)(2)(A).

<sup>9</sup> 52 U.S.C. § 20507(e).

<sup>10</sup> 52 U.S.C. § 21083(a).

<sup>11</sup> 52 U.S.C. § 21083(a)(5)(A).

<sup>12</sup> 52 U.S.C. § 21083(a)(5)(B).

<sup>13</sup> 52 U.S.C. § 21082.

### Appendix B: What Explains a Jurisdiction's Purge Rate?

	Removal Rate	Removal Rate
D (Preclearance Condition Lifted)	0.0150*** (0.00166)	
D (Preclearance Condition Lifted) * D (2014)		0.0240*** (0.00207)
D (Preclearance Condition Lifted) * D (2016)		0.00605*** (0.00193)
Median Age	-0.000600*** (0.000168)	-0.000601*** (0.000169)
Percent of Residents Who Moved in Past Year	0.0582*** (0.0124)	0.0578*** (0.0124)
Log (Median Income)	0.00639** (0.00283)	0.00625** (0.00283)
Log (Voting Age Population)	-0.000184*** (0.000608)	-0.000182*** (0.000608)
Log (Percent Black)	-0.00124*** (0.000362)	-0.00125*** (0.000362)
D (Secretary of State Appointed by Governor)	0.00634*** (0.00187)	0.00636*** (0.00187)
D (Secretary of State Appointed by Legislature)	0.0168*** (0.00202)	0.0168*** (0.00202)
D (State Legislature Controlled by Republicans)	0.0138*** (0.00122)	0.0138*** (0.00122)
Constant	0.0339 (0.0293)	0.0353 (0.0293)
Observations	9,057	9,057
R-squared	0.069	0.073
<p>Robust standard errors in parentheses, clustered by county.  Year dummies not shown.  *** p&lt;0.01, ** p&lt;0.05, * p&lt;0.1  Notes: Data are from the 2010, 2012, 2014, and 2016  reporting periods. Includes jurisdictions that reported in  each time period.  Sources: U.S. Election Assistance Commission, U.S. Census  Bureau: American Community Survey 5-Year Estimates,  National Conference of State Legislatures</p>		

### Appendix C: Relationship Between Purge Rates and Provisional Ballot Rates

	Provisional Ballot Rate
Removal Rate	0.0177** (0.00697)
Turnout Rate	-0.00553*** (0.00164)
Log (Median Income)	0.00189*** (0.000504)
Log (Percent Black)	-0.000554* (0.000308)
Log (Percent White)	-0.00453*** (0.00132)
D (Implemented Strict Voter ID Requirement)	-0.00314 (0.000406)
Constant	-0.0185*** (0.00523)
Observations	1,854
R-squared	0.741

Robust standard errors in parentheses, clustered by county. Year and state-level dummies not shown.  
 \*\*\* p<0.01, \*\* p<0.05, \* p<0.1  
 Notes: Data are from the 2010, 2012, 2014, and 2016 reporting periods. Includes jurisdictions covered under Section V of the Voting Rights Act at the time of the *Shelby County* decision in 2013 that reported in each time period.  
 Sources: U.S. Election Assistance Commission, U.S. Census Bureau: American Community Survey 5-Year Estimates, National Conference of State Legislatures.

Regression analysis shows that the higher a covered county's purge rate the higher their provisional ballot rate. Each 1 percent increase in removal rates was associated with an additional 1.8 provisional ballots for every 10,000 ballots cast. Although this number is small, the median for these jurisdictions in the 2012 presidential election was fewer than 1 provisional ballot per 10,000 cast. Importantly, this statistically significant relationship holds even after controlling for other sociodemographic factors such as population, turnout rate, racial composition, political orientation, and implementation of strict voter ID requirements.

As with any statistical study of this sort, it is impossible to determine whether the increase in purge rates in any particular county is responsible for an increase in provisional ballots. However, a closer look at the numbers in a few jurisdictions suggests how this relationship might work.

**Shelby County**, Alabama, the jurisdiction at issue in *Shelby County v. Holder*, is illustrative. After preclearance ended in 2013, the county's removal rate more than doubled, from 5.0 percent to 10.4 percent. In 2014, more than 18 percent of the county's voters were purged. In 2012, the provisional ballot rate was 0.15 percent, virtually identical to the national average of 0.16 percent. Following years in which the county purged an average of 10 percent of voters, the provisional ballot rate tripled to 0.45 percent.

**Montgomery County**, Alabama, also had to seek federal preclearance for purges in the past. From 2009 to 2012, when preclearance was required, the average two-year removal rate was 4.7 percent, well below the national average. But after

*Shelby County* effectively ended preclearance, the removal rates increased dramatically, nearly tripling to 12.0 percent. Montgomery County's numbers are similar to Shelby County's. In the two years ending in 2014, a period covering the cessation of preclearance, Montgomery County had a massive purge in which 21 percent of voters were removed. Subsequently, the provisional ballot rate shot up from 0.31 percent in the 2012 presidential election to more than 1 percent in the 2016 election.

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ANALYSIS

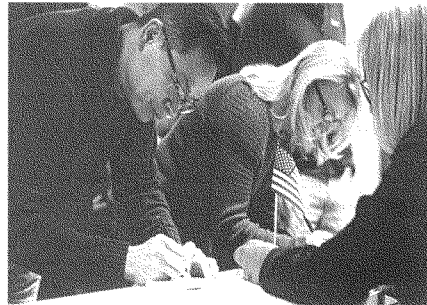
## Voter Purge Rates Remain High, Analysis Finds

New data reveal that counties with a history of voter discrimination have continued purging people from the rolls at elevated rates.



Kevin Morris

August 1, 2019



Using data released by the federal Election Assistance Commission (EAC) in June, a new Brennan Center analysis has found that between 2016 and 2018, counties with a history of voter discrimination have continued purging people from the rolls at much higher rates than other counties.

This phenomenon began after the Supreme Court's 2013 ruling in *Shelby County v. Holder*, a decision that severely weakened the protections of the Voting Rights Act of 1965. The Brennan Center first identified this troubling voter purge trend in a **major report** released in July 2018.

Before the *Shelby County* decision, Section 5 of the Voting Rights Act required jurisdictions with a history of discrimination to submit proposed changes in voting procedures to the Department of Justice or a federal court for approval, a process known as "preclearance."

After analyzing the 2019 EAC data, we found:

At least 17 million voters were purged nationwide between 2016 and 2018, similar to the number we saw between 2014 and 2016, but considerably higher than we saw 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; 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

To be clear, we report the total numbers of voters removed by a county for any reason. Election officials purge voters they believe are ineligible for a variety of reasons, including death and moving outside the jurisdiction. This analysis does not assess how many voters were improperly purged.

### **Methodology**

Every two years, the EAC administers a survey to election officials around the country known as the Election Administration and Voting Survey (EAVS). The survey includes a host of questions about the state of voter registration in the jurisdiction and the experience of the most recent federal election. Jurisdictions are requested to report on information including how many new registrations occurred between the federal elections, the number of ballots cast on election day, and the number of polling sites that were open on election day. The jurisdictions are also asked to report how many voters were removed from the registration rolls — or “purged” — over the two-year period that preceded the most recent federal election. These data formed the backbone of our statistical analysis in last year’s report, and we use them again here.

All election jurisdictions in the country are asked to respond to the EAVS survey every two years, but in 2018, some in Alabama and Texas did not report their purge numbers. Although this makes the data less than ideal, the EAC survey remains the best source for nationwide information on voter purges.

We calculate purge rates as the number of voters removed between 2016 and 2018 divided by the sum of total voters registered as of the 2018 election and the number removed. In other words,

$$\text{Purge Rate} = \frac{\text{Number Purged}}{\text{Number Purged} + \text{Total Number Registered in 2018}}$$

As with our report last year, we report the median purge rate when discussing aggregate purge rates. We use the median because of the nature of the data: using the mean purge rate would leave our analysis more susceptible to outliers.

### **Why purges can be problematic**

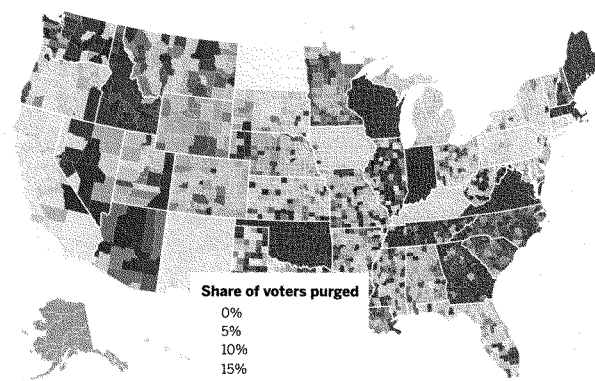
To be sure, there are many good reasons for a voter to be purged. For instance, if a voter moves from Georgia to New York, they are no longer eligible to cast a ballot in the Peach State. As such, they should be removed from Georgia’s voter rolls. Similarly, voters who have passed away should be removed from the rolls. Reasonable voter list maintenance ensures voter rolls remain up to date.

Problems arise when states remove voters who are still 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, 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.

#### Approximately 17 million purged between 2016 and 2018

The map below shows the purge rates for the counties that reported their information to the EAC. Some counties did not report their information. Because North Dakota does not have voter registration, it does not have a voter purge rate. Therefore, the state is grayed out below to mirror the non-reporting jurisdictions in Texas and Alabama.

#### Purge Rate, 2016-2018



*Notes:*  
 Data in the following states are aggregated here to the county-level but are reported at the sub-county level: CT, MA, ME, NH, RI, VT, and WI  
 North Dakota does not have voter registration.  
 Source: EAVS

In our report last year, we noted that 16 million voters were purged between the federal elections of 2014 and 2016, and that this was almost 4 million more names purged from the rolls than between 2006 and 2008.

The latest data from the EAC shows that between the presidential election in 2016 and the 2018 midterms, more than 17 million voters were purged. While this number is higher than what we reported last year, it is likely due to the fact that more jurisdictions reported their data in 2018, pushing the reported total higher. As the figure below

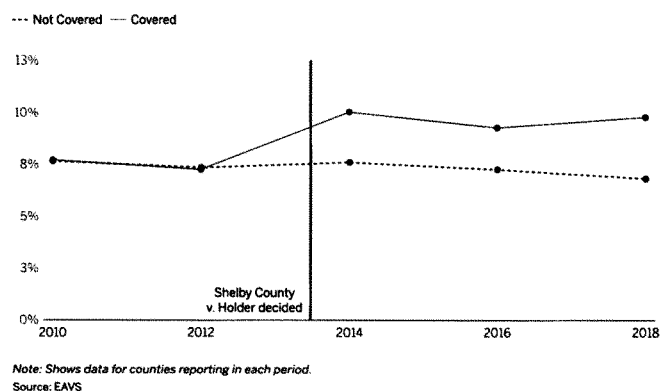
demonstrates, the median purge rate among counties that consistently report their data has remained largely the same.

#### Purge rates in Section 5 jurisdictions continue to be higher

Prior to *Shelby County*, jurisdictions covered under Section 5 of the Voting Rights Act collectively had purge rates right in line with the rest of the country. A major finding in last year's report was that jurisdictions that used to have federal oversight over their election practices began to purge more voters after they no longer had to pre-clear proposed election changes. The 2016–2018 EAC data shows a slightly wider gap in purge rates between the formerly covered jurisdictions and the rest of the country than existed between 2014 and 2016.

This is of particular interest because this continued — and even widening — gap debunks possible claims that certain states would experience a one-time jump when free of federal oversight, but then return to rates in line with the rest of the country. They haven't.

#### Purge Rates, 2008 - 2018



The median purge rate across the country in counties that were never covered by Section 5 of the Voting Rights Act decreased slightly between 2016 and 2018. In contrast, the purge rates ticked up in parts of the country that were covered at the time of the *Shelby County* decision. We found sustained higher purge rates in parts of the country that have a demonstrated history of discrimination in voting. If these formerly covered jurisdictions that reported their data each year had purged voters at rates consistent with the rest of the country — which they did before the *Shelby County* decision — they would have purged 1.1 million fewer voters between 2016 and 2018. In

our report last year, we noted that *Shelby County* was likely responsible for the purge of 2 million voters over four years in these counties. The effect of the Supreme Court's 2013 decision has not abated.

### Next Steps

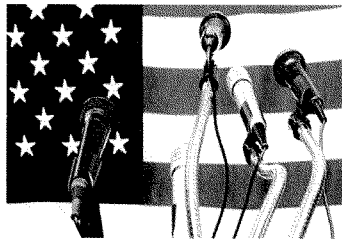
As the country prepares for the 2020 election, election administrators should take steps to ensure that every eligible American can cast a ballot next November. Election administrators must be transparent about how they are deciding what names to remove from the rolls. They must be diligent in their efforts to avoid erroneously purging voters. And they should push for reforms like automatic voter registration and election day registration, which keep voters' registration records up to date.

Election day is often too late to discover that a person has been wrongfully purged.

**Editor's note:** *An earlier version of this analysis reported aggregated statewide purge rates. We have since learned that at least one state self-reported the data in a way that complicates a statewide aggregation. As such, we are no longer reporting any statewide numbers. That does not change the number of people the counties self-reported as removing.*

(Image: Alex Wong/Getty)

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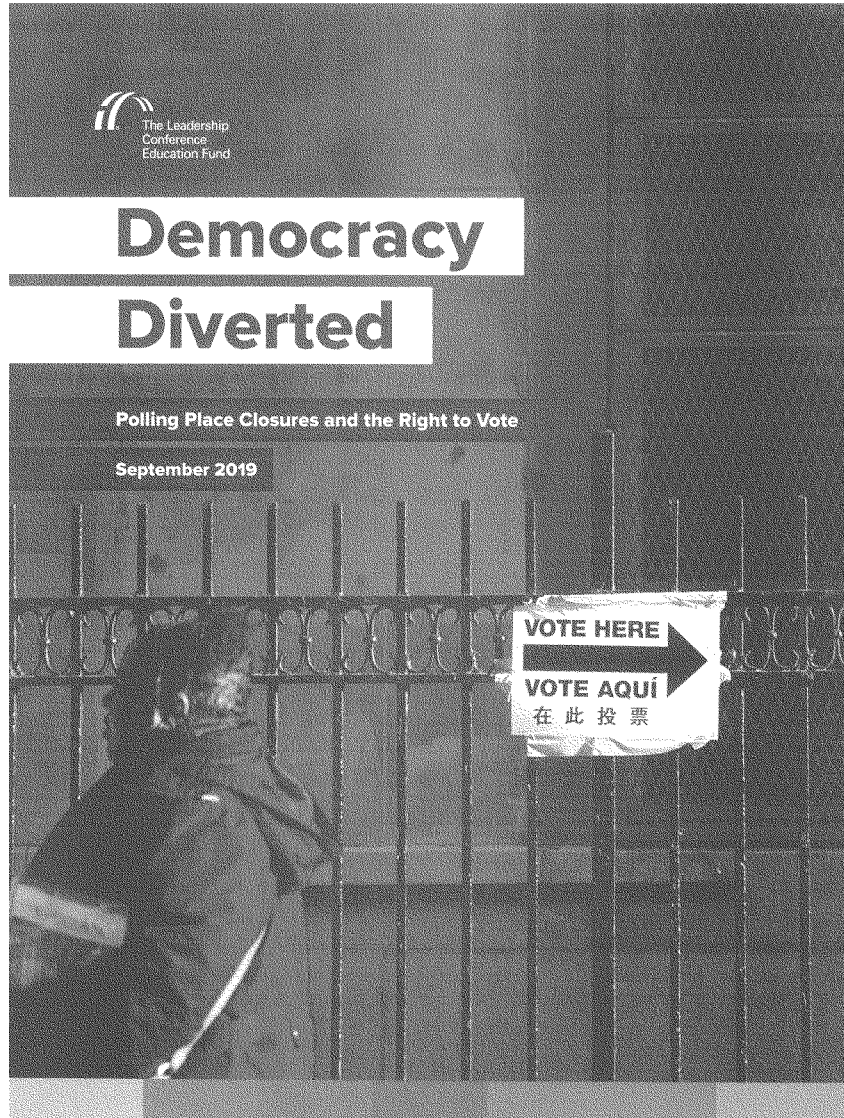
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## Acknowledgments

***Democracy Diverted: Polling Place Closures and the Right to Vote*** is a product of The Leadership Conference Education Fund.

The Education Fund was founded in 1969 as the education and research arm of The Leadership Conference on Civil and Human Rights, the nation's oldest and largest civil and human rights coalition of more than 200 national organizations. Because of our unique role in leading coalitions, we are able to create public education campaigns that leverage a range of diverse voices to empower and mobilize advocates at the local, state, and federal levels. For five decades, we have served as a force multiplier and amplified the call for a just, inclusive, and fair democracy. At The Education Fund, we believe an informed public is not only necessary to achieve civil and human rights, but also to make sure those rights endure. By activating the power of the coalition, The Education Fund and our partners can share innovative research and information around the country — and ultimately, shift the narrative on civil and human rights.

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We would like to thank the following advocates for providing invaluable advice and wisdom during the creation of this report:

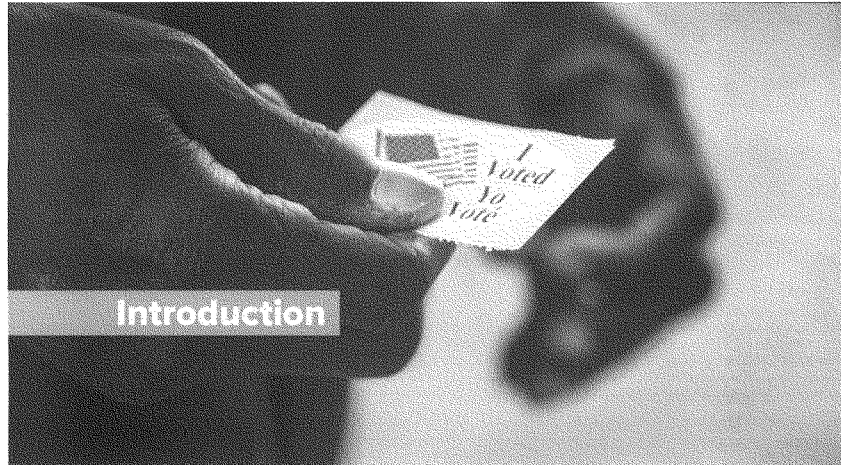
- Alex Gulotta, The Leadership Conference Education Fund, All Voting is Local, Arizona
- Brad Ashwell, The Leadership Conference Education Fund, All Voting is Local, Florida
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## Introduction

The Voting Rights Act of 1965 (VRA), a landmark achievement of the civil rights movement, is known as one of the most effective civil rights laws in American history. Years of struggle for the right to vote culminated in Bloody Sunday, the infamous day in 1965 when civil rights advocates, including U.S. Rep. John Lewis, were brutally beaten as they marched across the Edmund Pettus Bridge in Selma, Alabama, to demand equal access to the ballot box — a pivotal moment in the campaign for civil rights that led to the enactment of the VRA months later. Before the VRA, Black voters were prevented from participating in the political system due to literacy tests, poll taxes, voter intimidation tactics, and violence. In the mid-1950s, only 25 percent of African Americans were registered to vote, and the registration rate was even lower in some states. In Mississippi, for example, fewer than 5 percent of African Americans were registered to vote.<sup>1</sup> Those rates rose quickly after the VRA was enacted. By 1970, almost as many African Americans were registered to vote in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as had been in the entire century before 1965.<sup>2</sup> Like African Americans, Native Americans, Latinos, and Asian Americans have also faced voter discrimination and low voter registration rates. It wasn't until 1975, when Congress amended the VRA, that certain jurisdictions were required to provide bilingual election materials and voting assistance.<sup>3</sup>

<sup>1</sup> See U.S. COMMISSION ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 171 (2016), [https://www.usccr.gov/assets/2018/Mississippi\\_Materials\\_Access\\_2016.pdf](https://www.usccr.gov/assets/2018/Mississippi_Materials_Access_2016.pdf).

<sup>2</sup> See *Shelby Cty. v. Holder*, 570 U.S. 529, 562 (2013) (Sotomayor, J. dissenting).

<sup>3</sup> See U.S. COMMISSION ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 34 (2016), [https://www.usccr.gov/assets/2018/Mississippi\\_Materials\\_Access\\_2016.pdf](https://www.usccr.gov/assets/2018/Mississippi_Materials_Access_2016.pdf).

## The Heart of the Voting Rights Act

Often described as the "heart" of the VRA, Section 5<sup>4</sup> played a critical role in dismantling the systemic discrimination against voters of color that was prevalent throughout the South. This section, also known as the preclearance provision, allowed the U.S. Department of Justice (DOJ) and the U.S. District Court for the District of Columbia to block states and localities (*i.e.*, "covered jurisdictions"<sup>5</sup>) with a history of discrimination from implementing voting changes that could disenfranchise voters of color. In enacting Section 5, "Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress ... decide[d] to shift the advantage of time and inertia from the perpetrators of the evil to its victims."<sup>6</sup> Section 5 guaranteed that voting changes were public, transparent, analyzed, and evaluated before they were implemented, ensuring they would not discriminate against voters on the basis of race or language. While the VRA applies to the entire country, Section 5 was reserved for jurisdictions with the most pervasive patterns of discrimination: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. A selection of counties in California, Florida, Michigan, New York, North Carolina, and South Dakota were also covered and were required to submit their voting changes for approval.<sup>7</sup> In addition to its preventive powers, preclearance deterred state and local jurisdictions from suppressing the voting power of growing communities of color.

<sup>4</sup> 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 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.

<sup>5</sup> 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(e) of the VRA.

<sup>6</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

<sup>7</sup> See *Jurisdictions Previously Covered by Section 5*, U.S. DEPT OF JUSTICE CIVIL RIGHTS DIV., <https://www.justice.gov/civilrights/section5/covered-section5> (last updated Aug. 6, 2015).

*Shelby County v. Holder's Devastating Impact*

Despite the VRA's success in combating voting discrimination, the U.S. Supreme Court struck down its coverage formula in *Shelby County v. Holder* in 2013. In so doing, justices rendered the VRA's most powerful provision — the Section 5 preclearance system — inoperable, opening the door to racial discrimination across the country at every juncture of the electoral process. At the time, Justice Ruth Bader Ginsburg foresaw the devastating impact the loss of preclearance would have on voting rights in communities of color. "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet,"<sup>8</sup> she wrote in her dissenting opinion.

Since *Shelby*, a growing number of states and localities across the country have attempted to suppress voter participation among Black and Brown communities in various ways. States have shortened voting hours and days, enacted new barriers to voter registration, purged millions of eligible voters from the rolls, implemented strict voter identification laws, reshaped voting districts, and closed polling places. Many of these changes have been found to discriminate against Black and Brown voters.<sup>9</sup> Courts have, in fact, found intentional discrimination in at least 10 voting rights decisions since *Shelby*.<sup>10</sup> In 2016, the U.S. Court of Appeals for the Fourth Circuit described North Carolina's voter ID law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow" and said its provisions "target African Americans with almost surgical precision."<sup>11</sup> And in 2017, a federal court ruled that Texas' 2013 congressional redistricting maps were enacted with "racially discriminatory intent" against Latino and Black voters.<sup>12</sup>

**Since *Shelby*,  
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<sup>8</sup> See *Shelby Cty. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

<sup>9</sup> See generally, N.C. State Conf. of the NAACP v. McCrory, 839 F.3d 204, 214 (4th Cir. 2016); *Perez v. Abbott*, 274 F. Supp. 3d 624, 652, 686 (W.D. Tex. 2017).

<sup>10</sup> Letter from Shelbyly '88, President & Dr. Counsel, NAACP (legal Def. Fund) to Bob Goodlatte, Chair, U.S. House Comm. on the Judiciary (Dec. 7, 2017) (on file with author).

<sup>11</sup> N.C. State Conf. of the NAACP v. McCrory, 839 F.3d 204, 214 (4th Cir. 2016).

<sup>12</sup> See *Perez v. Abbott*, 274 F. Supp. 3d 624, 652, 686 (W.D. Tex. 2017).

The absence of Section 5 has made it increasingly difficult to identify harmful voting changes before they take effect because states and localities are no longer required to notify federal officials of changes to voting laws. To track discrimination against voters of color, advocates need a fine-grained understanding of changing electoral processes in states and localities across the nation, especially in those with histories of discrimination. In the absence of Section 5, they no longer have the means of achieving that knowledge. Section 5's prophylactic power came from its recognition that the "harms" of voting discrimination can never be truly redressed. Once an election is held, there is no do-over.

The wave of voter suppression since *Shelby* suggests that restoring the VRA and erecting additional safeguards to protect voters from racial discrimination must be a top legislative priority. When Congress wrote and passed the VRA, it understood that racial discrimination in voting morphs and changes over time; hence, the creation of Section 5. The myriad tactics now used to restrict electoral participation are just as pernicious as the poll taxes and literacy taxes of the 20<sup>th</sup> century. Congress can — and must — address this problem by restoring and strengthening the VRA.

**Congress can — and must — address this problem by restoring and strengthening the VRA.**

### Rise in Polling Place Closures Since *Shelby*

The national media have focused on discriminatory changes in voting policy and practice, such as the increase in photo identification requirements, purges from voting rolls, and reductions in rates of early voting. Yet poll closures have received little attention, even though they are a common and particularly pernicious way to disenfranchise voters of color. Decisions to shutter or reduce voting locations are often made quietly and at the last minute, making pre-election intervention or litigation virtually impossible. Closing polling places has a cascading effect, leading to long lines at other polling places, transportation hurdles, denial of language assistance and other forms of in-person help, and mass confusion about where eligible voters may cast their ballot. For many people, and particularly for voters of color, older voters, rural voters, and voters with disabilities, these burdens make it harder — and sometimes impossible — to vote.

#### Before *Shelby*:

States and localities were required to notify voters of any planned polling place closures well ahead of time. State and local officials were also required to prove that proposed voting changes would not have a discriminatory effect on Black, Latino, Asian American, or Native American voters, and they were required to give the DOJ data from the U.S. Census Bureau about the racial impact of polling closures.<sup>13</sup> The DOJ would then reach out to the community to obtain information about the impact of the proposed voting change.<sup>14</sup>

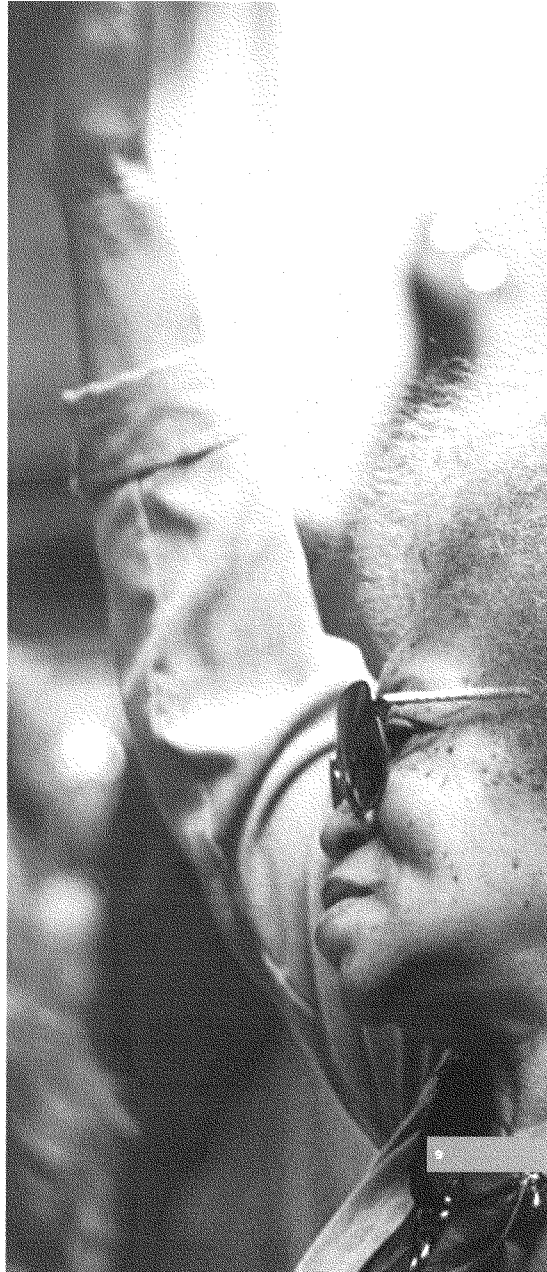
#### Since *Shelby*:

Jurisdictions are no longer required to notify voters of changes, and the DOJ does not have to analyze the impact of proposed voting changes on communities of color in Section 5 jurisdictions. To identify potentially discriminatory polling place relocations or closures and precinct changes, voters now must rely on reports from the news media, social media, and/or local advocates who attend city and county commission meetings or legislative sessions where these changes are made. In most cases, closures go unnoticed, unreported, and unchallenged.

<sup>13</sup> See U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 169 (2016), <https://www.usccr.gov/assets/2016/06/2016-06-20-Report-on-Minority-Voting-Rights-Access-2016.pdf>.

<sup>14</sup> See U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 47 (2016), <https://www.usccr.gov/assets/2016/06/2016-06-20-Report-on-Minority-Voting-Rights-Access-2016.pdf>.

While all poll closures do not prove discrimination, they merit heightened scrutiny, given this country's sordid history of excluding voters of color from the political process. Context matters. There may be legitimate reasons to reduce the number of polling places, perhaps because of a population decrease or reduced demand for Election Day voting because of increases in early or mail-in voting. When polling place reductions are planned in concert with diverse communities, evaluated in advance to ensure they won't harm voters of color, and take place with clear notice and transparency, they can be implemented equitably. Before *Shelby*, states and localities with clear records of voter discrimination — like those discussed in this report — were required to take these steps when consolidating polling places. Today, they are not.



## Polling Place Closures Today

The surge in voting changes at the state and local level after *Shelby* catalyzed the need for a systemic examination of poll closures and other seemingly innocuous changes that could have negatively impacted voters of color. In 2016, The Leadership Conference Education Fund identified 868 polling place closures in former Section 5 jurisdictions in our initial report, *The Great Poll Closure*.<sup>15</sup> This report is both an update to — and a major expansion of — our original publication.

Our first report drew on a sample of fewer than half of the approximately 860 counties or county-equivalents that were once covered by Section 5. This report covers an expanded data set of 757 counties. What's more, *The Great Poll Closure* relied on voluntary reports of aggregate numbers of polling places that state election officials gave to the U.S. Election Assistance Commission. This report relies largely on independent counts of polling places from public records requests and publicly available polling place lists.

In this report, 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 DOJ 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.

<sup>15</sup> See THE LEADERSHIP CONFERENCE EDUCATION FUND, *THE GREAT POLL CLOSURE 7* (Nov. 2016), <https://www.leadershipconference.org/wp-content/uploads/2016/11/great-poll-closure-report-2016.pdf>.

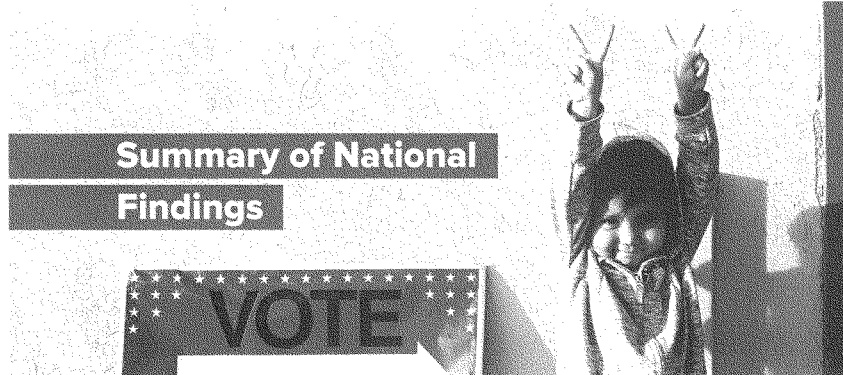


**Our hope** is that journalists, advocates, and voters will use this county-level polling place data to scrutinize the impact of poll closures in their communities, to understand their impact on voters of color, and to create a fairer and more just electoral system for all.

#### Summary of Methodology

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This report examines 757 (or nearly 90 percent) of the approximately 860 counties and county-level equivalents once covered by Section 5. Our sample includes only those jurisdictions where The Education Fund was able to acquire accurate polling place lists or counts from state or local election officials or reputable media sources for general elections in 2012, 2014, 2016, and/or 2018. Counties where we could not obtain reliable data (Virginia and three from Texas) were excluded from the analysis. More detail on methodology is available at the end of this report.



We found 1,688 polling place closures in places once covered by Section 5 of the Voting Rights Act. Of the 757 counties in our study, 298 (39 percent) reduced the number of polling places between 2012 and 2018. Because presidential elections tend to have higher turnout rates than midterms, we analyzed the data to determine whether the number of polling places varied to meet the different demands of each type of election. They did not. Most (69 percent) closures (–1,173)<sup>16</sup> occurred after the 2014 midterm election.

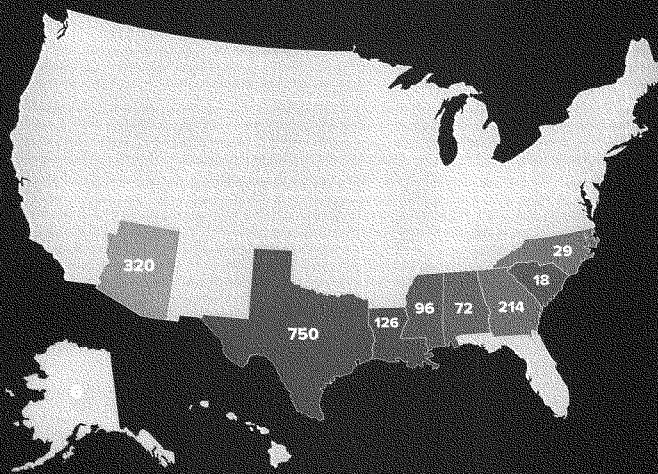
The *Shelby* decision paved the way for systematic statewide efforts to reduce the number of polling places in Texas (–750), Arizona (–320), and Georgia (–214). Quieter efforts to reduce the number of polling places without clear notice or justification spread throughout Louisiana (–126), Mississippi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

<sup>16</sup> Throughout this report, we refer to polling place reductions using the minus sign (–).

## Polling place closures since *Shelby*



The Nation’s Megaclosers

Our analysis uncovered statewide efforts to reduce polling places across Texas, Arizona, and Georgia — all states with rapidly growing and diversifying electorates. Each state stands out for the volume, scale, and breadth of its polling place closures.

The 10 counties that closed the most polling places by number are all located in Texas, Arizona, and Georgia.



Texas

Closures.....750  
Latino.....39%  
Black.....12%



Arizona

Closures.....320  
Latino.....30%  
Black.....4%  
Native American....4%



Georgia

Closures.....214  
Latino.....9%  
Black.....31%

## Top Ten Closers by Percentage

<b>Lumpkin County, GA</b>	<b>89%</b>
<b>Stephens County, GA</b>	<b>88%</b>
<b>Warren County, GA</b>	<b>83%</b>
<b>Bacon County, GA</b>	<b>80%</b>
<b>Butts County, GA</b>	<b>80%</b>
<b>Somervell County, TX</b>	<b>80%</b>
<b>Jackson County, TX</b>	<b>75%</b>
<b>Lanier County, TX</b>	<b>75%</b>
<b>Loving County, GA</b>	<b>75%</b>
<b>Stonewall County, GA</b>	<b>75%</b>

**Top Ten Closers  
by Total Numbers**

<b>Maricopa County, AZ</b>	<b>171</b>
<b>Dallas County, TX</b>	<b>74</b>
<b>Travis County, TX</b>	<b>67</b>
<b>Harris County, TX</b>	<b>52</b>
<b>Brazoria County, TX</b>	<b>37</b>
<b>Nueces County, TX</b>	<b>37</b>
<b>Mohave County, AZ</b>	<b>34</b>
<b>Cochise County, AZ</b>	<b>32</b>
<b>Pima County, AZ</b>	<b>31</b>
<b>McLennan County, TX</b>	<b>31</b>



## Texas

Texas, a state where 39 percent of the population is Latino and 12 percent is African American,<sup>17</sup> has closed 750 polling places since *Shelby*, by far the most of any state in our study. Five of the six largest closers of polling places are in Texas. With 74 closures, Dallas County, which is 41 percent Latino and 22 percent African American, is the second largest closer of polling places, followed by Travis County, which is 34 percent Latino (–67). Harris County, which is 42 percent Latino and 19 percent African American (–52), and Brazoria County, which is 13 percent African American and 30 percent Latino (–37), tied with Nueces County, which is 63 percent Latino (–37).<sup>18</sup> Many, but not all, of these polling places were closed as part of a statewide effort to centralize voting into “countywide polling places.” This effort slashed the number of voting locations but allowed voters to cast ballots at any Election Day polling place. Without Section 5 of the VRA, we cannot assess the impact these mass closures have on communities of color.



## Arizona

Arizona, a state where 30 percent of the population is Latino, 4 percent is Native American,<sup>19</sup> and 4 percent is African American, has the most widespread reduction (–320) in polling places. Almost every county (13 of 15 counties) closed polling places since preclearance was removed — some on a staggering scale. Maricopa County, which is 31 percent Latino, closed 171 voting locations since 2012 — the most of any county studied and more than the two next largest closers combined. Many Arizona counties shuttered significant numbers of polling places, including Mohave, which is 16 percent Latino (–34); Cochise, which is 35 percent Latino (–32); and Pima, which is 37 percent Latino (–31).<sup>20</sup>

<sup>17</sup> Texas is 39 percent Latino, 12 percent African American, 2 percent Native American and 1.4 percent Asian American. For all U.S. Census data referenced in this report, we rounded to the nearest whole number. All Census data is from the 2013–2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/faces/tableservices/jsf/servlettable?\\_af=y&\\_lang=en&\\_ds=US\\_17\\_5YR\\_B03002&\\_ss=all](https://datafinder.census.gov/faces/tableservices/jsf/servlettable?_af=y&_lang=en&_ds=US_17_5YR_B03002&_ss=all).

<sup>18</sup> See 2013–2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/faces/tableservices/jsf/servlettable?\\_af=y&\\_lang=en&\\_ds=US\\_17\\_5YR\\_B03002&\\_ss=all](https://datafinder.census.gov/faces/tableservices/jsf/servlettable?_af=y&_lang=en&_ds=US_17_5YR_B03002&_ss=all).

<sup>19</sup> Arizona is 30 percent Latino, 4 percent African American, 4 percent Native American, and 3 percent Asian American.

<sup>20</sup> See 2013–2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/faces/tableservices/jsf/servlettable?\\_af=y&\\_lang=en&\\_ds=US\\_17\\_5YR\\_B03002&\\_ss=all](https://datafinder.census.gov/faces/tableservices/jsf/servlettable?_af=y&_lang=en&_ds=US_17_5YR_B03002&_ss=all).



## Georgia

Georgia, a state where 31 percent of the population is African American and 9 percent is Latino, has 214 fewer polling places.<sup>21</sup> Georgia stands out because its counties have closed higher percentages of voting locations than any other state in our study. The top five closers of polling places by percentage were Georgia counties: The top three counties in the state were Lumpkin (89 percent closed); Stephens (88 percent closed); and Warren, which is 61 percent African American (83 percent closed). Bacon County, which is 15 percent African American, and Butts County, which is 28 percent African American, tied with 80 percent closed.<sup>22</sup> Seven counties with major polling place reductions now have only one polling site to serve hundreds of square miles. In a February 2015 memo, the office of Brian Kemp, who was then serving as Georgia's secretary of state, encouraged counties to consolidate voting locations. He specifically spelled out twice — in bold font — that "as a result of the *Shelby vs. Holder* [sic] Supreme Court decision, [counties are] no longer required to submit polling place changes to the Department of Justice for preclearance."<sup>23</sup>

<sup>21</sup> Georgia is 31 percent African American, 9 percent Latino, 1 percent Native American, and 4 percent Asian.

<sup>22</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://factfinder.census.gov/tables//aces/jst/tables/productview.html?tid=AC5\\_17\\_5Y8\\_#03002&periodType=table](https://factfinder.census.gov/tables//aces/jst/tables/productview.html?tid=AC5_17_5Y8_#03002&periodType=table)

<sup>23</sup> Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 3, 5 (Feb. 2015) (on file with author).



## Out of Sight, Out of Mind

Polling place closures in Louisiana, Mississippi, Alabama, and North Carolina follow a similarly troubling trend: Most took place out of public sight and were therefore out of the public's mind. Polling place closures happened largely without clear notice; transparency about how or why they were made; or approval from impacted voters or community stakeholders. In fact, news reports about polling place closures in all four states were often met with silence from elected officials. Many either did not respond to requests for comment;<sup>24</sup> responded but did not provide meaningful information;<sup>25</sup> or responded with false information.<sup>26</sup>

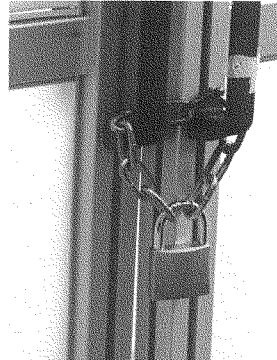
By far, the most common justification for closing polling places was no justification at all. Local officials who did offer an explanation often cited pretexts, such as budget constraints, compliance with the Americans with Disabilities Act (ADA), school safety concerns, limited parking, changes in voter turnout, or even simple logic. As one election commissioner from Mississippi put it, sometimes closing polling places "just makes sense."<sup>27</sup>

<sup>24</sup> See Mary Sell, *In Some Counties, Alabama Voters Have Lost a Quarter of Their Polling Places Since 2010*, BIRMINGHAM WATCH (Nov. 2, 2018), <https://birminghamwatch.org/counties-alabama-robberies-lead-quarter-polling-places-closed-2010/>.

<sup>25</sup> See Charles Maldonado, *Many New Orleans Voters are Still Driving Farther to Vote than Before Katrina*, THE LENS (Nov. 8, 2018), <https://thelensnola.org/2018/11/08/many-new-orleans-voters-are-still-driving-farther-to-vote-than-before-katrina/>.

<sup>26</sup> See Anna Wolfe & Alex Rozier, *Free From Federal Oversight, 5 Percent of Mississippi Polling Locations Have Closed Since 2013*, MISS. TODAY (Oct. 24, 2018), <https://mississippitoday.org/2018/10/24/free-from-federal-oversight-5-percent-of-mississippi-polling-locations-have-closed-since-2013/>.

<sup>27</sup> See Anna Wolfe & Alex Rozier, *Free From Federal Oversight, 5 Percent of Mississippi Polling Locations Have Closed Since 2013*, MISS. TODAY (Oct. 24, 2018), <https://mississippitoday.org/2018/10/24/free-from-federal-oversight-5-percent-of-mississippi-polling-locations-have-closed-since-2013/>.





## Louisiana

In Louisiana, two-thirds of all parishes closed polling places, leaving voters with 126 fewer places to vote than in 2012. The biggest closer was Jefferson Parish, which is 26 percent African American and 14 percent Latino. That parish first shuttered 23 voting locations in 2015 for lack of compliance with the ADA. Instead of making low-cost modifications or relocating those polling places in subsequent elections, the parish shuttered two more in advance of the 2018 election — a deeply troubling trend in a parish with an established record of hostility toward voting rights.<sup>28</sup> Equally concerning, voters in East Baton Rouge Parish, which is split about evenly between Black and White voters, have lost 10 polling places since 2012. Initially, many closures were said to be a temporary response to emergency flooding in 2016.<sup>29</sup> But years later, these polling places have yet to reopen. That follows a troubling trend that began in Orleans Parish, which has yet to restore many of the polling places that were closed in 2005 in the aftermath of Hurricane Katrina.



## Mississippi

In Mississippi, a state where more than one-third (37 percent) of the population is African American,<sup>30</sup> the number of polling places has dropped by 96 since 2012, with closures spread among 31 of the state's 82 counties. Harrison County, which is about one-quarter (24 percent) African American, and Pearl River County, which is 13 percent African American, were the largest closers in the state — each closing 13 polling places. The cuts would have been much worse in Pearl River had it not been for community pushback to a 2017 plan to slash the number of voting locations from 33 to 12. After months of negotiation, officials agreed to a compromise plan to move forward and keep 20 polling places open.

<sup>28</sup> See U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 171 (2018), [https://www.uscrt.gov/pub/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.uscrt.gov/pub/2018/Minority_Voting_Access_2018.pdf).

<sup>29</sup> See Kevin Dupuy, Temporary Voting Locations Approved for EBR Precincts, WBRZ (Oct. 10, 2016 3:15PM), <http://www.wbrz.com/news/temporary-voting-locations-approved-for-ebz-precincts>.

<sup>30</sup> Mississippi is 37 percent African American, 3 percent Latino, 1 percent Asian American, and 4 percent Native American.



## Alabama

Alabama, a state where more than a quarter (26 percent) of the population is African American,<sup>31</sup> now has 72 fewer polling places after 23 counties reduced voting locations.<sup>32</sup> These closures did not receive much media coverage, leaving voters with little information about why local polling places were closed. Those few news stories that were published, on the other hand, caused confusion. County officials, for example, claimed that they reduced polling places because there were too many voters<sup>33</sup> and cited nonexistent state laws as justification for requiring the removal of polling places from schools.<sup>34</sup>



## North Carolina

Voters in North Carolina, where more than one-fifth (21 percent) of the population is African American,<sup>35</sup> also have less access to polling stations. The 40 counties once covered by Section 5 of the VRA now have 29 fewer voting locations than they had before *Shelby*.<sup>36</sup> The vast majority of these reductions occurred under the proverbial cover of darkness — without any notice or reporting from the news media. They are especially concerning because majority-White counties voted to shutter voting locations with significant Black populations over the vocal objections of local civil rights groups. The Pasquotank County Board of Elections, for example, shuttered half of the polling places in Elizabeth City — a majority-Black community — without public input and over the objections of the local NAACP branch. The consolidation was undertaken in 2015 in the name of saving money, yet no polling places were eliminated in other parts of the county.

<sup>31</sup> Alabama is 26 percent African American, 4 percent Latino, 1.2 percent Asian American, and .4 percent Native American.

<sup>32</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/geographies/data/totals.html?\\_lang=en&\\_geo=state&\\_table=B03002&\\_allgeo=Alabama](https://datafinder.census.gov/geographies/data/totals.html?_lang=en&_geo=state&_table=B03002&_allgeo=Alabama).

<sup>33</sup> See Mary Sell, In Some Counties, Alabama Voters Have Lost a Quarter of Their Polling Places Since 2010, BIRMINGHAM WATCH (Nov. 2, 2018), <https://birminghamwatch.org/counties-alabama-voters-lost-quarter-polling-places-since-2010/>.

<sup>34</sup> See Donna Thornton, Possible Changes in District 2 Polls Bring Opposition, GADSDEN MESSENGER (Sep. 6, 2013), <https://gadsdensemessenger.com/2013/09/06/possible-changes-in-district-2-polls-bring-opposition/>.

<sup>35</sup> North Carolina is 21 percent African American, 9 percent Latino, 1 percent Native American and 3 percent Asian.

<sup>36</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/geographies/data/totals.html?\\_lang=en&\\_geo=state&\\_table=B03002&\\_allgeo=NorthCarolina](https://datafinder.census.gov/geographies/data/totals.html?_lang=en&_geo=state&_table=B03002&_allgeo=NorthCarolina).



## Alaska

In Alaska, where 14 percent of the population is Native American,<sup>37</sup> six of the 390 polling places open in 2012 have been closed. In a state stretching over more than 660,000 square miles, every polling place matters. In many locations, one polling place serves an entire town; yet there is little to no public documentation of why any of these polling places were closed. When the only polling place serving an entire community is closed, every voter is impacted. In the absence of Section 5, the time-consuming and expensive process of litigation is often the only tool voters have to stop polling place closures.

Once under Section 5 preclearance on account of its efforts to disenfranchise Alaska Natives, the state has had recent problems with voting rights. In 2013, it settled a legal challenge from several voters and tribes for failing to meet its obligations under the VRA to provide language-accessible materials for voters with limited proficiency in English. While Section 5 was in effect, the DOJ blocked state efforts to close polling places in rural areas (which were being carried out under the guise of euphemisms like “consolidation” and “realignment”). Thanks to the work of the Alaska Federation of Natives, 176 rural villages now have absentee-in-person voting rights, which are vital in a state as large as Alaska.<sup>38</sup>

<sup>37</sup> Alaska is 14 percent Native American, 3 percent African American, 7 percent Latino and 6 percent Asian.  
<sup>38</sup> See Villages Across the State Register to Become Absentee Early Voting Sites, ALASKA FED’N OF NATIVES, <https://www.afn.org/federation-arc201407/villages-across-the-state-register-to-become-absentee-early-voting-sites/> (last visited Aug. 8, 2019).

## Vote Centers: The Jury Is Out

One reason why Texas and Arizona closed so many polling places is because they converted to the "vote center" model of voting. Under this model, voters are not assigned to specific polling places; instead, they can cast ballots at the polling place of their choosing. While generally intended to enhance access to voting locations, this model often leads to massive reductions in polling places.

Arizona and Texas are the only two states formerly covered by Section 5 that have adopted clear programs to convert to the vote center model. In both states, many counties aggressively reduced voting locations immediately after *Shelby*. Without Section 5, racial impact analyses are no longer conducted to fully assess the impact of vote centers on Black, Latino, Native American, and Asian American voters.

### Vote Centers in Arizona

In 2014, Graham County, which is 33 percent Latino and 13 percent Native American, closed half of its polling places when it converted to vote centers.<sup>39</sup> In 2012, Graham had 18 polling sites; today, it has half that — six vote centers and three precincts. Cochise County, which is 35 percent Latino, closed nearly two-thirds (65 percent) of its polling places when it converted to vote centers, falling from 49 in 2012 to 17 in 2018. Gila County, which is 16 percent Native American and 19 percent Latino, closed almost half of its polling places; it had 17 in 2018, down from 33 in 2012.<sup>40</sup>

Many counties justify the transition to vote centers by rightly pointing out that the widespread adoption of vote-by-mail has diminished the need for physical polling places. Yet the state has given voters little in the way of explaining the process of voting, providing safeguards to protect voting rights, or making recommendations about how to transition to vote centers in ways that do not discriminate against voters of color or voters with limited English proficiency. State law gives counties broad leeway to implement vote centers as they see fit; as a result, some have converted entirely to vote centers, some have maintained traditional voting precincts, and others have adopted a hybrid model.<sup>41</sup>

Switching to vote centers doesn't necessitate fewer polling places. Navajo County, which is almost half Native American and home to three Native American reservations, converted all of its polling places to vote centers while keeping almost every one of its voting locations open.

<sup>39</sup> See Jon Johnson, *County Chooses Vote Centers Over Polling Precincts*, E. ARIZ. COURIER (Jun. 9, 2014), <http://www.azcourier.com/news/county-chooses-vote-centers-over-polling-precincts-147345-az88-11614429-001x40c187a.html>.

<sup>40</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), <https://data.census.gov/tables/2017/acs/5yr/b03002>.

<sup>41</sup> See H.R. 2302, 50th Leg., 1st Reg. Sess. (Ariz. 2011).



#### Vote Centers in Texas

Unlike Arizona, Texas has a clear and established process for converting to vote centers. To apply to the Countywide Polling Place Program (CWPP), counties must document specific plans to meet program requirements. Though intended to make voting more efficient and convenient, this law allows counties to make deep and immediate cuts to polling places and has no required safeguards to protect voters of color from discrimination.

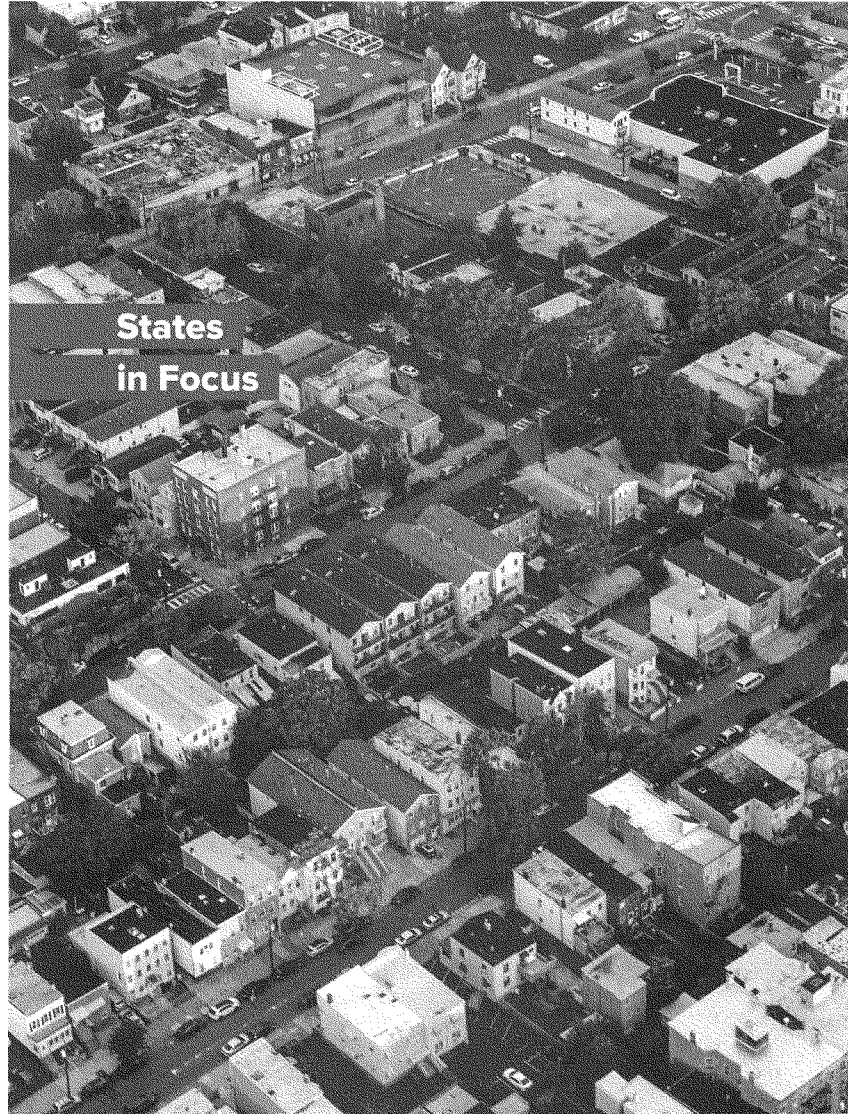
The state's process for converting to vote centers allows counties to close 35 percent of their polling places in their first election after conversion, and 50 percent in subsequent elections. The 60 counties that voluntarily participate in the program<sup>42</sup> account for 24 percent of the Texas counties in our study but are responsible for about two-thirds of the state's polling place closures. While not all counties that participate in the program reduce the number of polling places, those that do are more than twice as likely to close polling places than counties that use the precinct model.

The CWPP encourages counties to ask voters of color about their thoughts on the changes — but does not require it. Nor does it require a racial impact analysis, which was required before *Shelby*. To enroll in the CWPP, counties must provide a transcript or recording of a public forum soliciting input from voters that includes “minority organizations” among other stakeholders. The state election office also “strongly encourages” counties to create advisory committees to provide feedback on voting locations so they don’t run afoul of the VRA. Each county is required to explain how it chose its voting locations, but discriminatory impact is not mentioned as a possible metric.<sup>43</sup>

Though far from perfect, this limited and transparent process is better than no process at all. Massive reductions are still happening in the remaining 194 counties that haven’t converted to vote centers, and those consolidations are occurring with little oversight or transparency.

<sup>42</sup> See Counties Approved to Use the Countywide Polling Place Program (CWPP) for the May 4, 2019 Uniform Election, TEX. SEC’Y OF STATE, <https://www.sos.state.tx.us/elections/countywidepollingplaceprogram.shtml> (last visited Aug. 8, 2019).

<sup>43</sup> 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/news/advisory/2019-01.shtml>.





### State in Focus:

**Texas**

# 750

total closures  
since *Shelby*

# 590

total closures from 2014  
Midterm to 2018 Midterm

# 43%

counties in sample that  
reduced polling places  
(109 of 251)

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.<sup>44</sup> Furthermore, 14 Texas counties closed at least 50 percent of their polling places after *Shelby*.

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 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 to intentionally discriminate against Black and Latino voters.

<sup>44</sup> See 2013–2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), <https://data.census.gov/tables/2017/acs/5yr/b03002>.



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.

Beth Stevens, director of the Voting Rights Program at the Texas Civil Rights Project, called closures “a real barrier” to voting. “Voters,” she said, “often don’t hear that a beloved polling location near their home has closed until Election Day, forcing them to make disruptive changes on the spur of the moment to work schedules, childcare plans, and transportation arrangements. Even when they do hear about it ahead of time, voters may have to choose between going to a new polling place significantly further away and working enough hours that day to put food on the table — an impossible choice that no one should ever have to face. And it’s a choice that usually falls on the most vulnerable voters, thereby reinforcing existing power structures and sending a message to these voters that they are less important than others in the eyes of their government.”

<sup>40</sup> See TEX. SECY 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/electionadvisory2019-01.shtml>.

<sup>46</sup> See TEX. SECY 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/advisory/2019-01.shtml>.



Texas

#### Counties in Focus: Nueces County

Nueces County, which is 63 percent Latino, has a clear record of problems with VRA compliance. Since *Shelby*, it has closed 37 polling places in its shift to vote centers — going from 121 voting locations in 2012 to 84 in 2018. This reduction occurred while the county also failed to provide voting information in Spanish during the 2016 election, a violation of its still-binding commitment under the VRA.<sup>47</sup> When preclearance was still intact in 2011, Nueces attempted to dilute the Latino vote in a redistricting plan for multiple county offices — despite the fact that Latino population growth greatly outpaced that of Whites.<sup>48</sup> That history resurfaced in 2018 during a county race between a White candidate and a Latina candidate. The White candidate said he needed to win to have authority over the redistricting process; “if we’re not,” he said, “we lose control of everything.”<sup>49</sup>

#### Counties in Focus: Jefferson County

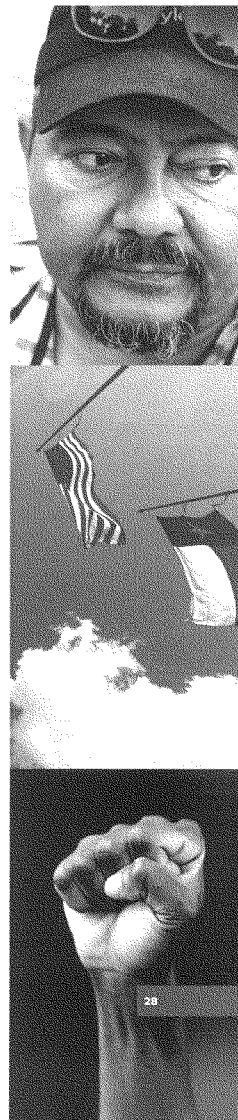
Located in southeast Texas, Jefferson County is home to the city of Beaumont. About one-third (34 percent) of its 250,000 residents are African American and one-fifth (20 percent) are Latino. County officials reduced the number of polling places from 57 in 2012 to 39 in 2018 when they converted to the vote center model. They also tried to nullify the votes of 86 mail-in ballot voters, most of whom are over age 65 and people with disabilities, in the 2018 election.<sup>50</sup> “Voter suppression really happens,” the Rev. Rufus Parker Jr. told the *Beaumont Enterprise* after his ballot was rejected. “The system is messed up.”

<sup>47</sup> See MALDEF Finds Dozens of Texas Counties Are Violating Federal Law by Failing to Provide Bilingual Voting Information, MALDEF (Oct. 6, 2016) <https://www.maldef.org/2016/10/maldef-finds-dozens-of-texas-counties-are-violating-federal-law-by-failing-to-provide-bilingual-voting-information/>.

<sup>48</sup> See Letter from Thomas E. Perez, Assistant Atty Gen., U.S. Dept of Justice Civil Rights Div., to Joseph M. Nixon, Debra L. Odham, and James E. Trainor of Benito Maynard & Persons (Feb. 7, 2012), <https://www.justice.gov/crt/voting-determinations/letter-11-9444-updated-aug-8-2016>.

<sup>49</sup> Tim Acosta, Nueces County Judge Candidates Spar Over Redistricting, Control, CALLER TIMES (Oct. 31, 2018, 4:30PM), <https://www.callertimes.com/story/news/politics/2018/10/31/nueces-county-judge-candidates-spar-over-redistricting-control/163181009/>.

<sup>50</sup> See Phoebe Guy, Jefferson County’s Rejected Voters Were Elderly, Infirm, or Out-of-town, BEAUMONT ENTERPRISE (Nov. 9, 2018 9:26AM), <https://www.beaumontenterprise.com/news/article/Jefferson-County-2-rejected-voters-were-1475873.php>.





## State in Focus:

### Arizona

# 320

total closures since *Shelby*

# 235

total closures from 2014  
Midterm to 2018 Midterm

# 87%

counties in sample that  
reduced polling places  
(13 of 15)

Arizona, where 31 percent of the population is Latino, 4 percent is Native American, and 4 percent is African American, was required to submit voting changes for preclearance under the 1975 reauthorization of the VRA, which expanded Section 5 to include voters who speak a language other than English as their primary language, including Latinos, Asian Americans, and Native Americans.<sup>51</sup> Since the loss of Section 5 preclearance, Arizona counties have embarked on a massive effort to close polling places statewide, and they have succeeded: The state now has 320 fewer polling places in Arizona than it did in 2012. These closures occurred despite national news coverage of the adverse impact of polling place reductions in Maricopa County in the 2016 presidential preference election,<sup>52</sup> which forced voters to stand in line for five hours to cast a ballot.<sup>53</sup> Most of these closures (~235) have taken place since 2014.

<sup>51</sup> See U.S. COMM'N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES 171 (2016), [https://www.usccr.gov/pubs/2016/Minority\\_Voting\\_Access\\_2016.pdf](https://www.usccr.gov/pubs/2016/Minority_Voting_Access_2016.pdf); see 2013-2017 American Community Survey 5-Year Estimates, Table B01002, U.S. CENSUS BUREAU (2017), <https://data.census.gov/tables//2017/acs/5yr/b01002>; <https://www.census.gov/data/tables//2017/acs/5yr/b01002.html>.

<sup>52</sup> "The Presidential Preference Election (PPE), is an election in which voters can choose who they would like to be their presidential candidate in the upcoming General Election. Party winners of the Arizona PPE are officially determined at the party's national convention." <https://www.azleg.gov/elections/aznhow-to-vote/presidential-preference-election/>.

<sup>53</sup> See Editorial, Our View: A Five-Hour Wait to Vote in Arizona Primary? That's Shameful, AZ CENTRAL (Mar. 23, 2016, 8:47AM), <https://www.azcentral.com/story/news/politics/2016/03/23/arizona-primary-view-our-view-our-views/8215283/>.



## Arizona

With a reduction of 171 polling places, Maricopa County, which is 31 percent Latino, 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.<sup>54</sup> 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.<sup>55</sup> 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. 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.<sup>56</sup>

Some counties in Arizona, however, are clearly trying to ensure that voters of color can access the ballot box. Navajo County, which, as noted above, 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 ADA-compliant. 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.<sup>57</sup>

<sup>54</sup> See Mary Jo Piot, Anne Ryman & Rob O'Dell, Long Lines, Too Few Polls Frustrate Metro Phoenix Primary Voters, *AZ CENTRAL* (Mar. 23, 2016, 12:42AM), <https://www.azcentral.com/story/news/politics/elections/2016/03/23/long-lines-too-few-polls-frustrate-metro-phoenix-primary-voters/8121814p/>.

<sup>55</sup> See THE LEADERSHIP CONFERENCE EDUCATION FUND, *THE GREAT POLL CLOSURE* 7 (Nov. 2016), <http://www.leadershipconferenceeducationfund.org/2016/11/01/the-great-poll-closure/>.

<sup>56</sup> See 2013-2017 American Community Survey 5-Year Estimates, Table B03002, U.S. CENSUS BUREAU (2017), <https://data.census.gov/tables/2017/acs/5yr/b03002>.

<sup>57</sup> See Kira Lerner, The ADA Is Being Used to Disenfranchise Minority Voters, *THINKPROGRESS* (Aug. 24, 2016, 1:46PM), <http://thinkprogress.org/ada/2016/08/24/ada-disenfranchisement/>.



**State in Focus:**  
**Georgia**

**214**

total closures since *Shelby*

**113**

total closures from 2014  
Midterm to 2018 Midterm

**33%**

counties in sample that  
reduced polling places  
(53 of 159)

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 was overseeing elections while serving as Georgia's secretary of state (between the years of 2010 and 2018). 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.<sup>58</sup>

<sup>58</sup> Allen Judd, *Georgia's Strict Laws Lead to Large Purge of Voters*, AIC (Oct. 27, 2018), <https://www.aic.org/docs/default-source/2018-2019-the-act-to-repeal-shelby-the-matter-with-appendix-vf-vol-2018-2019.pdf>.



## Georgia

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 asks, "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."<sup>59</sup>

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."<sup>60</sup>

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.<sup>61</sup>

<sup>59</sup> Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 2 (Feb. 2015) (on file with author).  
<sup>60</sup> Memorandum from Ga. Sec'y of State Elections Div. to Ga. Local Election Officials 3 (Feb. 2015) (on file with author).  
<sup>61</sup> <https://www.nytimes.com/2018/11/06/us/politics/stacey-abrams-georgia-governor.html>



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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

### Counties in Focus: Hundreds of Square Miles and Only One Polling Place

Voters in seven counties in Georgia now have only one polling place. Rural Lumpkin County closed nearly all (89 percent) of its precincts in 2016, leaving voters in the 284-square-mile county with only one place to vote. County officials could have kept more polling places open by moving polling places to locations that are accessible to people with disabilities or making low-cost modifications to comply with the ADA, but they chose not to. Lanier County, which is 24 percent African American, closed 75 percent of its polling places, leaving voters in this 200-square-mile county with only one place to exercise their franchise. After the lone public hearing on the closure, the Lanier County sheriff noted that the county's population had "almost doubled" during his tenure. "Personally, I don't think [the polling place closure plan] points the county in the right direction," he told the *Valdosta Daily Times*.<sup>67</sup>

GA RELEASE: NEWAUDIO — Kemp Associate Mike Malone Reveals Brian Kemp Recommended "Consolidation" of Randolph County Polling Places  
GA. DEMOCRATS (Aug. 20, 2018).

<sup>47</sup> Terry Richards, *Lanier May Close 3 of 4 Voting Precincts*, VALDOSTA DAILY TIMES (Jun. 28, 2016), <http://www.valdosta-times.com/story/news/politics/2016/06/28/lanier-may-close-3-of-4-voting-precincts/862220-2> (last visited Feb. 22, 2017).



### State in Focus:

#### Louisiana

# 126

total closures since *Shelby*

# 76

total closures from 2014  
Midterm to 2018 Midterm

# 66%

counties in sample that  
reduced polling places  
(42 of 64)

In Louisiana, voters have 126 fewer places to vote than they did in 2012. Since VRA safeguards were removed, two-thirds of the state's parishes have closed polling places. seventy-six closed after the 2014 midterm election. Winn Parish, which is 31 percent African American, closed 24 percent of its polling places, the highest percentage in the state. Lafayette followed with 17 percent, Jefferson with 15 percent, and Bienville and Morehouse with 14 percent each.

East Baton Rouge Parish, which is 46 percent African American, has closed 10 polling places since *Shelby*. In October 2016, the parish voted to consolidate 19 polling places due to "historic flooding." This "temporary" consolidation was intended to apply only to the 2016 election, according to local news sources.<sup>68</sup> But our analysis revealed that at least eight closed locations did not reopen by 2018.

<sup>68</sup> See Kevin Dupuy, Temporary Voting Locations Approved for EBR Precincts, WBRZ (Oct. 10, 2016 3:15PM), <http://www.wbrz.com/story/36566668/temporary-voting-locations-approved-for-ebz-precincts>.





This trend — temporarily closing polling places on an emergency basis but never reopening them — continues. In the aftermath of Hurricane Katrina, Orleans Parish, reeling from a major loss of population and nonfunctioning polling places, cut the number of voting locations in half — from 252 to 120.<sup>69</sup> Fifteen years later, the polling place map supposedly designed for emergency conditions appears to be permanent, especially in the Lower 9<sup>th</sup> Ward, home to a large Black population. In the 2018 election, voters in Orleans Parish had only 124 places to vote. When asked about the closures, Stacy Head, former president of the New Orleans City Council, didn't comment other than to say she "couldn't recall any complaints about voting locations."<sup>70</sup>

This compounds the long travel times to the polls many Black voters experience, an established problem in Louisiana. The Louisiana Advisory Committee to the U.S. Commission on Civil Rights cited Jhacova Williams, an economics professor who testified that the number of polling locations in a subdivision negatively correlates with the number of Black people in the subdivision. "This means that there are fewer polling locations per voter in a geographical area if that area has more Black residents," she said. "This in turn implies that Black residents face longer travel distances to reach a polling location."<sup>71</sup>

<sup>69</sup> See Charles Maldonado, *Many New Orleans Voters Are Still Driving Farther to Vote than Before Katrina*, THE LENS (Nov. 8, 2016), <https://www.thelensnola.com/2016/11/08/many-new-orleans-voters-are-still-driving-farther-to-vote-than-before-katrina/>.

<sup>70</sup> Charles Maldonado, *Many New Orleans Voters Are Still Driving Farther to Vote than Before Katrina*, THE LENS (Nov. 8, 2016), <https://www.thelensnola.com/2016/11/08/many-new-orleans-voters-are-still-driving-farther-to-vote-than-before-katrina/>.

<sup>71</sup> LA ADVISORY COMM. FOR THE U.S. COMM'N ON CIVIL RIGHTS, BARRIERS TO VOTING IN LOUISIANA 12 (Jan. 2018).



## State in Focus:

### Mississippi

# 96

total closures since *Shelby*

# 49

total closures from 2014  
Midterm to 2018 Midterm

# 38%

counties in sample that  
reduced polling places  
(31 of 82)

In Mississippi, we found that counties closed 96 polling places since VRA safeguards were removed. Of these, 49 took place after the 2014 midterm election. Since *Shelby*, almost 40 percent of Mississippi counties have closed polling places. Pearl River and Harrison counties closed 13 polling places each since VRA safeguards were removed, the most in the state.

Pearl River County closed 39 percent of its polling places, the largest percentage in the state. This massive reduction could have been much worse. In 2017, Pearl River's board of supervisors proposed eliminating 25 of the county's 37 polling places, for a potential 64 percent reduction. But pushback led to keeping open 20 voting locations.<sup>72</sup> The board of supervisors claimed the reduction was necessary to ensure that all polling places were compliant with the ADA, even though one election commissioner — Margaret Woodson — admitted she lacked expertise in the law. "We're not knowledgeable in the rules for ADA compliancy," Woodson said at a board meeting considering the elimination of polling places. "We're election commissioners. We're not qualified to tell you for sure if these locations are or are not compliant."<sup>73</sup>

<sup>72</sup> See Rashell Reese, *New Voting Precincts Finalized for Pearl River County*, WRJW (Oct. 19, 2017), <https://www.wrtv.com/story/news/politics/elections/2017/10/19/new-voting-precincts-finalized-for-pearl-river-county/564444002/>.

<sup>73</sup> Rashell Reese, *New Voting Precincts Finalized for Pearl River County*, WRJW (Oct. 19, 2017), <https://www.wrtv.com/story/news/politics/elections/2017/10/19/new-voting-precincts-finalized-for-pearl-river-county/564444002/>.



## Mississippi

The process in Pearl River County appears to have been much more deliberate than in Harrison County, which also closed 13 polling places, a 20 percent reduction. In October 2018, *Mississippi Today* chronicled polling place reductions across the state and highlighted the steep drop in the county, the second most populous in the state. The report shined a light on a precinct in an elementary school where 2016 voters “stood in lines weaving through the classroom hallways and out the door.” But instead of creating more voting locations, election commissioners scaled the number back. As one commissioner told the newspaper, “I don’t know if it’s going to create longer wait times, but they’ll be inside for that wait.”<sup>74</sup>

The article cited the commissioner’s list of factors to consider when deciding whether to reduce polling locations, including “the quality of the facility, how much further voters will have to travel, handicap accessibility, lighting, and room for lines.” The impacts on low-income voters and voters of color were not listed as factors for consideration. One county commissioner told journalists, “You can’t just go back to the way it was before” — a reference to the elimination of preclearance. County officials apparently anticipated long lines and intentionally planned extra space at existing polling stations to accommodate them. This plan apparently came to fruition. In November 2018, TV reporters showed “long lines across south Mississippi as voters show up at the polls.”<sup>75</sup> The station singled out a polling place in Harrison County where “hundreds of people waited to vote.”

*Mississippi Today* also documented counties that acted to prevent potential voting discrimination when they made changes to polling places. Smith County, for example, moved but did not eliminate its polling places and continues to notify the DOJ of its changes, even though it is no longer required to do so. When the county moved a polling place in September 2018, two Black officials sent affidavits to the DOJ and to Mississippi’s secretary of state that declared the move necessary and said it was “not made to inconvenience voters, especially minority voters.”

<sup>74</sup> Anna Wolfe & Alex Rozier, *Free From Federal Oversight, 5 Percent of Mississippi Polling Locations Have Closed Since 2013*, *SUNHERALD* (Oct. 6, 2018, 9:01PM), <https://www.sunherald.com/news/politics-government/election/article24693213.html>.

<sup>75</sup> See Lindsay Knowles, *Long Lines Across South MS as Voters Show Up at the Polls*, *WLON* (Nov. 6, 2018, 10:38AM), <https://www.wlon.com/story/38111965/south-mississippi-counties-reports-overcrowded-polling-places/>.



## State in Focus:

### Alabama

# 72

total closures since *Shelby*

# 26

total closures from 2014  
Midterm to 2018 Midterm

# 34%

counties in sample that  
reduced polling places  
(23 of 67)

Since voting rights safeguards were removed in 2013, Alabama has eliminated 72 polling places without clear oversight or accountability. Of these, 26 have taken place since the 2014 midterm election. The polling place reductions took place against the backdrop of various voting changes, causing concern among voting rights advocates. Changes included polling place consolidation in Daphne, Alabama; the enactment of a strict voter ID law accompanied by massive closures of DMV offices in counties with large Black populations; voter purges; and the Alabama secretary of state's refusal to inform recently re-enfranchised voters that their voting rights were restored.<sup>76</sup>

State election officials have even submitted inaccurate counts of polling places to the U.S. Election Assistance Commission (EAC). Our 2016 *Great Poll Closure* report relied on data provided by Alabama's secretary of state in 2012 and 2014. The state disclosed that Elmore County, which is 21 percent Black, had 42 polling places in 2012 and 2014, when in fact it only had 28.<sup>77</sup> When local journalists asked about the inaccuracy, a spokesperson for the Alabama secretary of state said The Education Fund "misread" the number 42.<sup>78</sup> Alabama did not fill out any information related to polling places in response to EAC's 2016 survey.<sup>79</sup>

<sup>76</sup> See Campbell Robertson, *For Alabama's Poor, the Budget Cuts Trickle Down, Limiting Access to Driver's Licenses*, N.Y. TIMES (Oct. 9, 2015), <https://www.nytimes.com/2015/10/09/us/politics/alabama-budget-cuts-driver-licenses.html>.

<sup>77</sup> The Great Poll Closure, The Leadership Conference Education Fund, November 1, 2016.

<sup>78</sup> See Connor Sheets, *How One Alabama County Was Wrongly Identified as the State's Worst on Voting Access*, BIRMINGHAM NEWS (Jan. 13, 2017, 1:20PM), [https://www.birminghamnews.com/news/2017/01/13/how\\_one\\_alabama\\_county\\_was\\_wrongly\\_identified\\_as\\_the\\_states\\_worst\\_on\\_voting\\_access/](https://www.birminghamnews.com/news/2017/01/13/how_one_alabama_county_was_wrongly_identified_as_the_states_worst_on_voting_access/).

<sup>79</sup> Election Assistance Commission, 2016 Election and Voting Survey, <https://www.eac.gov/2016-election-and-voting-survey>.



## Alabama

Marshall County, which is 13 percent Latino, is the state's largest closer, closing 10 polling places (26 percent) since 2012. Despite this reduction, the county's lead election official called for a review of Marshall's remaining polling sites in 2019 to assess disability accessibility.<sup>80</sup> Such a review may appear to be intended to enhance voting rights, but it could be a canard: Lack of ADA compliance is often used as an excuse to close polling places in other jurisdictions. In news reports, election officials did not cite any complaints or concerns about accurate ADA compliance at particular polling sites.

Mobile County, which is 35 percent African American, tied with Marshall County; it too closed 10 locations, or about 10 percent of its voting sites. Most polling sites were eliminated in early 2014, immediately after *Shelby*<sup>81</sup> — a reduction covered by the *Lagniappe Weekly*. The county has yet to provide clear justification for the swift and significant closures.<sup>82</sup> In a 2018 interview with *Birmingham Watch*, a county commissioner indicated that the reduction was due to growth in voting populations — a counterintuitive argument, to be sure. A more inclusive democracy demands more polling places, not fewer.<sup>83</sup> The commissioner cited ADA compliance, parking, and traffic as the major points of consideration when placing the new sites. Missing from her list: preventing racial discrimination. "How disconcerting to know our own state has silenced the voices of thousands by an act as simple as closing polls in the Black Belt," Jessica Barker, a Huntsville-based advocate who leads Lift Our Vote 2020, told The Education Fund.

<sup>80</sup> See Stephen McLamb, "Probate Judge Plans Review of Polling Locations for ADA Compliance in Marshall County," *WAFB46* (Mar. 28, 2019, 6:57PM), <https://www.wafb.com/story/news/politics/elections/2019/03/28/probate-judge-plans-review-polling-locations-ada-compliance-marshall-county/3400000002/>.

<sup>81</sup> See "Polling Centers Moved or Eliminated in 19 Mobile County Precincts," *LAGNIAPPE WEEKLY* (Mar. 12, 2014), <http://www.lagniappe.com/mobile-county-polling-centers-moved-or-eliminated-in-19-mobile-county-precincts-12-03-2014/>.

<sup>82</sup> See Mary Sell, "In Some Counties, Alabama Voters Have Lost a Quarter of Their Polling Places Since 2010," *BIRMINGHAM WATCH* (Nov. 2, 2019), <https://www.birminghamwatch.com/2019/11/02/in-some-counties-alabama-voters-have-lost-a-quarter-of-their-polling-places-since-2010/>.

<sup>83</sup> See Donna Thornton, "Possible Changes in District 2 Polls Bring Opposition," *GADSDEN MESSENGER* (Sep. 6, 2019), <https://www.gadsdenmessenger.com/story/news/politics/elections/2019/09/06/possible-changes-in-district-2-polls-bring-opposition/5400000002/>.





#### Counties in Focus: Etowah County

Etowah County, Alabama, which is 15 percent African American, closed nine polling places after *Shelby*, or almost a quarter of its voting locations. Its justifications were among the most confusing we found. After a public hearing on the matter in 2013, the *Gadsden Messenger* noted that the changes were made for "financial and other reasons," including "a new state law [that] mandates polling places be moved from schools for security reasons." Local election official Bobby Junkins also wanted to take polling places off of private property because "voting at churches eventually will become an issue."<sup>84</sup> Later reports said Junkins said "it has been suggested that voting locations not be on private property" and that "new federal regulations prohibit voting locations at schools."<sup>85</sup>

We could not verify the existence of any federal, state, or local regulation requiring voting locations to be removed from schools or from private property, such as churches.

<sup>84</sup> See Donna Thornton, *Possible Changes in District 2 Polls Bring Opposition*, GADSDEN MESSENGER (Sep. 6, 2013), <http://www.gadsdenmessenger.com/story/news/politics/elections/2013/09/06/possible-changes-in-district-2-polls-bring-opposition/2511111>.

<sup>85</sup> Lisa Rogers Savage, *Some Voting Locations Changed*, GADSDEN TIMES (May 31, 2014, 9:00PM), <http://www.gadsdentimes.com/story/news/politics/elections/2014/05/31/some-voting-locations-changed/7111111>.



### State in Focus: North Carolina

# 29

total closures since *Shelby*

# 18

total closures from 2014  
Midterm to 2018 Midterm

# 25%

counties in sample that  
reduced polling places  
(23 of 67)

Since *Shelby*, the North Carolina legislature has doggedly attempted to reduce voting access for people of color at every juncture of the voting process. In 2018, almost half of all counties in the state cut early voting locations,<sup>86</sup> and a federal court called its 2016 “monster” voting law “the most restrictive voting law North Carolina has seen since the era of Jim Crow.”<sup>87</sup> The law included cuts to early voting, restrictive voter ID provisions, and eliminated out-of-precinct voting.

Against this backdrop of high-profile voting rights violations, one quarter of the counties that were once covered by Section 5 have quietly consolidated Election Day polling places — with shockingly little public scrutiny. Since *Shelby*, officials in the 40 preclearance counties have shuttered 29 polling places, most of which (—18) have been closed since the last midterm election in 2014.

<sup>86</sup> See Blake Peterson, *Republican Funnels as North Carolina Election Law Strips Early Voting Locations by Almost 20 Percent*, PROPUBLICA (Sep. 24, 2018, 5:00AM), <https://www.propublica.org/article/north-carolina-republican-funnels-as-north-carolina-election-law-strips-early-voting-locations-by-almost-20-percent>; William Wan, *Inside the Republican Creation of the North Carolina Voting Bill Dubbed the ‘Monster’ Law*, WASH. POST (Sep. 2, 2016), <https://www.washingtonpost.com/news/insider-politics/wp/2016/09/02/inside-the-republican-creation-of-the-north-carolina-voting-bill-dubbed-the-monster-law/>.



## North Carolina

North Carolina's largest closer by percentage (31 percent) is majority-White Pasquotank County, which eliminated half the polling places in Elizabeth City, which is 52 percent African American. In a 2-1 vote, county officials shuttered four polling places in Elizabeth City without any public input and over the objections of the local NAACP branch.<sup>88</sup> Officials attributed the closures to cost constraints, but they closed polling places in Elizabeth City alone — and nowhere else in the entire county.<sup>89</sup>

The largest closer of polling places by number is Cleveland County, which eliminated five polling places in the first federal election after *Shelby* despite clear opposition from the local NAACP chapter as well as from one of its three election officials.<sup>90</sup> These closures — planned in the city of Shelby, North Carolina — were intended to eliminate three polling places in areas with a large share of Black voters — and to make the remaining two voting locations the largest in the county. This realignment came at a time when state law invalidated ballots cast at the “wrong” polling place.<sup>91</sup> The champion for the reduction was a White election official who expressed “shock” at opposition from Black voters and claimed not to know when he proposed the reduction that Section 5 would no longer apply to the county.<sup>92</sup>

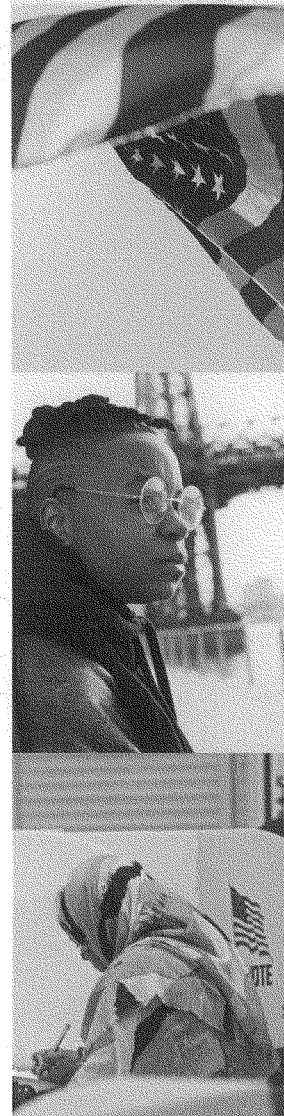
<sup>88</sup> See Voting Precinct Merger Approved, DAILY ADVANCE (Jul. 18, 2015), <http://www.dailyadvance.com/story/21337210/Voting-merger-approved-2015>.

<sup>89</sup> See Voting Precinct Merger Approved, DAILY ADVANCE (Jul. 18, 2015), <http://www.dailyadvance.com/story/21337210/Voting-merger-approved-2015>.

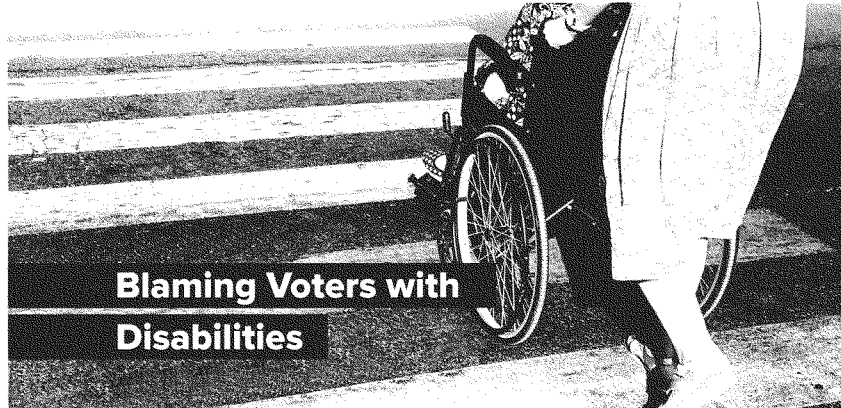
<sup>90</sup> See Joe DePrest, Cleveland County Board of Elections Considering Merging 5 Precincts into 2, THE HERALD (Mar. 2, 2015 10:08PM), <http://www.theherald.com/story/21337210/Voting-merger-approved-2015>.

<sup>91</sup> See Joe DePrest, Cleveland County Board of Elections Considering Merging 5 Precincts into 2, THE HERALD (Mar. 2, 2015 10:08PM), <http://www.theherald.com/story/21337210/Voting-merger-approved-2015>.

<sup>92</sup> See Richard Fausset, Mistrust in North Carolina Over Plan to Reduce Precincts, N.Y. TIMES (Jul. 7, 2016), <https://www.nytimes.com/2016/07/07/us/politics/north-carolina-voting-precincts.html>.







## Blaming Voters with Disabilities

One of the more alarming trends we discovered is a widespread practice of blaming polling place closures on another civil rights law, the Americans with Disabilities Act (ADA). The leading closers of polling places from Mississippi, Georgia, and Louisiana used ADA compliance as their major pretext. In several cases, little to no effort was made to understand ADA compliance. Instead, election officials took advantage of the public's lack of understanding about the law to grossly inflate the estimated costs of compliance for both publicly and privately owned polling places.

Closing polling places because of a lack of ADA compliance should be a last resort for election officials and should happen only when there are no suitable alternative sites, no possible same-day modifications, and no possibilities for curbside voting and other best practices to ensure accessibility. In addition, officials must be required to conduct a thorough analysis to determine the impact on voters of color. The DOJ provides clear guidance and support for helping ensure that parking lots, hallways, doorways, and walkways are accessible to all voters.<sup>93</sup> Ensuring ADA compliance might be as simple and inexpensive as:

- Creating accessible parking with temporary signage and traffic cones;
- Building temporary ramps for curbs and staircases; and/or
- Installing doorbells or propping heavier doors open

<sup>93</sup> See generally U.S. DEPT. OF JUSTICE CIVIL RIGHTS DIV. DISABILITY RIGHTS SECTION, SOLUTIONS FOR FIVE COMMON ADA ACCESS PROBLEMS AT POLLING PLACES, <https://www.ada.gov/ada-voting/section-504/section-504-access-problems.pdf> (last visited Aug. 6, 2019).

Perhaps the most successful effort to turn back proposed polling place closures in a formerly covered jurisdiction happened in 2018, after officials in Randolph County, Georgia, attempted to use the ADA as an excuse to close seven of its nine polling places in a county that is 60 percent African American.<sup>94</sup> According to a county attorney, the plan was not based on any actual analysis of ADA accessibility for the voting locations. “There is no document, report or analysis studying the handicap accessibility of polling places,” the attorney wrote to a journalist in response to a public records request.<sup>95</sup>

Swift opposition to the closures came from national and local stakeholders, including the National Disability Rights Network,<sup>96</sup> the ACLU of Georgia, the Georgia NAACP, and The Education Fund. Former U.S. Rep. Tony Coelho — the author of the ADA — called the plan “a violation of the law I and others worked so hard to pass.”<sup>97</sup> Advocates successfully blocked the proposed closures in Randolph County, but not in many other Georgia counties.

Lumpkin County, Georgia, the largest closer of polling places by percentage in the state, used ADA compliance as an excuse to eliminate all but one polling place in the 284-square mile county. Toombs County, Georgia, which is 25 percent African American and 12 percent Latino, shuttered 64 percent of its polling places in 2015. Toombs officials claimed that closing nine of its 14 polling places would save up to \$200,000 needed for operations and to secure ADA compliance.<sup>98</sup> Immediately after the *Shelby* decision, Habersham County, Georgia, which is 14 percent Latino and 3 percent African American, used ADA compliance as a purported reason to shutter 85 percent of its polling places — reducing voting locations from 14 to just two. This seismic shift led to long lines and voting problems, for which the elections board blamed voters for having the audacity to wait until Election Day to vote.<sup>99</sup> The county backpedaled on the consolidation and reopened several more polling places in the 2016 election.<sup>100</sup>

<sup>94</sup> See Associated Press, NBC NEWS (Aug. 4, 2018, 4:00PM), <https://www.nbcnews.com/news/politics/atlanta-georgia-county-scrap-plan-close-most-polling-places-n902691>.

<sup>95</sup> Sam Levine, Georgia County Can't Back Up Its Excuse for Plan to Disenfranchise Black Voters, HUFFINGTON POST (Aug. 22, 2018), [https://www.huffpost.com/entry/georgia-county-close-polling-places-access\\_n\\_5b7c7484e4b0729615?hpid=hp\\_hp-top-table-main-politics%3A-georgia-county-close-polling-places-access\\_n\\_5b7c7484e4b0729615](https://www.huffpost.com/entry/georgia-county-close-polling-places-access_n_5b7c7484e4b0729615?hpid=hp_hp-top-table-main-politics%3A-georgia-county-close-polling-places-access_n_5b7c7484e4b0729615?hpid=hp_hp-top-table-main-politics%3A-georgia-county-close-polling-places-access_n_5b7c7484e4b0729615).

<sup>96</sup> See The Leadership Conference (@govrightsorg), An Open Letter to the Georgia Secretary of State, MEDIUM (Nov. 5, 2018), <https://medium.com/@govrightsorg/an-open-letter-to-the-georgia-secretary-of-state-2da4b8d7f5d0>.

<sup>97</sup> Americans with Disabilities Act Author: Kemp Has Failed to Comply with ADA, GA. DEMOCRATS (Aug. 23, 2018), <https://www.georgiademocrats.org/2018/08/kemp-ada/>.

<sup>98</sup> See Change to Toombs Voting Precincts, SE. GA. TODAY (Mar. 7, 2015), <http://sega.com/news/2015/03/07/change-to-toombs-voting-precincts-habersham-12340-pp-1330265164>.

<sup>99</sup> See Joy Purcell, Elections Board Focuses on “Process Improvement”, NOW HABERSHAM (Dec. 21, 2014), <https://nowhabersham.com/elections-board-focuses-on-process-improvement/>.

<sup>100</sup> See Rob Moore, Habersham Voters Will Use New Polling Locations Tomorrow, ACCESSWDUN (Feb. 29, 2016 1:06PM), <https://accesswdun.com/article/2016/2/27/38970/habersham-voters-to-use-new-polling-locations-tomorrow>.

Pearl River County, one of the largest closers of polling places in Mississippi, used ADA compliance as its purported rationale to shutter 13 locations. In 2017, the county's board of supervisors proposed slashing its number of polling places from 33 to 12 — but pushback from the community led to a compromise reduction to 20. Supervisors and election commissioners said the reason was ADA compliance, but radio journalists reported that they hadn't even attempted to understand how to determine ADA compliance.<sup>101</sup> The officials also seemed to conflate ADA compliance with budget concerns, with one official saying, "I'm going [to] catch some hell about it but I'm not paying \$60 a vote."<sup>102</sup> The ADA rationale is especially puzzling in light of a 2010 agreement between the DOJ and the county that specified exactly which polling places in the county were and were not ADA compliant. The agreement detailed specific corrective actions for the county to bring them up to code.<sup>103</sup>



<sup>101</sup> See Rashell Reese, *New Voting Precincts Finalized for Pearl River County*, WRJW (Oct. 19, 2017), <https://www.wrtvradio.com/article/2017/10/19/new-voting-precincts-finalized-for-pearl-river-county>.

<sup>102</sup> See Rashell Reese, *New Voting Precincts Finalized for Pearl River County*, WRJW (Oct. 18, 2017), <https://www.wrtvradio.com/article/2017/10/18/new-voting-precincts-finalized-for-pearl-river-county>.

<sup>103</sup> See Pearl River County, Mississippi, (Dep't of Justice Jul. 20, 2010) (settlement agreement), <https://www.ada.gov/pearl-co-peap/pearl-co-sa.htm>.

## A Tale of Two Jeffersons

In Louisiana, the largest closer of polling places was Jefferson Parish, which is 26 percent African American and 14 percent Latino and which had 25 fewer voting locations in 2018 than before the 2012 election. The sharp drop came in 2015 after a local disability rights group survey found that many polling places had "significant barriers to individuals with mobility impairments."<sup>104</sup> Instead of making modifications or finding more suitable voting locations, the parish closed 23 polling places.<sup>105</sup> In the three years since, the county has closed two more polling places. This development is not out of character for Jefferson Parish, which has a grave record of hostility toward Black residents' voting rights.<sup>106</sup>

These actions stand in stark contrast to Jefferson County, Alabama, which has made efforts to ensure that polling place reductions are adopted as a last resort. Jefferson is the largest county in the state and home to Birmingham, as well as a population that is 42 percent African American and 4 percent Latino. The county, which eliminated five precincts, actively adds precincts when lines get long, as noted on its website, which documents all precinct changes.<sup>107</sup> And instead of closing the 32 polling places that were found out of compliance with the ADA in 2016, county officials worked to address as many problems as possible so they could keep the facilities open.<sup>108</sup>

**Instead of making modifications or finding more suitable voting locations, the parish closed 23 polling places.**

<sup>104</sup> See Paul Purpura, *Kenner Woman Sues Jefferson Parish to Get Better Access for Disabled Voters*, TIMES-PICAYUNE | NEW ORLEANS ADVOC. (Jun. 9, 2016, 2:15AM), <http://www.kenneradvertiser.com/story/news/politics/2016/06/09/kenner-woman-sues-jefferson-parish-better-access-disabled-voters/854751002/>.

<sup>105</sup> See Wilborn P. Hobbs II, *Jefferson Parish Has 23 Fewer Places to Vote This Year: Here's Why*, TIMES-PICAYUNE | NEW ORLEANS ADVOC. (Nov. 8, 2016, 9:57PM), <http://www.nola.com/picayune/2016/11/08/jefferson-parish-voting-places.shtml>.

<sup>106</sup> See DEBO P. ADEGBILE, *VOTING RIGHTS IN LOUISIANA 1982-2006*, at 17-18, 23, 28, 45-46 (Mar. 2006), [http://www.americanbar.org/publications/voting\\_rights\\_in\\_louisiana/VRF.pdf](http://www.americanbar.org/publications/voting_rights_in_louisiana/VRF.pdf).

<sup>107</sup> See generally *Voting Precinct Changes*, PROB. CT. OF JEFFERSON COUNTY, ALA., <http://jeffersonprobct.com/votingprecinctchanges/> (last visited Aug. 6, 2019).

<sup>108</sup> See Alex Aubuchon, *Jefferson County Disability Voting Settlement*, ALA. PUB. RADIO (Oct. 31, 2016), <http://www.alapublicradio.org/jefferson-county-disability-voting-settlement/>.

**Complying with the  
ADA does not have to  
mean mass polling  
place closures.**

Complying with the ADA does not have to mean mass polling place closures, as Jefferson County shows. Counties can keep polling places open and serving all voters — as opposed to no voters at all. Coconino County in Arizona settled with the DOJ after it found that 46 of its polling places, many of which were on tribal lands, were not compliant with the ADA in 2016.<sup>109</sup> The county, which is 26 percent Native American and 14 percent Latino, is working with the Navajo Nation to ensure compliance in advance of the 2020 election and, as per the settlement agreement, will "provide an accessible voting program, including a program that is accessible to persons with mobility or vision disabilities and accessible polling places at accessible sites."<sup>110</sup>

Richland County, South Carolina, which is 48 percent African American, is also using ADA compliance to enhance voting opportunities. The county also entered a settlement agreement with the DOJ to improve access to polling places.<sup>111</sup> Instead of reducing voting locations, the county added them and improved access to curbside voting to inaccessible polling places.<sup>112</sup> This is a far cry from the discriminatory rhetoric used by a McLennan County, Texas, commissioner, who told the *Waco Tribune* that "the ADA is prohibiting people from voting."<sup>113</sup>

There are myriad ways to ensure all voters have access to polling places and that all comply with DOJ guidance for polling place accessibility and the ADA; simply shutting down polling places without regard to voting rights has the opposite effect.

<sup>109</sup> See Anna V. Smith, *Arizona's Long Road to Make Elections Accessible*, HIGH COUNTRY NEWS (Nov. 21, 2018), <https://www.highcountrynews.org/article/az-ada-compliance-long-road-to-make-elections-accessible>.

<sup>110</sup> Kira Lerner, *The ADA is Being Used to Disenfranchise Minority Voters*, THINKPROGRESS (Aug. 24, 2018, 1:45PM), <https://thinkprogress.org/ada-voter-access/az-ada-20180824/>.

<sup>111</sup> See Richland City Bd. of Elections and Voter Registration, S.C., (Dep't of Justice May 22, 2017) (settlement agreement), [https://www.ada.gov/richland\\_county\\_south\\_carolina/](https://www.ada.gov/richland_county_south_carolina/).

<sup>112</sup> See Jason Axelrod, *Civil Disability*, AM. CITY & COUNTY (Informa PLC, London, SWIP IWG), Jun. 5, 2018, <https://www.amcityandcounty.com/2018/06/05/civil-disability/>.

<sup>113</sup> Charles L. Smith, *County Vote Centers Change: Creating Frustration*, WACO TRIB.-HERALD (Oct. 10, 2017), [https://www.waco360.com/news/elections-county-vote-centers-change-creating-frustration/article\\_8c114b4c-1991-5f08-a996-2438fc28d979.html](https://www.waco360.com/news/elections-county-vote-centers-change-creating-frustration/article_8c114b4c-1991-5f08-a996-2438fc28d979.html).



## School Safety: No Excuse to Deny Voting Rights

Our analysis indicates that a climate of fear of school shootings has contributed to an unintended — and unfortunate — outcome: fewer polling places.

In states and localities across our study, we found election and education officials citing school safety as a reason to remove polling places from schools. This unnecessary and counterproductive response has a corrosive effect on the right to vote in low-income neighborhoods, in rural communities, and for people with disabilities. It also erects barriers between communities and schools. That said, many communities are dealing with school safety concerns in a better way: by turning Election Day into a school holiday.

In Alabama, officials justified a spate of polling place consolidations in advance of the 2014 election as a response to school safety concerns and unverified claims of new state and federal regulations to remove polling places from schools. A local newspaper reported that several of Etowah County's nine polling place closures were first explained as a response to "a new state law" that "mandates polling places be moved from schools for security reasons."<sup>114</sup> No such law exists. A subsequent article said that some closures were in response to "new federal regulations [that] prohibit voting locations at schools."<sup>115</sup> No such federal regulations exist. In Morgan County, where five polling places were consolidated to remove them from schools, the local election official said schools feared for their students' safety, even telling a local newspaper that hosting polling places in schools is problematic because "you're opening up the schoolchildren to potential threats."<sup>116</sup>

<sup>114</sup> See Donna Thornton, *Possible Changes in District 2 Polls Bring Opposition*, GADSDEN MESSENGER (Sep. 8, 2013), <https://gadsdenmessenger.com/2013/09/08/possible-changes-in-district-2-polls-bring-opposition/>.

<sup>115</sup> See Lisa Rogers Savage, *Some Voting Locations Changed*, GADSDEN TIMES (May 31, 2014, 9:00PM), <https://www.gadsdentimes.com/news/2014/05/31/some-voting-locations-changed/>.

<sup>116</sup> See Mary Sell, *In Some Counties, Alabama Voters Have Lost a Quarter of Their Polling Places Since 2010*, BIRMINGHAM WATCH (Nov. 2, 2018), <https://birminghamwatch.org/counties-alabama-loses-quarter-polling-places-since-2010/>.

In Georgia, school and school board officials, out of widespread fear, removed polling places from schools and even changed state law to make it harder to place voting locations in schools. In Rockdale County, which is 51 percent African American, local election officials moved 10 polling places out of schools for security purposes, eliminating two voting locations in the process.<sup>117</sup> During a local hearing about the consolidation, the elections board chair noted that no specific threats drove the change. “It is just the safety of the schools,” he said. “Leaving the schools open and people going in just creates some safety issues. If we go back to Columbine, a lot of things have changed since then. So since the schools are not always closed on election days, this would be the best move for us, to bring them out of the schools and put them in other locations, such as churches. But it was mainly for safety concerns.”<sup>118</sup>

The drive for closures is even prompting efforts to change state law to make it easier for schools to deny polling places.<sup>119</sup> In Fulton County, several school officials, including the school board president, have called to remove voting locations from schools. “With all these shootings it’s scary to have people be able to walk into the schools,” Fulton School Board President Linda Bryant told the *Atlanta Journal-Constitution* in August 2018.<sup>120</sup> Fears are also alive in nearby Cobb County, which already has 12 fewer voting locations than before *Shelby* — and more potential cuts as the county considers removing more polling places from schools.<sup>121</sup> In Cobb (which has approximately 60 polling places in schools), and Fulton (which has more than 50), the burden on local election officials to find replacement voting locations would be significant. The effort is also especially vexing for Fulton and Cobb Counties, which already close schools on election days to separate voters from students. “We try to accommodate it,” Richard Barron, Fulton County’s elections director told WABE radio. “It’s just going to get to a point where there are areas in the county where we have no options, and we can’t keep consolidating locations.”<sup>122</sup> Such closures could be devastating for low-income and rural voters, as well as voters of color, who often live in communities with fewer accessible polling places.

The effort to remove polling places from schools was also cited by an election official in Harrison County, Mississippi, a leading closer of polling places.<sup>123</sup>

<sup>117</sup> See Larry Stanford, *Rockdale Board of Elections Approves New Precinct Voting Locations*, ROCKDALE CITIZEN & NEWTON CITIZEN (Feb. 14, 2018), [https://www.rockdalecitizen.com/news/local/rockdale-changing-some-voting-precinct-locations/article\\_037a8b97-df5a-5d5e-ae1f-a938821d52a.html](https://www.rockdalecitizen.com/news/local/rockdale-changing-some-voting-precinct-locations/article_037a8b97-df5a-5d5e-ae1f-a938821d52a.html); see 2013-2017 American Community Survey 5-Year Estimates, Table B00002, U.S. CENSUS BUREAU (2017), [https://datafinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_5YR\\_B00002&prodType=table](https://datafinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B00002&prodType=table).

<sup>118</sup> Larry Stanford, *Rockdale Board of Elections Approves New Precinct Voting Locations*, ROCKDALE CITIZEN & NEWTON CITIZEN (Feb. 14, 2018), [https://www.rockdalecitizen.com/news/local/rockdale-changing-some-voting-precinct-locations/article\\_037a8b97-df5a-5d5e-ae1f-a938821d52a.html](https://www.rockdalecitizen.com/news/local/rockdale-changing-some-voting-precinct-locations/article_037a8b97-df5a-5d5e-ae1f-a938821d52a.html).

<sup>119</sup> See Vanessa McCray, *Schools No Longer Best Voting Place, Says Fulton School Board*, AJC (Aug. 24, 2018), [https://www.aic.com/news/local-education/schools-no-longer-best-voting-place-says-fulton-school-board/article\\_b9a8b8b8-7c0e-4d44-9c1e-1e1e1e1e1e1e](https://www.aic.com/news/local-education/schools-no-longer-best-voting-place-says-fulton-school-board/article_b9a8b8b8-7c0e-4d44-9c1e-1e1e1e1e1e1e).

<sup>120</sup> Vanessa McCray, *Schools No Longer Best Voting Place, Says Fulton School Board*, AJC (Aug. 24, 2018), [https://www.aic.com/news/local-education/schools-no-longer-best-voting-place-says-fulton-school-board/article\\_b9a8b8b8-7c0e-4d44-9c1e-1e1e1e1e1e1e](https://www.aic.com/news/local-education/schools-no-longer-best-voting-place-says-fulton-school-board/article_b9a8b8b8-7c0e-4d44-9c1e-1e1e1e1e1e1e).

<sup>121</sup> See Ross Terrell, *School Safety Concerns Starting to Change Metro Atlanta Voting Locations*, WABE (Jun. 1, 2018), <https://www.wabe.org/school-safety-concerns-starting-to-change-metro-atlanta-voting-locations/>.

<sup>122</sup> See Ross Terrell, *School Safety Concerns Starting to Change Metro Atlanta Voting Locations*, WABE (Jun. 1, 2018), <https://www.wabe.org/school-safety-concerns-starting-to-change-metro-atlanta-voting-locations/>.

<sup>123</sup> See Anna Wolfe & Alex Rozier, *Free From Federal Oversight, 5 Percent of Mississippi Polling Locations Have Closed Since 2013*, MISS. TODAY (Oct. 24, 2018), <https://mississippitoday.org/2018/10/24/free-from-federal-oversight-5-percent-of-mississippi-polling-locations-have-closed-since-2013/>.

**But school safety and voter access  
aren't at odds with one another.**

Indeed, it is possible to protect students while ensuring voting rights. One key way is to not hold school on election days — the practice in Fulton and Cobb Counties in Georgia, Richardson County in Texas,<sup>124</sup> and throughout North Carolina.<sup>125</sup> A local official in Richardson County, Texas, pointed to the dividends in civic engagement. A city council official in Dallas, meanwhile, told the *Dallas News* that “having Election Day off could also give students an opportunity to go to the polling place with their parents.”<sup>126</sup>

<sup>124</sup> See Dana Branham & Nanette Light, Richardson ISD Cancels Class on Election Day, Citing Security Risks of Voters in Schools, DALLAS NEWS (Aug. 1, 2018 7:45 PM), <https://www.dallasnews.com/news/education/2018/08/01/richardson-cancels-class-election-day-citing-security-risks-voters-schools>.

<sup>125</sup> See also Billy Bell, Some North Carolina Schools to Close or Change Schedule Due to Election Day Voting, THE PROGRESSIVE PULSE (Nov. 4, 2016), <http://www.progressivepulse.org/2016/11/04/north-carolina-schools-close-change-schedule-due-election-day-voting/>.

<sup>126</sup> Dana Branham & Nanette Light, Richardson ISD Cancels Class on Election Day, Citing Security Risks of Voters in Schools, DALLAS NEWS (Aug. 1, 2018 7:45 PM), <https://www.dallasnews.com/news/education/2018/08/01/richardson-cancels-class-election-day-citing-security-risks-voters-schools>.





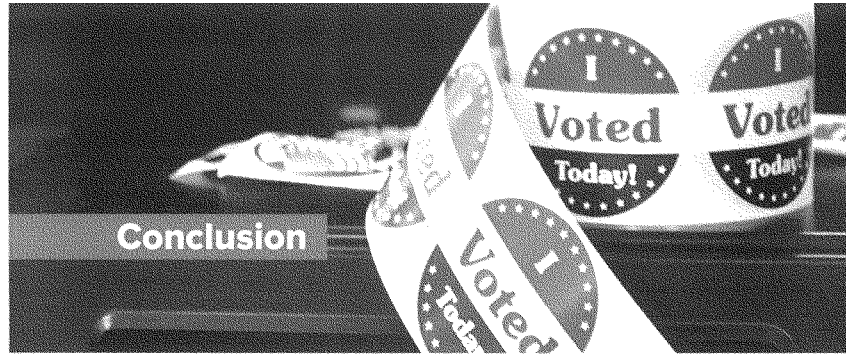


South Carolina stood out for its tradition of keeping polling places open. Of 1,922 polling places that were open in 2012, we found that only 18 have closed — a closure rate of merely .009 percent. We attribute this to state laws requiring multiple local and state elected officials to approve all polling place closures, a conclusion we arrived at through research and interviews with local advocates.

State laws also ensure that changes to polling places are transparent. And they require consensus among local and state elected officials in order to close polling places, which is unique to South Carolina. The South Carolina Code of Laws' section on elections requires that any polling place change from a county election board must also be approved by the county legislative delegation, a body comprising the county's elected representatives to the state legislature. And it also requires that precincts are "designated, fixed, and established by the General Assembly" and signed by the governor.<sup>127</sup>

Yet despite South Carolina's positive steps to ensure an inclusive democracy, a gaping policy hole remains: No racial impact analysis is required, leaving the public without a key way to determine who will or may be harmed by polling place changes. This critical data point must be a determinative factor in the deliberative process.

<sup>127</sup> S.C. Code § 7-7-10 (2018) (effective June 14, 2000), <https://www.sclaw.com/sc-code-of-laws.html>.



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 accessible 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 nakedly 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.

**The best way to do that is to restore the Voting Rights Act, reactivate Section 5, and strengthen its other provisions that require elected officials to seek the input of communities of color and provide notice of any polling place change for any reason.**

## Methodology

This analysis quantifies the number of Election Day polling places that have closed in jurisdictions once covered by Section 5 of the Voting Rights Act since the *Shelby County v. Holder* decision rendered that provision inoperable in 2013.

This report studies 757 of the approximately 861 counties and county-level equivalents once covered by Section 5. It only includes jurisdictions where The Leadership Conference Education Fund could acquire accurate polling place lists or counts from state or local election officials or reputable media sources for general elections in 2012, 2014, 2016, and/or 2018. Counties where we could not obtain reliable data (Virginia and three from Texas) were excluded from the report.

Data for every county and state (including partially covered states like Florida, New York, California, and South Dakota) are included in the Appendix.

### Data were compiled for this report from the following sources:

- Public records requests from state election officials
- Posted lists of polling places on county websites
- Reputable news sources documenting lists of polling places
- The federal Election Assistance Commission's Election Administration and Voting Survey (EAVS)

For all lists of polling places from records requests and posted online, each polling place with a unique address or name was counted. Multiple polling places listed at the same address were counted as one polling place. Counts were conducted multiple times to ensure accuracy for each county.

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**For EAVS counts,** the survey is voluntarily submitted by state election officials to the EAC and includes questions about how elections are conducted in each state. One of the data points collected in the EAVS is the total number of Election Day physical polling places in each county. The EAVS does not ask for polling place location data that includes addresses or zip codes, so it could not be determined where polling places were closed within counties — only the total number of polling places in each county.

- In EAVS for 2012, 2014, and 2016: The surveys ask three questions to determine the total number of Election Day polling places in Section D under the header "Election Day voting." Question D2b asks for "Physical polling places other than election offices," Question D2c asks about "Election offices," and D2d asks about "Other" and provides a space for comment. The total number of Election Day polling places was determined by totaling the answers for all three questions.
- In EAVS for 2018: In question D4a, the survey asks officials to "report the total number of physical polling places in your jurisdiction for Election Day voting." It then asks for officials to demonstrate how that total number breaks down between "physical polling places other than election offices (e.g., libraries, schools, mobile voting location)" in question D3b and "polling places that are a part of the election office" for question D4c. For this study, we only used the self-reported total in question D4a. We did use D4b and D4c as well as a comments field to provide context to the total number.

### How Analysis was Conducted

Because of the decentralized nature of election administration and vast differences in how or if states and counties manage, share, and make polling place data public, The Education Fund determined which data sources it would rely on and which elections it would compare on a county-by-county basis depending on data quality.

Where possible, we first opted for primary source hand-counts of polling place lists provided directly by state and county election offices and reputable news sources. When those sources were not available, we used EAVS data. We made good faith attempts to include reliable information for every county once covered by Section 5.

**Benchmark Elections:** For each county, we designated a past general election with the most reliable data to serve as a Benchmark Election. Where possible (709 counties), we used the 2012 general election as this benchmark, the last election to occur pre-*Shelby*. Where reliable information for 2012 could not be acquired, we relied on counts for the 2014 (41 counties) and 2016 (six counties) elections.

**Post-*Shelby* Elections:** Post-*Shelby* election counts are for the most recent general election in which reliable polling place data could be acquired for a given county. Where possible (in 737 counties), we used 2018, the most recent election prior to the publication of this report. Where reliable information for 2018 could not be acquired, we used counts from the 2016 election (20 counties).

In order to determine the number and percentage of polling places closures in each county, we compared the number of Election Day polling places open in a given county in its designated post-*Shelby* election with the number that were open in its Benchmark Election. The election years and data-sources used are marked for each individual county listed in Appendix A.

We also conducted an analysis to understand if the number of polling places fluctuates with turnout differences between midterm and presidential election years. We were concerned that counties in our study may regularly open fewer polling places during midterm election years because of expected lower turnout and therefore impact our results. Our analysis of counties in this study found that not to be the case. Counties in our study generally do not open fewer polling places in midterm election years than in presidential election years.

In every state, local advocates vetted our analysis and provided context for our findings and a sense of what is happening on the ground.

## Appendix: Data Set for All Included Counties

State	County	Change	% Change	Benchmark Election Count	Benchmark Election Year	Benchmark Election Score	Post-Shelly Election Count	Post-Shelly Election Year	Post-Shelly Election Score	Midterm for Midterm Count	2016 Midterm Count	2014 Midterm Score
AK	ALUTIAN ISLANDS EAST	0	0%	4	2012	Handcount	4	2018	Handcount	0	4	Handcount
AK	Bristol Bay	0	0%	3	2012	Handcount	3	2018	Handcount	0	3	Handcount
AK	Denali	-1	-20%	5	2012	Handcount	4	2018	Handcount	-1	5	Handcount
AK	FAIRBANKS NORTH	0	0%	37	2012	Handcount	37	2018	Handcount	0	37	Handcount
AK	Haines	0	0%	2	2012	Handcount	2	2018	Handcount	0	2	Handcount
AK	Juneau	0	0%	13	2012	Handcount	13	2018	Handcount	0	13	Handcount
AK	KENAI PENINSULA	-1	-4%	24	2012	Handcount	25	2018	Handcount	0	25	Handcount
AK	KETCHIKAN GATEWAY	0	0%	7	2012	Handcount	7	2018	Handcount	0	7	Handcount
AK	KODIAK ISLAND	0	0%	9	2012	Handcount	9	2018	Handcount	-1	10	Handcount
AK	LAKE & PENINSULA	0	0%	8	2012	Handcount	8	2018	Handcount	0	8	Handcount
AK	MATANUSKA-SUSTNA	2	5%	39	2012	Handcount	41	2018	Handcount	0	41	Handcount
AK	MUNICIPALITY OF ANCHORAGE	2	2%	119	2012	Handcount	121	2018	Handcount	12	108	Handcount
AK	NORTH SLOPE	0	0%	9	2012	Handcount	9	2018	Handcount	0	9	Handcount
AK	NORTHWEST ARCTIC	0	0%	11	2012	Handcount	11	2018	Handcount	0	11	Handcount
AK	PETERSBURG	0	0%	1	2012	Handcount	1	2018	Handcount	0	1	Handcount
AK	SITKA	0	0%	1	2012	Handcount	1	2018	Handcount	0	1	Handcount
AK	SKAGWAY	0	0%	1	2012	Handcount	1	2018	Handcount	0	1	Handcount
AK	WENDEL	0	0%	1	2012	Handcount	1	2018	Handcount	0	1	Handcount
AK	YAKUTAT	0	0%	1	2012	Handcount	1	2018	Handcount	0	1	Handcount
AK	UNINCORPORATED	-4	-4%	93	2012	Handcount	89	2018	Handcount	-3	90	Handcount
AL	AUTAUGA COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	1	18	Handcount
AL	BALDWIN COUNTY	3	7%	46	2012	Handcount	49	2018	Handcount	3	46	Handcount
AL	BARBOUR COUNTY	-1	-4%	17	2012	Handcount	16	2018	Handcount	0	16	Handcount
AL	BIBB COUNTY	0	0%	8	2012	Handcount	8	2018	Handcount	0	8	Handcount
AL	BLOUNT COUNTY	0	0%	24	2012	Handcount	24	2018	Handcount	0	24	Handcount
AL	BULLOCK COUNTY	0	0%	15	2014	Handcount	15	2018	Handcount	0	15	Handcount
AL	BUTLER COUNTY	-1	-5%	22	2014	Handcount	21	2018	Handcount	-1	22	Handcount
AL	CALHOUN COUNTY	-4	-8%	49	2012	Handcount	44	2018	Handcount	-1	45	Handcount
AL	CHAMBERS COUNTY	-1	-5%	21	2012	Handcount	20	2018	Handcount	-1	21	Handcount

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Sheriff Election Count	Post-Sheriff Election Year	Post-Sheriff Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
AL	CHEROKEE COUNTY	0	0%	23	2012	Handcount	23	2018	Handcount	0	23	Handcount
AL	CHILTON COUNTY	-2	-11%	18	2012	Handcount	16	2018	Handcount	0	16	Handcount
AL	CHOCTAW COUNTY	-2	-6%	32	2012	Handcount	30	2018	Handcount	-2	32	Handcount
AL	CLARKE COUNTY	2	7%	27	2012	Handcount	29	2018	Handcount	0	29	Handcount
AL	CLAY COUNTY	1	7%	14	2012	Handcount	15	2018	Handcount	0	15	Handcount
AL	CLEBURNE COUNTY	0	0%	14	2012	Handcount	14	2018	Handcount	0	14	Handcount
AL	COFFEE COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
AL	COLBERT COUNTY	-1	-3%	36	2012	Handcount	35	2018	Handcount	0	35	Handcount
AL	CONELAH COUNTY	1	4%	26	2012	Handcount	27	2018	Handcount	0	27	Handcount
AL	COOSA COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount
AL	COVINGTON COUNTY	0	0%	25	2012	Handcount	25	2018	Handcount	0	25	Handcount
AL	CRENSHAW COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	Handcount
AL	CULLMAN COUNTY	0	0%	49	2012	Handcount	49	2018	Handcount	0	49	Handcount
AL	DALE COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	0	19	Handcount
AL	DALLAS COUNTY	2	7%	29	2012	Handcount	31	2018	Handcount	2	29	Handcount
AL	DEKALB COUNTY	-1	-2%	45	2012	Handcount	44	2018	Handcount	0	44	Handcount
AL	ELMORE COUNTY	1	4%	28	2012	Handcount	29	2018	Handcount	1	28	Handcount
AL	ESCAMBA COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
AL	ETOWAH COUNTY	-9	-22%	41	2012	Handcount	32	2018	Handcount	-1	33	Handcount
AL	FAYETTE COUNTY	0	0%	27	2012	Handcount	27	2018	Handcount	0	27	Handcount
AL	FRANKLIN COUNTY	-1	-4%	24	2012	Handcount	23	2018	Handcount	-1	24	Handcount
AL	GENEVA COUNTY	-1	-4%	25	2012	Handcount	24	2018	Handcount	-1	25	Handcount
AL	GREENE COUNTY	0	0%	14	2012	Handcount	14	2018	Handcount	0	14	Handcount
AL	HALE COUNTY	0	0%	14	2014	Handcount	14	2018	Handcount	0	14	Handcount
AL	HENRY COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	0	13	Handcount
AL	HOUSTON COUNTY	1	4%	26	2012	Handcount	27	2018	Handcount	0	27	Handcount
AL	JACKSON COUNTY	0	0%	37	2012	Handcount	37	2018	Handcount	0	37	Handcount
AL	JEFFERSON COUNTY	-5	-3%	177	2012	Handcount	172	2018	Handcount	-1	173	Handcount
AL	LAMAR COUNTY	0	0%	22	2012	Handcount	22	2018	Handcount	0	22	Handcount
AL	LAUDERDALE COUNTY	0	0%	31	2012	Handcount	31	2018	Handcount	0	31	Handcount
AL	LAWRENCE COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
AL	LEE COUNTY	1	4%	23	2012	Handcount	24	2018	Handcount	1	23	Handcount
AL	LIMESTONE COUNTY	0	0%	25	2012	Handcount	25	2018	Handcount	0	25	Handcount
AL	LOWNDES COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shelby Election Count	Post-Shelby Election Year	Post-Shelby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
AL	MACON COUNTY	0	0%	14	2012	Handcount	14	2018	Handcount	0	14	Handcount
AL	MADISON COUNTY	-4	-5%	75	2012	Handcount	71	2018	Handcount	-1	72	Handcount
AL	MARENGO COUNTY	-3	-14%	22	2012	Handcount	19	2018	Handcount	-3	22	Handcount
AL	MARION COUNTY	-1	-5%	20	2012	Handcount	19	2018	Handcount	-1	20	Handcount
AL	MARSHALL COUNTY	-10	-26%	38	2012	Handcount	28	2018	Handcount	-2	30	Handcount
AL	MOBILE COUNTY	-10	-10%	98	2012	Handcount	88	2018	Handcount	0	88	Handcount
AL	MONROE COUNTY	-1	-3%	31	2012	Handcount	30	2018	Handcount	0	30	Handcount
AL	MONTGOMERY COUNTY	4	9%	46	2012	Handcount	50	2018	Handcount	8	41	Handcount
AL	MORGAN COUNTY	-5	-11%	44	2012	Handcount	39	2018	Handcount	-1	40	Handcount
AL	PERRY COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount
AL	PICKENS COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	0	19	Handcount
AL	PIKE COUNTY	1	4%	28	2012	Handcount	29	2018	Handcount	0	29	Handcount
AL	RANDOLPH COUNTY	-1	-4%	23	2012	Handcount	22	2018	Handcount	-1	23	Handcount
AL	RUSSELL COUNTY	0	0%	17	2012	Handcount	17	2018	Handcount	0	17	Handcount
AL	SHELBY COUNTY	-3	-6%	47	2012	Handcount	44	2018	Handcount	-3	47	Handcount
AL	ST. CLAIR COUNTY	-1	-3%	31	2012	Handcount	30	2018	Handcount	-1	31	Handcount
AL	SUMTER COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	0	13	Handcount
AL	TALLADEGA COUNTY	0	0%	26	2012	Handcount	26	2018	Handcount	0	26	Handcount
AL	TALLAPOOSA COUNTY	1	4%	25	2012	Handcount	26	2018	Handcount	0	26	Handcount
AL	TUSCALOOSA COUNTY	0	0%	54	2012	Handcount	54	2018	Handcount	0	54	Handcount
AL	WALKER COUNTY	0	0%	45	2012	Handcount	45	2018	Handcount	0	45	Handcount
AL	WASHINGTON COUNTY	3	18%	17	2012	Handcount	20	2018	Handcount	1	19	Handcount
AL	WILCOX COUNTY	-4	-19%	26	2014	Handcount	22	2018	Handcount	-4	26	Handcount
AL	WINSTON COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	Handcount
AZ	APACHE COUNTY	1	2%	42	2012	EAVS	43	2018	Handcount	0	43	EAVS
AZ	COCHISE COUNTY	-32	-63%	49	2012	EAVS	17	2018	Handcount	-32	49	EAVS
AZ	COCONINO COUNTY	-9	-14%	64	2012	EAVS	55	2018	Handcount	-9	64	EAVS
AZ	GILA COUNTY	-16	-48%	33	2012	EAVS	17	2018	Handcount	N/A	N/A	N/A
AZ	GRAHAM COUNTY	-9	-50%	18	2012	EAVS	9	2018	Handcount	0	9	EAVS
AZ	GREENLEE COUNTY	-3	-38%	8	2012	EAVS	5	2018	Handcount	-3	8	EAVS



State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Study Election Count	Post-Study Election Year	Post-Study Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
AZ	LA PAZ COUNTY	-1	-11%	9	2012	EAVS	8	2018	Handcount	-1	9	EAVS
AZ	MARICOPA COUNTY	-171	-25%	671	2012	Handcount	500	2018	Handcount	-169	649	Handcount
AZ	MOHAVE COUNTY	-34	-49%	70	2012	EAVS	36	2018	Handcount	-30	46	EAVS
AZ	NAVAJO COUNTY	-2	-4%	52	2012	EAVS	50	2018	Handcount	-11	29	EAVS
AZ	PIMA COUNTY	-31	-11%	280	2012	EAVS	249	2018	Handcount	-7	242	EAVS
AZ	PINAL COUNTY	2	2%	98	2012	EAVS	100	2018	Handcount	3	97	EAVS
AZ	SANTA CRUZ COUNTY	-5	-29%	17	2012	EAVS	12	2018	Handcount	-6	17	EAVS
AZ	YAVAPI COUNTY	-5	-17%	30	2012	EAVS	25	2018	Handcount	-5	20	EAVS
AZ	YUMA COUNTY	-2	-18%	11	2012	EAVS	9	2018	Handcount	-1	10	EAVS
CA	KINGS COUNTY	-13	-37%	35	2012	EAVS	22	2018	Handcount	-13	35	EAVS
CA	MONTEREY COUNTY	0	0%	83	2012	EAVS	83	2018	Handcount	-1	84	EAVS
CA	YUBA COUNTY	-7	-26%	27	2012	EAVS	20	2018	EAVS	-6	26	EAVS
FL	COLLIER COUNTY	-1	-2%	50	2012	Handcount	59	2018	Handcount	2	57	Handcount
FL	HARDEE COUNTY	1	8%	12	2012	Handcount	13	2018	Handcount	1	12	Handcount
FL	HENDRY COUNTY	0	0%	10	2012	Handcount	10	2018	Handcount	0	10	Handcount
FL	HILLSBOROUGH COUNTY	-19	-7%	276	2012	EAVS	257	2018	Handcount	-22	278	EAVS
FL	MONROE COUNTY	-2	-7%	29	2012	Handcount	27	2018	Handcount	-3	30	Handcount
GA	APPLING COUNTY	-7	-44%	16	2012	AJC	9	2018	AJC	-5	14	AJC
GA	ATKINSON COUNTY	0	0%	4	2012	AJC	4	2018	AJC	0	4	AJC
GA	BACON COUNTY	-4	-80%	5	2012	AJC	1	2018	AJC	-4	5	AJC
GA	BAKER COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	BALDWIN COUNTY	0	0%	14	2012	AJC	14	2018	AJC	0	14	AJC
GA	BANKS COUNTY	0	0%	13	2012	AJC	13	2018	AJC	0	13	AJC
GA	BARROW COUNTY	0	0%	16	2012	AJC	16	2018	AJC	0	16	AJC
GA	BARTOW COUNTY	-1	-6%	17	2012	AJC	16	2018	AJC	-1	17	AJC
GA	BEN HILL COUNTY	-3	-60%	5	2012	AJC	2	2018	AJC	0	2	AJC
GA	BERRIEN COUNTY	-2	-29%	7	2012	AJC	5	2018	AJC	-2	7	AJC
GA	BISS COUNTY	9	-23%	40	2012	AJC	31	2018	AJC	-9	40	AJC
GA	BLICKLEY COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	BRANTLEY COUNTY	-6	-67%	9	2012	AJC	3	2018	AJC	0	3	AJC

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Study Election Count	Post-Study Election Year	Post-Study Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
GA	BROOKS COUNTY	-2	-22%	9	2012	AJC	7	2018	AJC	0	7	AJC
GA	BRYAN COUNTY	0	0%	10	2012	AJC	10	2018	AJC	0	10	AJC
GA	BULLOCH COUNTY	0	0%	16	2012	AJC	16	2018	AJC	0	16	AJC
GA	BURKE COUNTY	0	0%	16	2012	AJC	16	2018	AJC	0	16	AJC
GA	BUTTS COUNTY	-4	-80%	5	2012	AJC	1	2018	AJC	-4	5	AJC
GA	CALHOUN COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	CAMDEN COUNTY	0	0%	14	2012	AJC	14	2018	AJC	0	14	AJC
GA	CANDLER COUNTY	0	0%	2	2012	AJC	2	2018	AJC	0	2	AJC
GA	CARROLL COUNTY	-2	-7%	30	2012	AJC	28	2018	AJC	-2	30	AJC
GA	CATOOSA COUNTY	-1	-8%	12	2012	AJC	11	2018	AJC	0	11	AJC
GA	CHARLTON COUNTY	-1	-11%	9	2012	AJC	8	2018	AJC	-1	9	AJC
GA	CHATHAM COUNTY	1	1%	89	2012	AJC	90	2018	AJC	1	89	AJC
GA	CHATTAHOOCHEE COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	CHATTOOGA COUNTY	2	18%	11	2012	AJC	13	2018	AJC	1	12	AJC
GA	CHEROKEE COUNTY	0	0%	42	2012	AJC	42	2018	AJC	0	42	AJC
GA	CLARKE COUNTY	0	0%	24	2012	AJC	24	2018	AJC	0	24	AJC
GA	CLAY COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	CLAYTON COUNTY	0	0%	58	2012	AJC	58	2018	AJC	0	58	AJC
GA	CLINCH COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	COBB COUNTY	-12	-8%	153	2012	AJC	141	2018	AJC	-4	145	AJC
GA	COFFEE COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	COLQUITT COUNTY	0	0%	19	2012	AJC	19	2018	AJC	0	19	AJC
GA	COLUMBIA COUNTY	0	0%	42	2012	AJC	42	2018	AJC	-3	45	AJC
GA	COOK COUNTY	0	0%	8	2012	AJC	8	2018	AJC	0	8	AJC
GA	COWETA COUNTY	-1	-4%	28	2012	AJC	27	2018	AJC	-1	28	AJC
GA	CRAWFORD COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	CRISP COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	DADE COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	DAWSON COUNTY	0	0%	3	2012	AJC	3	2018	AJC	0	3	AJC
GA	DECATUR COUNTY	0	0%	9	2012	AJC	9	2018	AJC	0	9	AJC

State	County	P Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shelby Election Count	Post-Shelby Election Year	Post-Shelby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
GA	DEKALB COUNTY	3	2%	189	2012	AJC	192	2018	AJC	3	189	AJC
GA	DODGE COUNTY	0	0%	16	2012	AJC	16	2018	AJC	0	16	AJC
GA	DOOLY COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	DOUGHERTY COUNTY	0	0%	28	2012	AJC	28	2018	AJC	0	28	AJC
GA	DOUGLAS COUNTY	0	0%	25	2012	AJC	25	2018	AJC	0	25	AJC
GA	EARLY COUNTY	-6	-55%	11	2012	AJC	5	2018	AJC	-6	11	AJC
GA	ECHOLS COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	EFFINGHAM COUNTY	0	0%	17	2012	AJC	17	2018	AJC	0	17	AJC
GA	ELBERT COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	EMANUEL COUNTY	-1	-8%	12	2012	AJC	11	2018	AJC	-1	12	AJC
GA	EVANS COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	FANNIN COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	FAYETTE COUNTY	0	0%	36	2012	AJC	36	2018	AJC	0	36	AJC
GA	FLOYD COUNTY	0	0%	25	2012	AJC	25	2018	AJC	0	25	AJC
GA	FORSYTH COUNTY	-9	-36%	25	2012	AJC	16	2018	AJC	0	16	AJC
GA	FRANKLIN COUNTY	-6	-46%	13	2012	AJC	7	2018	AJC	-6	13	AJC
GA	FULTON COUNTY	22	6%	351	2012	AJC	373	2018	AJC	7	366	AJC
GA	GILMER COUNTY	0	0%	13	2012	AJC	13	2018	AJC	0	13	AJC
GA	GLASCOCK COUNTY	0	0%	4	2012	AJC	4	2018	AJC	0	4	AJC
GA	GLYNN COUNTY	0	0%	21	2012	AJC	21	2018	AJC	0	21	AJC
GA	GORDON COUNTY	-1	-8%	13	2012	AJC	12	2018	AJC	0	12	AJC
GA	GRADY COUNTY	0	0%	13	2012	AJC	13	2018	AJC	0	13	AJC
GA	GREENE COUNTY	-3	-38%	8	2012	AJC	5	2018	AJC	-3	8	AJC
GA	GINNETT COUNTY	1	1%	156	2012	AJC	157	2018	AJC	1	156	AJC
GA	HABERSHAM COUNTY	-7	-50%	14	2012	AJC	7	2018	AJC	2	5	AJC
GA	HALL COUNTY	-4	-11%	35	2012	AJC	31	2018	AJC	-4	35	AJC
GA	HANCOCK COUNTY	3	43%	7	2012	AJC	10	2018	AJC	0	10	AJC
GA	HARALSON COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	HARRIS COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	HART COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Sheriff Election Count	Post-Sheriff Election Year	Post-Sheriff Election Source	Midterm vs. Midterm	2014 Midterm Count	2014 Midterm Source
GA	HEARD COUNTY	-3	-33%	9	2012	AJC	6	2018	AJC	0	6	AJC
GA	HENRY COUNTY	-1	-3%	38	2012	AJC	37	2018	AJC	-1	38	AJC
GA	HOUSTON COUNTY	-7	-30%	23	2012	AJC	16	2018	AJC	-3	19	AJC
GA	IRWIN COUNTY	-8	-63%	8	2012	AJC	3	2018	AJC	-5	8	AJC
GA	JACKSON COUNTY	-12	-75%	16	2012	AJC	4	2018	AJC	-12	16	AJC
GA	JASPER COUNTY	-4	-57%	7	2012	AJC	3	2018	AJC	0	3	AJC
GA	JEFF DAVIS COUNTY	0	0%	9	2012	AJC	9	2018	AJC	0	9	AJC
GA	JEFFERSON COUNTY	0	0%	8	2012	AJC	8	2018	AJC	0	8	AJC
GA	JENKINS COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	JOHNSON COUNTY	0	0%	4	2012	AJC	4	2018	AJC	0	4	AJC
GA	JONES COUNTY	-1	-9%	11	2012	AJC	10	2018	AJC	0	10	AJC
GA	LAMAR COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	LANIER COUNTY	-3	-75%	4	2012	AJC	1	2018	AJC	-2	4	AJC
GA	LAURENS COUNTY	-1	-6%	17	2012	AJC	16	2018	AJC	-1	17	AJC
GA	LEE COUNTY	0	0%	10	2012	AJC	10	2018	AJC	0	10	AJC
GA	LIBERTY COUNTY	0	0%	13	2012	AJC	13	2018	AJC	0	13	AJC
GA	LINCOLN COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	LONG COUNTY	2	40%	5	2012	AJC	7	2018	AJC	0	7	AJC
GA	LOWMEDES COUNTY	-3	-25%	12	2012	AJC	9	2018	AJC	0	9	AJC
GA	LUMPkin COUNTY	-8	-89%	9	2012	AJC	1	2018	AJC	-8	7	AJC
GA	MACON COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	MADISON COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	MARION COUNTY	-2	-29%	7	2012	AJC	5	2018	AJC	-2	7	AJC
GA	MCDUFFIE COUNTY	-1	-10%	10	2012	AJC	9	2018	AJC	-1	10	AJC
GA	MCINTOSH COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	MERIWETHER COUNTY	0	0%	14	2012	AJC	14	2018	AJC	0	14	AJC
GA	MILLER COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	MITCHELL COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	MONROE COUNTY	0	0%	14	2012	AJC	14	2018	AJC	0	14	AJC
GA	MONTGOMERY COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Swaby Election Count	Post-Swaby Election Year	Post-Swaby Election Source	Maternal Id.	Maternal Count	2018 Maternal Source
GA	MORGAN COUNTY	-4	-36%	11	2012	AJC	7	2018	AJC	0	7	AJC
GA	MURRAY COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	MUSCOGEE COUNTY	-3	-11%	28	2012	AJC	25	2018	AJC	-2	27	AJC
GA	NEWTON COUNTY	0	0%	22	2012	AJC	22	2018	AJC	0	22	AJC
GA	OCONEE COUNTY	0	0%	13	2012	AJC	13	2018	AJC	0	13	AJC
GA	OGLETHORPE COUNTY	-7	-70%	10	2012	AJC	3	2018	AJC	0	3	AJC
GA	PAULDING COUNTY	-2	-14%	14	2012	AJC	12	2018	AJC	-2	14	AJC
GA	PEACH COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	PICKENS COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	PIERCE COUNTY	0	0%	8	2012	AJC	8	2018	AJC	0	8	AJC
GA	PIKE COUNTY	0	0%	8	2012	AJC	8	2018	AJC	0	8	AJC
GA	POLK COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	PULASKI COUNTY	-2	-67%	3	2012	AJC	1	2018	AJC	0	1	AJC
GA	PUTNAM COUNTY	-3	-38%	8	2012	AJC	5	2018	AJC	0	5	AJC
GA	QUITMAN COUNTY	0	0%	2	2012	AJC	2	2018	AJC	0	2	AJC
GA	RABUN COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	RANDOLPH COUNTY	0	0%	9	2012	AJC	9	2018	AJC	0	9	AJC
GA	RICHMOND COUNTY	-9	-12%	78	2012	AJC	69	2018	AJC	0	69	AJC
GA	ROCKDALE COUNTY	-2	-11%	18	2012	AJC	16	2018	AJC	-2	18	AJC
GA	SCHLEY COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	SCREVEN COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	SEMINOLE COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	SPALDING COUNTY	-3	-14%	21	2012	AJC	18	2018	AJC	-3	21	AJC
GA	STEPHENS COUNTY	-7	-88%	8	2012	AJC	1	2018	AJC	0	1	AJC
GA	STEWART COUNTY	0	0%	4	2012	AJC	4	2018	AJC	0	4	AJC
GA	SUMTER COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	TALBOT COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	TALIAFERRO COUNTY	0	0%	2	2012	AJC	2	2018	AJC	0	2	AJC
GA	TATTNALL COUNTY	-1	-11%	9	2012	AJC	8	2018	AJC	-1	9	AJC
GA	TAYLOR COUNTY	-1	-25%	4	2012	AJC	3	2018	AJC	-1	4	AJC

State	County	P Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Elec/Bn Source	Post-Shellby Election Count	Post-Shellby Election Year	Post-Shellby Election Source	Midterm % Midterm	2014 Midterm Count	2014 Midterm Source
GA	TELFAR COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	TERRELL COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	THOMAS COUNTY	0	0%	20	2012	AJC	20	2018	AJC	0	20	AJC
GA	TIFT COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	TOOMBS COUNTY	-9	-64%	14	2012	AJC	5	2018	AJC	0	5	AJC
GA	TOWNS COUNTY	0	0%	4	2012	AJC	4	2018	AJC	0	4	AJC
GA	TREUTLEN COUNTY	-4	-67%	6	2012	AJC	2	2018	AJC	-4	6	AJC
GA	TROUP COUNTY	-1	-6%	16	2012	AJC	15	2018	AJC	0	15	AJC
GA	TURNER COUNTY	0	0%	3	2012	AJC	3	2018	AJC	0	3	AJC
GA	TWIGGS COUNTY	0	0%	5	2012	AJC	5	2018	AJC	0	5	AJC
GA	UNION COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	UPSON COUNTY	-5	-56%	9	2012	AJC	4	2018	AJC	-5	9	AJC
GA	WALKER COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	WALTON COUNTY	0	0%	21	2012	AJC	21	2018	AJC	0	21	AJC
GA	WARE COUNTY	0	0%	12	2012	AJC	12	2018	AJC	0	12	AJC
GA	WARREN COUNTY	-3	-83%	4	2012	AJC	1	2018	AJC	0	1	AJC
GA	WASHINGTON COUNTY	0	0%	8	2012	AJC	8	2018	AJC	0	8	AJC
GA	WAYNE COUNTY	-3	-20%	15	2012	AJC	12	2018	AJC	-3	15	AJC
GA	WEBSTER COUNTY	0	0%	1	2012	AJC	1	2018	AJC	0	1	AJC
GA	WHEELER COUNTY	0	0%	2	2012	AJC	2	2018	AJC	0	2	AJC
GA	WHITE COUNTY	0	0%	11	2012	AJC	11	2018	AJC	0	11	AJC
GA	WHITFIELD COUNTY	0	0%	23	2012	AJC	23	2018	AJC	0	23	AJC
GA	WILCOX COUNTY	0	0%	6	2012	AJC	6	2018	AJC	0	6	AJC
GA	WILKES COUNTY	0	0%	7	2012	AJC	7	2018	AJC	0	7	AJC
GA	WILKINSON COUNTY	0	0%	9	2012	AJC	9	2018	AJC	0	9	AJC
GA	WORTH COUNTY	0	0%	15	2012	AJC	15	2018	AJC	0	15	AJC
LA	ACADIA PARISH	0	0%	40	2012	EAVS	40	2018	Handcount	0	40	EAVS
LA	ALLEN PARISH	-1	-5%	22	2012	EAVS	21	2018	Handcount	-1	22	EAVS
LA	ASCENSION PARISH	3	9%	34	2012	EAVS	37	2018	Handcount	0	37	EAVS
LA	ASSUMPTION PARISH	-2	-12%	17	2012	EAVS	15	2018	Handcount	-1	16	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post Shelby Election Count	Post Shelby Election Year	Post Shelby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
LA	AVOUELLES PARISH	-1	-4%	28	2012	EAVS	27	2018	Handcount	0	27	EAVS
LA	BEAUREGARD PARISH	0	0%	28	2012	EAVS	28	2018	Handcount	0	28	EAVS
LA	BIENVILLE PARISH	-3	-14%	21	2012	EAVS	18	2018	Handcount	0	18	EAVS
LA	BOSSIER PARISH	-2	-4%	50	2012	EAVS	48	2018	Handcount	-1	49	EAVS
LA	CADDO PARISH	-6	-7%	88	2012	EAVS	82	2018	Handcount	-4	86	EAVS
LA	CALCASIEU PARISH	-4	-5%	78	2012	EAVS	74	2018	Handcount	-3	77	EAVS
LA	CALDWELL PARISH	0	0%	12	2012	EAVS	12	2018	Handcount	0	12	EAVS
LA	CAMERON PARISH	1	12%	8	2012	EAVS	9	2018	Handcount	1	9	EAVS
LA	CATAHOULA PARISH	-1	-6%	16	2012	EAVS	15	2018	Handcount	-1	16	EAVS
LA	CLAIBORNE PARISH	0	0%	8	2012	EAVS	8	2018	Handcount	0	8	EAVS
LA	CONCORDIA PARISH	-1	-6%	18	2012	EAVS	17	2018	Handcount	-1	18	EAVS
LA	DE SOTO PARISH	-2	-7%	27	2012	EAVS	25	2018	Handcount	-1	24	EAVS
LA	EAST BATON ROUGE PARISH	-10	-7%	147	2012	EAVS	137	2018	Handcount	-8	145	EAVS
LA	EAST CARROLL PARISH	-1	-7%	14	2012	EAVS	13	2018	Handcount	-1	14	EAVS
LA	EAST FELICIANA PARISH	0	0%	12	2012	EAVS	12	2018	Handcount	0	12	EAVS
LA	EVANGELINE PARISH	-3	-9%	33	2012	EAVS	30	2018	Handcount	-1	31	EAVS
LA	FRANKLIN PARISH	0	0%	18	2012	EAVS	18	2018	Handcount	0	18	EAVS
LA	GRANT PARISH	-1	-7%	15	2012	EAVS	14	2018	Handcount	-1	15	EAVS
LA	IBERIA PARISH	0	0%	41	2012	EAVS	41	2018	Handcount	0	41	EAVS
LA	IBERVILLE PARISH	-2	-8%	25	2012	EAVS	23	2018	Handcount	-1	24	EAVS
LA	JACKSON PARISH	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
LA	JEFFERSON DAVIS PARISH	-1	-7%	15	2012	EAVS	14	2018	Handcount	0	14	EAVS
LA	JEFFERSON PARISH	-25	-15%	170	2012	EAVS	145	2018	Handcount	-24	169	EAVS
LA	LAFAYETTE PARISH	-10	-17%	58	2012	EAVS	48	2018	Handcount	-1	47	EAVS
LA	LAFOURCHE PARISH	-1	-3%	48	2012	EAVS	47	2018	Handcount	0	47	EAVS
LA	LASALLE PARISH	-1	-4%	23	2012	EAVS	22	2018	Handcount	0	22	EAVS
LA	LINCOLN PARISH	-2	-8%	26	2012	EAVS	24	2018	Handcount	-1	25	EAVS
LA	LIVINGSTON PARISH	-1	-3%	37	2012	EAVS	36	2018	Handcount	-2	38	EAVS
LA	MADISON PARISH	0	0%	15	2012	EAVS	15	2018	Handcount	0	15	EAVS
LA	MORRISHOUSE PARISH	-3	-14%	21	2012	EAVS	18	2018	Handcount	-1	19	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shelby Election Count	Post-Shelby Election Year	Post-Shelby Election Source	Midterm Count	2014 Midterm Count	2014 Midterm Source
LA	NATCHITOCHES PARISH	-1	-2%	42	2012	EAVS	41	2018	Handcount	-1	42	EAVS
LA	ORLEANS PARISH	-5	-4%	129	2012	EAVS	124	2018	Handcount	0	124	EAVS
LA	QUACHITA PARISH	-1	-2%	50	2012	EAVS	49	2018	Handcount	-1	50	EAVS
LA	PLAQUEMINES PARISH	-1	-10%	10	2012	EAVS	9	2018	Handcount	-1	10	EAVS
LA	POINTE COUPEE PARISH	-2	-10%	21	2012	EAVS	19	2018	Handcount	0	19	EAVS
LA	RAPIDES PARISH	-1	-1%	69	2012	EAVS	68	2018	Handcount	-1	69	EAVS
LA	RED RIVER PARISH	-1	-3%	13	2012	EAVS	12	2018	Handcount	-1	13	EAVS
LA	RICHLAND PARISH	-1	-6%	17	2012	EAVS	16	2018	Handcount	0	16	EAVS
LA	SABINE PARISH	-2	-7%	30	2012	EAVS	28	2018	Handcount	-1	29	EAVS
LA	ST. BERNARD PARISH	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
LA	ST. CHARLES PARISH	-3	-12%	26	2012	EAVS	23	2018	Handcount	-1	24	EAVS
LA	ST. HELENA PARISH	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
LA	ST. JAMES PARISH	-1	-8%	13	2012	EAVS	12	2018	Handcount	-1	13	EAVS
LA	ST. JOHN THE BAPTIST PA	0	0%	16	2012	EAVS	15	2018	Handcount	-1	16	EAVS
LA	ST. LANDRY PARISH	-3	-5%	59	2012	EAVS	56	2018	Handcount	-1	57	EAVS
LA	ST. MARTIN PARISH	-3	-10%	31	2012	EAVS	28	2018	Handcount	-3	31	EAVS
LA	ST. MARY PARISH	0	0%	45	2012	EAVS	45	2018	Handcount	0	45	EAVS
LA	ST. TAMMANY PARISH	3	5%	61	2012	EAVS	64	2018	Handcount	-1	65	EAVS
LA	TANGIPAHOA PARISH	0	0%	38	2012	EAVS	38	2018	Handcount	-1	39	EAVS
LA	TENSAS PARISH	-1	-11%	9	2012	EAVS	8	2018	Handcount	-1	9	EAVS
LA	TERREBONNE PARISH	-7	-12%	57	2012	EAVS	50	2018	Handcount	-3	53	EAVS
LA	UNION PARISH	-1	-5%	22	2012	EAVS	21	2018	Handcount	-1	22	EAVS
LA	VERMILION PARISH	-2	-7%	30	2012	EAVS	28	2018	Handcount	-2	30	EAVS
LA	VERNON PARISH	0	0%	30	2012	EAVS	30	2018	Handcount	0	30	EAVS
LA	WASHINGTON PARISH	0	0%	27	2012	EAVS	27	2018	Handcount	0	27	EAVS
LA	WEBSTER PARISH	0	0%	17	2012	EAVS	17	2018	Handcount	0	17	EAVS
LA	WEST BATON ROUGE PARISH	-1	-6%	16	2012	EAVS	15	2018	Handcount	-1	16	EAVS
LA	WEST CARROLL PARISH	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
LA	WEST FELICIANA PARISH	0	0%	12	2012	EAVS	12	2018	Handcount	0	12	EAVS
LA	WINN PARISH	-5	-24%	21	2012	EAVS	16	2018	Handcount	-1	17	EAVS



State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Study Election Count	Post-Study Election Year	Post-Study Election Source	Midterm In Midterm	2014 Midterm Count	2014 Midterm Source
MS	ADAMS COUNTY	-1	-5%	20	2012	Handcount	19	2018	Handcount	0	19	Handcount
MS	ALCORN COUNTY	0	0%	17	2014	Handcount	17	2018	Handcount	0	17	Handcount
MS	AMITE COUNTY	0	0%	21	2012	Handcount	21	2018	Handcount	0	21	EAVS
MS	ATTALA COUNTY	0	0%	20	2012	Handcount	20	2018	Handcount	1	19	Handcount
MS	BENTON COUNTY	0	0%	5	2014	Handcount	5	2018	Handcount	0	5	Handcount
MS	BOLIVAR COUNTY	-1	-3%	29	2012	Handcount	28	2018	Handcount	0	28	Handcount
MS	CALHOUN COUNTY	0	0%	10	2012	Handcount	10	2018	Handcount	0	10	Handcount
MS	CARROLL COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	-1	14	EAVS
MS	CHICKASAW COUNTY	2	15%	13	2012	Handcount	15	2018	Handcount	0	15	Handcount
MS	CHOCTAW COUNTY	2	15%	13	2012	EAVS	15	2018	Handcount	2	13	EAVS
MS	CLAIBORNE COUNTY	1	11%	9	2012	Handcount	10	2018	Handcount	1	9	Handcount
MS	CLARKE COUNTY	0	0%	23	2012	EAVS	23	2018	Handcount	0	23	EAVS
MS	CLAY COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
MS	COAHOMA COUNTY	-1	-5%	19	2014	Handcount	18	2018	Handcount	-1	19	Handcount
MS	COPIAH COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	-1	20	EAVS
MS	COVINGTON COUNTY	-2	-11%	18	2012	EAVS	16	2018	Handcount	-2	18	EAVS
MS	DEBOTO COUNTY	3	8%	38	2012	Handcount	41	2018	Handcount	2	39	EAVS
MS	FORREST COUNTY	-1	-3%	35	2014	Handcount	34	2018	Handcount	-1	35	Handcount
MS	FRANKLIN COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
MS	GEORGE COUNTY	0	0%	22	2012	EAVS	22	2018	Handcount	0	22	EAVS
MS	GREENE COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	-1	14	EAVS
MS	GRENADA COUNTY	0	0%	12	2014	Handcount	12	2018	Handcount	0	12	Handcount
MS	HANCOCK COUNTY	0	0%	25	2014	Handcount	25	2018	Handcount	0	25	Handcount
MS	HARRISON COUNTY	-13	-20%	66	2012	EAVS	53	2018	Handcount	N/A	N/A	N/A
MS	HINDS COUNTY	-8	-7%	118	2012	Handcount	110	2018	Handcount	N/A	N/A	N/A
MS	HOLMES COUNTY	0	0%	17	2012	Handcount	17	2018	Handcount	0	17	Handcount
MS	HUMPHREYS COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	0	13	Handcount
MS	ISSAQUENA COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	0	5	EAVS
MS	ITAWAMBA COUNTY	-3	-11%	27	2012	EAVS	24	2018	Handcount	0	24	EAVS
MS	JACKSON COUNTY	1	3%	31	2012	EAVS	32	2018	Handcount	1	31	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Past Shelby Election Count	Past Shelby Election Year	Past Shelby Election Source	Midterm to Midterm	2018 Midterm Count	2018 Midterm Source
MS	JASPER COUNTY	-1	-6%	18	2012	Handcount	17	2018	Handcount	1	16	EAVS
MS	JEFFERSON COUNTY	-3	-20%	15	2012	Handcount	12	2018	Handcount	-2	14	Handcount
MS	JEFFERSON DAVIS COUNTY	-4	-19%	21	2014	Handcount	17	2018	Handcount	-4	21	Handcount
MS	JONES COUNTY	0	0%	37	2014	Handcount	37	2018	Handcount	0	37	Handcount
MS	KEMPER COUNTY	0	0%	14	2012	Handcount	14	2018	Handcount	1	13	Handcount
MS	LAFAYETTE COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	EAVS
MS	LAMAR COUNTY	2	10%	21	2014	Handcount	23	2018	Handcount	2	21	Handcount
MS	LAUDERDALE COUNTY	-9	-18%	49	2012	EAVS	40	2018	Handcount	-9	43	EAVS
MS	LAWRENCE COUNTY	-2	-8%	26	2014	Handcount	24	2018	Handcount	-2	26	Handcount
MS	LEAKE COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	0	19	Handcount
MS	LEE COUNTY	-2	-5%	38	2014	Handcount	36	2018	Handcount	-2	36	Handcount
MS	LEFLORE COUNTY	-1	-5%	19	2012	Handcount	18	2018	Handcount	-1	19	Handcount
MS	LINCOLN COUNTY	-2	-6%	32	2012	Handcount	30	2018	Handcount	N/A	N/A	N/A
MS	LOWNDES COUNTY	-1	-5%	22	2012	Handcount	21	2018	Handcount	-1	22	EAVS
MS	MADISON COUNTY	-1	-3%	43	2014	Handcount	42	2018	Handcount	-1	43	Handcount
MS	MARION COUNTY	-2	-8%	24	2012	EAVS	22	2018	Handcount	-1	23	EAVS
MS	MARSHALL COUNTY	0	0%	24	2012	Handcount	24	2018	Handcount	0	24	Handcount
MS	MONROE COUNTY	0	0%	26	2012	EAVS	26	2018	Handcount	0	26	EAVS
MS	MONTGOMERY COUNTY	-1	-6%	16	2012	Handcount	15	2018	Handcount	0	15	EAVS
MS	NESHOBA COUNTY	0	0%	27	2012	Handcount	27	2018	Handcount	0	27	Handcount
MS	NEWTON COUNTY	-3	-16%	19	2012	Handcount	16	2018	Handcount	N/A	N/A	N/A
MS	NOXUBEE COUNTY	-2	-20%	10	2012	Handcount	8	2018	Handcount	-2	10	Handcount
MS	OKTIBBEHA COUNTY	0	0%	20	2012	Handcount	20	2018	Handcount	-1	21	EAVS
MS	PANOLA COUNTY	-2	-8%	24	2012	Handcount	22	2018	Handcount	-2	24	Handcount
MS	PEARL RIVER COUNTY	-13	-39%	33	2012	Handcount	20	2018	Handcount	-13	33	Handcount
MS	PERRY COUNTY	0	0%	15	2012	Handcount	15	2018	Handcount	-1	16	EAVS
MS	PIKE COUNTY	0	0%	25	2014	Handcount	25	2018	Handcount	0	25	Handcount
MS	PONTOTOC COUNTY	-1	-3%	29	2012	Handcount	28	2018	Handcount	0	28	EAVS
MS	PRENTISS COUNTY	0	0%	15	2012	EAVS	15	2018	Handcount	0	15	EAVS
MS	QUITMAN COUNTY	1	11%	9	2012	EAVS	10	2018	Handcount	0	10	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shelby Election Count	Post-Shelby Election Year	Post-Shelby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
MS	RANKIN COUNTY	-4	-8%	53	2012	EAVS	49	2018	Handcount	-1	50	EAVS
MS	SCOTT COUNTY	-2	-8%	25	2014	Handcount	23	2018	Handcount	-2	25	Handcount
MS	SHARKEY COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	N/A	N/A	N/A
MS	SIMPSON COUNTY	0	0%	23	2014	Handcount	23	2018	Handcount	0	23	Handcount
MS	SMITH COUNTY	0	0%	18	2012	EAVS	18	2018	Handcount	N/A	N/A	N/A
MS	STONE COUNTY	0	0%	15	2012	EAVS	15	2018	Handcount	0	15	EAVS
MS	SUNFLOWER COUNTY	0	0%	17	2014	Handcount	17	2018	Handcount	0	17	Handcount
MS	TALLAHATCHIE COUNTY	0	0%	21	2012	Handcount	21	2018	Handcount	0	21	Handcount
MS	TATE COUNTY	1	5%	19	2012	Handcount	20	2018	Handcount	0	20	EAVS
MS	TIPPRAH COUNTY	0	0%	24	2012	EAVS	24	2018	Handcount	0	24	EAVS
MS	TISHOMINGO COUNTY	-5	-26%	19	2012	Handcount	14	2018	Handcount	0	14	EAVS
MS	TUNICA COUNTY	0	0%	12	2014	Handcount	12	2018	Handcount	0	12	Handcount
MS	UNION COUNTY	0	0%	20	2014	Handcount	20	2018	Handcount	0	20	Handcount
MS	WALTHALL COUNTY	-1	-5%	21	2012	Handcount	20	2018	Handcount	-1	21	Handcount
MS	WARREN COUNTY	1	5%	22	2012	Handcount	23	2018	Handcount	1	22	Handcount
MS	WASHINGTON COUNTY	0	0%	19	2012	Handcount	19	2018	Handcount	0	19	Handcount
MS	WAYNE COUNTY	0	0%	22	2014	EAVS	22	2018	Handcount	0	22	EAVS
MS	WEBSTER COUNTY	0	0%	17	2012	Handcount	17	2018	Handcount	0	17	EAVS
MS	WILKINSON COUNTY	0	0%	9	2014	Handcount	9	2018	Handcount	0	9	Handcount
MS	WINSTON COUNTY	0	0%	12	2012	EAVS	12	2018	Handcount	0	12	EAVS
MS	YALOBUSHA COUNTY	-2	-15%	13	2012	EAVS	11	2018	Handcount	N/A	N/A	N/A
MS	YAZOO COUNTY	-2	-8%	25	2012	Handcount	23	2018	Handcount	-2	25	Handcount
NC	ANSON COUNTY	0	0%	11	2012	Handcount	11	2018	Handcount	0	11	Handcount
NC	BEAUFORT COUNTY	0	0%	20	2012	Handcount	20	2018	Handcount	0	20	Handcount
NC	BERTIE COUNTY	0	0%	11	2012	Handcount	11	2018	Handcount	0	11	Handcount
NC	BLADEN COUNTY	0	0%	17	2012	Handcount	17	2018	Handcount	0	17	Handcount
NC	CAMDEN COUNTY	0	0%	3	2012	Handcount	3	2018	Handcount	0	3	Handcount
NC	CASWELL COUNTY	-1	-10%	10	2012	Handcount	9	2018	Handcount	-1	10	Handcount
NC	CHOWAN COUNTY	0	0%	6	2012	Handcount	6	2018	Handcount	0	6	Handcount
NC	CLEVELAND COUNTY	-5	-19%	26	2012	Handcount	21	2018	Handcount	0	21	Handcount

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NC	CRAVEN COUNTY	-3	-11%	27	2012	Handcount	24	2018	Handcount	-2	26	Handcount
NC	CUMBERLAND COUNTY	0	0%	77	2012	Handcount	77	2018	Handcount	0	77	Handcount
NC	EDGECOMBE COUNTY	0	0%	21	2012	Handcount	21	2018	Handcount	0	21	Handcount
NC	FRANKLIN COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	Handcount
NC	GASTON COUNTY	0	0%	46	2012	Handcount	46	2018	Handcount	0	46	Handcount
NC	GATES COUNTY	0	0%	6	2012	Handcount	6	2018	Handcount	0	6	Handcount
NC	GRANVILLE COUNTY	0	0%	15	2012	Handcount	15	2018	Handcount	0	15	Handcount
NC	GREENE COUNTY	0	0%	10	2012	Handcount	10	2018	Handcount	0	10	Handcount
NC	GUILFORD COUNTY	0	0%	165	2012	Handcount	165	2018	Handcount	0	165	Handcount
NC	HALIFAX COUNTY	-4	-16%	25	2012	Handcount	21	2018	Handcount	-4	25	Handcount
NC	HARNETT COUNTY	1	8%	12	2012	Handcount	13	2018	Handcount	0	13	Handcount
NC	HERTFORD COUNTY	0	0%	13	2012	Handcount	13	2018	Handcount	0	13	Handcount
NC	Hoke COUNTY	1	7%	14	2012	Handcount	15	2018	Handcount	0	15	Handcount
NC	JACKSON COUNTY	-1	-7%	15	2012	Handcount	14	2018	Handcount	0	14	Handcount
NC	LEE COUNTY	0	0%	10	2012	Handcount	10	2018	Handcount	0	10	Handcount
NC	LENOIR COUNTY	0	0%	22	2012	Handcount	22	2018	Handcount	0	22	Handcount
NC	MARTIN COUNTY	-1	-6%	12	2012	Handcount	11	2018	Handcount	0	11	Handcount
NC	NASH COUNTY	-3	-11%	27	2012	Handcount	24	2018	Handcount	-3	27	Handcount
NC	NORTHAMPTON COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	Handcount
NC	ONSLow COUNTY	0	0%	24	2012	Handcount	24	2018	Handcount	0	24	Handcount
NC	PASQUOTANK COUNTY	-4	-31%	13	2012	Handcount	9	2018	Handcount	-4	13	Handcount
NC	PERQUIMANS COUNTY	0	0%	7	2012	Handcount	7	2018	Handcount	0	7	Handcount
NC	PERSON COUNTY	-3	-21%	14	2012	Handcount	11	2018	Handcount	-3	14	Handcount
NC	PITT COUNTY	0	0%	40	2012	Handcount	40	2018	Handcount	0	40	Handcount
NC	ROBEson COUNTY	-4	-10%	42	2012	Handcount	38	2018	Handcount	-1	39	Handcount
NC	ROCKINGHAM COUNTY	0	0%	15	2012	Handcount	15	2018	Handcount	0	15	Handcount
NC	SCOTLAND COUNTY	0	0%	10	2012	Handcount	10	2018	Handcount	0	10	Handcount
NC	UNION COUNTY	0	0%	52	2012	Handcount	52	2018	Handcount	0	52	Handcount
NC	VANCE COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount
NC	WASHINGTON COUNTY	0	0%	6	2012	Handcount	6	2018	Handcount	0	6	Handcount

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NC	WAYNE COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
NC	WILSON COUNTY	0	0%	24	2012	Handcount	24	2018	Handcount	0	24	Handcount
NY	BRONX COUNTY	-8	-4%	198	2016	EAVS	190	2018	EAVS	N/A	N/A	N/A
NY	KINGS COUNTY	-6	-1%	404	2016	EAVS	398	2018	EAVS	N/A	N/A	N/A
NY	NEW YORK COUNTY	12	5%	265	2016	EAVS	277	2018	EAVS	N/A	N/A	N/A
SC	ABBEVILLE COUNTY	0	0%	14	2012	Handcount	14	2018	Handcount	0	14	Handcount
SC	AJEN COUNTY	4	6%	69	2012	Handcount	73	2018	Handcount	4	69	Handcount
SC	ALLENDALE COUNTY	0	0%	8	2012	Handcount	8	2018	Handcount	0	8	Handcount
SC	ANDERSON COUNTY	3	4%	75	2012	Handcount	78	2018	Handcount	0	78	Handcount
SC	BAMBERG COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount
SC	BARNWELL COUNTY	-1	-10%	10	2012	Handcount	9	2018	Handcount	-1	10	Handcount
SC	BEAUFORT COUNTY	-1	-2%	58	2012	Handcount	57	2018	Handcount	0	57	Handcount
SC	BERKELEY COUNTY	7	15%	48	2012	Handcount	55	2018	Handcount	8	47	Handcount
SC	CALHOUN COUNTY	0	0%	12	2012	Handcount	12	2018	Handcount	0	12	Handcount
SC	CHARLESTON COUNTY	-16	-10%	105	2012	Handcount	95	2018	Handcount	-2	103	Handcount
SC	CHEROKEE COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
SC	CHESTER COUNTY	1	5%	20	2012	Handcount	21	2018	Handcount	0	21	Handcount
SC	CHESTERFIELD COUNTY	0	0%	25	2012	Handcount	25	2018	Handcount	0	25	Handcount
SC	CLARENDON COUNTY	0	0%	25	2012	Handcount	25	2018	Handcount	0	25	Handcount
SC	COLLETON COUNTY	1	3%	31	2012	Handcount	32	2018	Handcount	0	32	Handcount
SC	DARLINGTON COUNTY	0	0%	32	2012	Handcount	32	2018	Handcount	0	32	Handcount
SC	DILLON COUNTY	0	0%	20	2012	Handcount	20	2018	Handcount	0	20	Handcount
SC	DORCHESTER COUNTY	-3	-8%	40	2012	Handcount	37	2018	Handcount	-3	40	Handcount
SC	EDGEFIELD COUNTY	1	10%	10	2012	Handcount	11	2018	Handcount	0	11	Handcount
SC	FAIRFIELD COUNTY	0	0%	20	2012	Handcount	20	2018	Handcount	0	20	Handcount
SC	FLORENCE COUNTY	-2	-3%	61	2012	Handcount	59	2018	Handcount	-1	60	Handcount
SC	GEORGETOWN COUNTY	1	3%	31	2012	Handcount	32	2018	Handcount	0	32	Handcount
SC	GREENVILLE COUNTY	0	0%	150	2012	Handcount	150	2018	Handcount	0	150	Handcount
SC	GREENWOOD COUNTY	5	11%	45	2012	Handcount	50	2018	Handcount	1	49	Handcount
SC	HAMPTON COUNTY	0	0%	15	2012	Handcount	15	2018	Handcount	0	15	Handcount

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SC	HORRY COUNTY	5	4%	117	2012	Handcount	122	2018	Handcount	4	118	Handcount
SC	JASPER COUNTY	1	8%	13	2012	Handcount	14	2018	Handcount	0	14	Handcount
SC	KERSHAW COUNTY	-1	-3%	34	2012	Handcount	33	2018	Handcount	1	32	Handcount
SC	LANCASTER COUNTY	7	24%	29	2012	Handcount	36	2018	Handcount	7	29	Handcount
SC	LAURENS COUNTY	0	0%	34	2012	Handcount	34	2018	Handcount	0	34	Handcount
SC	LEE COUNTY	0	0%	22	2012	Handcount	22	2018	Handcount	0	22	Handcount
SC	LEXINGTON COUNTY	3	3%	91	2012	Handcount	84	2018	Handcount	-1	95	Handcount
SC	MARION COUNTY	0	0%	17	2012	Handcount	17	2018	Handcount	0	17	Handcount
SC	MARLBORO COUNTY	0	0%	15	2012	Handcount	15	2018	Handcount	0	15	Handcount
SC	MCCORMICK COUNTY	1	10%	10	2012	Handcount	11	2018	Handcount	0	11	Handcount
SC	NEWBERRY COUNTY	0	0%	29	2012	Handcount	29	2018	Handcount	0	29	Handcount
SC	OCONEE COUNTY	0	0%	26	2012	Handcount	26	2018	Handcount	0	26	Handcount
SC	ORANGEBURG COUNTY	0	0%	45	2012	Handcount	45	2018	Handcount	0	45	Handcount
SC	PICKENS COUNTY	0	0%	55	2012	Handcount	55	2018	Handcount	0	55	Handcount
SC	RICHLAND COUNTY	20	16%	122	2012	Handcount	142	2018	Handcount	0	142	Handcount
SC	SALUDA COUNTY	0	0%	18	2012	Handcount	18	2018	Handcount	0	18	Handcount
SC	SPARTANBURG COUNTY	0	0%	97	2012	Handcount	97	2018	Handcount	1	96	Handcount
SC	SUMTER COUNTY	0	0%	46	2012	Handcount	46	2018	Handcount	0	46	Handcount
SC	UNION COUNTY	0	0%	23	2012	Handcount	23	2018	Handcount	0	23	Handcount
SC	WILLIAMSBURG COUNTY	0	0%	28	2012	Handcount	28	2018	Handcount	0	28	Handcount
SC	YORK COUNTY	3	3%	86	2012	Handcount	89	2018	Handcount	0	89	Handcount
SD	SHANNON/OGLALA LAKOTA COUNTY	-1	-11%	9	2012	EAVS	8	2018	Handcount	-1	9	EAVS
SD	TODD COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	-1	8	EAVS
TX	ANDERSON COUNTY	0	0%	22	2012	EAVS	22	2018	Handcount	0	22	EAVS
TX	ANDREWS COUNTY	0	0%	1	2012	EAVS	1	2018	EAVS	-1	2	EAVS
TX	ANGELINA COUNTY	-4	-13%	31	2012	EAVS	27	2018	Handcount	-3	30	EAVS
TX	ARANSAS COUNTY	-3	-50%	6	2012	EAVS	3	2018	Handcount	-3	6	EAVS
TX	ARCHER COUNTY	-3	-27%	11	2012	EAVS	8	2018	Handcount	-3	11	EAVS
TX	ARMSTRONG COUNTY	-3	-50%	6	2012	EAVS	3	2018	Handcount	-3	6	EAVS
TX	ATASCOSA COUNTY	0	0%	23	2012	EAVS	23	2018	Handcount	0	23	EAVS

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TX	AUSTIN COUNTY	-2	-1%	18	2012	EAVS	16	2018	Handcount	N/A	N/A	N/A
TX	BAILEY COUNTY	0	0%	1	2012	EAVS	1	2018	EAVS	-1	2	EAVS
TX	BANDERA COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	BASTROP COUNTY	1	5%	20	2012	EAVS	21	2018	Handcount	1	20	EAVS
TX	BAYLOR COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	N/A	N/A	N/A
TX	BEE COUNTY	-7	-41%	17	2014	EAVS	10	2018	Handcount	-7	17	EAVS
TX	BELL COUNTY	-1	-2%	47	2012	EAVS	46	2018	Handcount	0	46	EAVS
TX	BEXAR COUNTY	0	0%	302	2012	EAVS	302	2018	Handcount	-4	306	EAVS
TX	BLANCO COUNTY	0	0%	6	2012	EAVS	6	2016	Handcount	2	4	EAVS
TX	BORDEN COUNTY	-1	-14%	7	2012	EAVS	6	2018	Handcount	-2	8	EAVS
TX	BOSQUE COUNTY	-5	-36%	14	2012	EAVS	9	2018	Handcount	-2	11	EAVS
TX	BOWIE COUNTY	-3	-9%	35	2012	EAVS	32	2018	Handcount	-3	35	EAVS
TX	BRAZORIA COUNTY	-37	-59%	63	2012	EAVS	26	2018	Handcount	-39	64	EAVS
TX	BRAZOS COUNTY	-11	-31%	36	2012	EAVS	25	2018	Handcount	-11	26	EAVS
TX	BREWSTER COUNTY	-1	-13%	8	2012	EAVS	7	2018	Handcount	-2	9	EAVS
TX	BRISCOE COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	0	5	EAVS
TX	BROOKS COUNTY	-3	-33%	9	2014	EAVS	6	2018	Handcount	-3	9	EAVS
TX	BROWN COUNTY	-1	-6%	16	2012	EAVS	15	2018	Handcount	-1	16	EAVS
TX	BURLESON COUNTY	-1	-7%	14	2012	EAVS	13	2018	Handcount	-1	14	EAVS
TX	BURNET COUNTY	0	0%	20	2012	EAVS	20	2018	Handcount	0	20	EAVS
TX	CALDWELL COUNTY	-13	-52%	25	2012	EAVS	12	2018	Handcount	-5	17	EAVS
TX	CALHOUN COUNTY	-7	-30%	23	2012	EAVS	16	2018	Handcount	-6	24	EAVS
TX	CALLAHAN COUNTY	-3	-43%	7	2012	EAVS	4	2018	Handcount	-3	6	EAVS
TX	CAMERON COUNTY	-7	-8%	83	2012	EAVS	76	2018	Handcount	-1	77	EAVS
TX	CAMP COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	CARSON COUNTY	0	0%	8	2014	EAVS	8	2016	Handcount	0	8	EAVS
TX	CASS COUNTY	0	0%	18	2012	EAVS	18	2018	Handcount	0	18	EAVS
TX	CASTRO COUNTY	0	0%	8	2012	EAVS	8	2018	EAVS	0	8	N/A
TX	CHAMBERS COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	1	13	EAVS
TX	CHEROKEE COUNTY	-2	-8%	25	2012	EAVS	23	2018	Handcount	-1	24	EAVS

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TX	CHILDRESS COUNTY	-1	-25%	4	2012	EAVS	3	2018	EAVS	-1	4	EAVS
TX	CLAY COUNTY	0	0%	16	2012	EAVS	16	2016	Handcount	0	16	EAVS
TX	COCHRAN COUNTY	-2	-40%	5	2012	EAVS	3	2018	Handcount	-3	6	EAVS
TX	COKE COUNTY	-2	-50%	4	2012	EAVS	2	2018	Handcount	-2	4	EAVS
TX	COLEMAN COUNTY	-1	-20%	5	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	COLLIN COUNTY	2	3%	67	2012	EAVS	69	2018	Handcount	2	67	EAVS
TX	COLLINGSWORTH COUNTY	1	14%	7	2012	EAVS	8	2016	EAVS	0	8	EAVS
TX	COLORADO COUNTY	-1	-8%	12	2012	EAVS	11	2018	Handcount	-2	13	EAVS
TX	COMAL COUNTY	2	9%	22	2012	EAVS	24	2018	Handcount	1	23	EAVS
TX	COMANCHE COUNTY	-3	-21%	14	2012	EAVS	11	2018	Handcount	-3	13	EAVS
TX	CONCHO COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	COOKE COUNTY	0	0%	16	2012	EAVS	16	2018	Handcount	16	0	EAVS
TX	CORYELL COUNTY	-7	-47%	15	2012	EAVS	8	2018	Handcount	-2	10	EAVS
TX	COTTE COUNTY	2	100%	2	2014	EAVS	4	2016	EAVS	2	2	EAVS
TX	CRANE COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	CROCKETT COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	CULBERSON COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	-1	6	EAVS
TX	DALLAM COUNTY	0	0%	2	2014	EAVS	2	2018	Handcount	0	2	EAVS
TX	DALLAS COUNTY	-34	-15%	485	2012	EAVS	411	2018	Handcount	-78	489	EAVS
TX	DAWSON COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	DEAF SMITH COUNTY	2	50%	4	2012	EAVS	6	2018	Handcount	2	4	EAVS
TX	DENTON COUNTY	-3	-3%	97	2012	EAVS	94	2018	EAVS	-9	103	EAVS
TX	DEWITT COUNTY	-1	-13%	8	2012	EAVS	7	2018	Handcount	-2	9	EAVS
TX	DICKENS COUNTY	0	0%	6	2012	EAVS	6	2018	Handcount	N/A	N/A	N/A
TX	DIMMIT COUNTY	0	0%	7	2012	EAVS	7	2018	EAVS	N/A	N/A	EAVS
TX	DONLEY COUNTY	0	0%	6	2012	EAVS	6	2018	Handcount	-1	7	EAVS
TX	DUVAL COUNTY	0	0%	9	2012	EAVS	9	2018	EAVS	0	9	EAVS
TX	EASTLAND COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	ECTOR COUNTY	-3	-11%	28	2012	EAVS	25	2018	Handcount	-11	36	EAVS
TX	EDWARDS COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	0	5	EAVS



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TX	EL PASO COUNTY	-6	-4%	150	2014	EAVS	144	2018	Handcount	-6	150	EAVS
TX	ELLIS COUNTY	-2	-5%	39	2012	EAVS	37	2016	Handcount	-4	41	EAVS
TX	ERATH COUNTY	-1	-9%	11	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	FALLS COUNTY	0	0%	13	2012	EAVS	13	2018	Handcount	N/A	N/A	N/A
TX	FANNIN COUNTY	0	0%	16	2012	EAVS	16	2018	Handcount	-1	17	EAVS
TX	FAYETTE COUNTY	0	0%	26	2012	EAVS	26	2018	Handcount	0	26	EAVS
TX	FISHER COUNTY	-6	-60%	10	2012	EAVS	4	2018	Handcount	-6	10	EAVS
TX	FLOYD COUNTY	0	0%	2	2012	EAVS	2	2018	Handcount	0	2	EAVS
TX	FOARD COUNTY	0	0%	2	2012	EAVS	2	2018	EAVS	0	2	EAVS
TX	FORT BEND COUNTY	-18	-18%	101	2014	EAVS	83	2016	Handcount	-18	101	EAVS
TX	FRANKLIN COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	FREESTONE COUNTY	0	0%	15	2012	EAVS	15	2018	Handcount	0	15	EAVS
TX	FRIO COUNTY	-1	-10%	10	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	GAINES COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	GALVESTON COUNTY	-10	-22%	45	2012	EAVS	35	2018	Handcount	1	34	EAVS
TX	GARZA COUNTY	0	0%	6	2012	EAVS	6	2018	Handcount	-1	7	EAVS
TX	GILLESPIE COUNTY	0	0%	13	2012	EAVS	13	2018	Handcount	0	13	EAVS
TX	GLASSCOCK COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	GOLIAD COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	GONZALES COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
TX	GRAY COUNTY	0	0%	7	2012	EAVS	7	2018	Handcount	0	7	EAVS
TX	GRAYSON COUNTY	-13	-36%	36	2012	EAVS	23	2016	Handcount	0	23	EAVS
TX	GREGG COUNTY	-3	-14%	21	2012	EAVS	18	2018	Handcount	-3	21	EAVS
TX	GRIMES COUNTY	1	7%	14	2012	EAVS	15	2018	Handcount	15	0	EAVS
TX	GUADALUPE COUNTY	-1	-3%	35	2012	EAVS	34	2018	Handcount	-1	35	EAVS
TX	HALE COUNTY	0	0%	15	2012	EAVS	15	2018	EAVS	0	15	N/A
TX	HALL COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	-1	5	EAVS
TX	HAMILTON COUNTY	-2	-18%	11	2012	EAVS	9	2018	Handcount	-2	11	EAVS
TX	HANSFORD COUNTY	-1	-13%	8	2012	EAVS	7	2018	EAVS	-1	8	EAVS
TX	HARDEMAN COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	0	4	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shelby Election Count	Post-Shelby Election Year	Post-Shelby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
TX	HARDIN COUNTY	0	0%	19	2012	EAVS	19	2018	Handcount	19	0	EAVS
TX	HARRIS COUNTY	-52	-7%	778	2012	EAVS	724	2018	Handcount	-46	770	EAVS
TX	HARRISON COUNTY	0	0%	26	2012	EAVS	26	2018	Handcount	0	26	EAVS
TX	HARTLEY COUNTY	0	0%	3	2012	EAVS	3	2018	Handcount	0	3	EAVS
TX	HASKELL COUNTY	0	0%	10	2014	EAVS	10	2018	Handcount	0	10	EAVS
TX	HAYS COUNTY	0	0%	37	2012	EAVS	37	2018	Handcount	1	36	EAVS
TX	HEMPHILL COUNTY	-1	-11%	9	2014	EAVS	8	2018	EAVS	-1	9	EAVS
TX	HENDERSON COUNTY	0	0%	26	2012	EAVS	26	2018	Handcount	0	26	EAVS
TX	HDALGO COUNTY	0	0%	74	2012	EAVS	74	2018	Handcount	-1	75	EAVS
TX	HILL COUNTY	0	0%	22	2012	EAVS	22	2018	Handcount	0	22	EAVS
TX	HOCKLEY COUNTY	1	7%	14	2012	EAVS	15	2018	Handcount	1	14	EAVS
TX	HOOD COUNTY	-5	-33%	15	2014	EAVS	10	2018	Handcount	-5	15	EAVS
TX	HOPKINS COUNTY	-9	-43%	21	2012	EAVS	12	2018	Handcount	-9	21	EAVS
TX	HOUSTON COUNTY	1	5%	21	2012	EAVS	22	2018	Handcount	1	21	EAVS
TX	HOWARD COUNTY	-1	-17%	6	2012	EAVS	5	2018	Handcount	-1	6	EAVS
TX	HUDSPETH COUNTY	0	0%	5	2012	EAVS	5	2018	EAVS	0	5	EAVS
TX	HUNT COUNTY	-1	-3%	34	2012	EAVS	33	2018	Handcount	-1	34	EAVS
TX	HUTCHINSON COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	IRON COUNTY	-1	-50%	2	2012	EAVS	1	2018	Handcount	-1	2	EAVS
TX	JACK COUNTY	-2	-33%	6	2012	EAVS	4	2018	Handcount	-4	8	EAVS
TX	JACKSON COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	-1	10	EAVS
TX	JASPER COUNTY	1	5%	20	2012	EAVS	21	2016	Handcount	1	20	EAVS
TX	JEFF DAVIS COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	-1	6	EAVS
TX	JEFFERSON COUNTY	-18	-32%	57	2012	EAVS	39	2018	Handcount	-1	40	EAVS
TX	JIM HOGG COUNTY	0	0%	4	2012	EAVS	4	2016	Handcount	-1	5	EAVS
TX	JIM WELLS COUNTY	0	0%	21	2012	EAVS	21	2018	EAVS	0	21	EAVS
TX	JOHNSON COUNTY	-3	-10%	31	2012	EAVS	28	2018	Handcount	-1	29	EAVS
TX	JONES COUNTY	-1	-9%	11	2012	EAVS	10	2018	Handcount	-1	11	EAVS
TX	KARNES COUNTY	2	15%	13	2014	EAVS	15	2018	Handcount	2	13	EAVS
TX	KAUFMAN COUNTY	0	0%	30	2012	EAVS	30	2018	Handcount	0	30	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Sheby Election Count	Post-Sheby Election Year	Post-Sheby Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
TX	KENDALL COUNTY	-7	-39%	18	2012	EAVS	11	2018	Handcount	-5	16	EAVS
TX	KENEDY COUNTY	0	0%	6	2012	EAVS	6	2016	Handcount	0	6	EAVS
TX	KENT COUNTY	-1	-17%	6	2012	EAVS	5	2018	Handcount	-1	6	EAVS
TX	KERR COUNTY	0	0%	20	2012	EAVS	20	2016	Handcount	0	20	EAVS
TX	KIMBLE COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	0	4	EAVS
TX	KING COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	0	4	EAVS
TX	KINNEY COUNTY	0	0%	4	2014	EAVS	4	2016	Handcount	0	4	EAVS
TX	KLEBERG COUNTY	5	42%	12	2012	EAVS	17	2018	Handcount	-1	18	EAVS
TX	KNOX COUNTY	-3	-50%	6	2012	EAVS	3	2018	Handcount	-3	6	EAVS
TX	LA SALLE COUNTY	2	50%	4	2012	EAVS	6	2018	Handcount	0	6	EAVS
TX	LAMAR COUNTY	-1	-3%	33	2012	EAVS	32	2018	Handcount	0	32	EAVS
TX	LAMB COUNTY	-3	-33%	9	2012	EAVS	6	2018	Handcount	-6	12	EAVS
TX	LAMPASAS COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	0	5	EAVS
TX	LAVACA COUNTY	0	0%	19	2012	EAVS	19	2018	Handcount	0	19	EAVS
TX	LEE COUNTY	-7	-47%	15	2012	EAVS	8	2018	Handcount	-7	15	EAVS
TX	LEON COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
TX	LIBERTY COUNTY	0	0%	30	2012	EAVS	30	2018	Handcount	0	30	EAVS
TX	LIMESTONE COUNTY	0	0%	21	2012	EAVS	21	2018	Handcount	0	21	EAVS
TX	LIPSOMB COUNTY	0	0%	4	2014	EAVS	4	2018	EAVS	0	4	EAVS
TX	LIVE OAK COUNTY	-1	-7%	14	2012	EAVS	13	2018	Handcount	0	13	EAVS
TX	LLANO COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	LOVING COUNTY	-3	-75%	4	2012	EAVS	1	2018	Handcount	0	1	EAVS
TX	LUBBOCK COUNTY	0	0%	37	2012	EAVS	37	2018	Handcount	1	38	EAVS
TX	LYNN COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	MADISON COUNTY	1	25%	4	2012	EAVS	5	2018	Handcount	-1	6	EAVS
TX	MARION COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	MARTIN COUNTY	-1	-33%	3	2012	EAVS	2	2016	EAVS	-5	7	EAVS
TX	MASON COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	N/A	N/A	N/A
TX	MATAGORDA COUNTY	0	0%	18	2012	EAVS	18	2016	Handcount	0	18	EAVS
TX	MAVERICK COUNTY	-1	-7%	14	2012	EAVS	13	2018	Handcount	-1	14	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Sherby Election Count	Post-Sherby Election Year	Post-Sherby Election Source	Midterm to Midterm Count	2014 Midterm Count	2014 Midterm Source
TX	MCCULLOCH COUNTY	1	14%	7	2012	EAVS	8	2018	Handcount	-1	9	EAVS
TX	MCLENNAN COUNTY	-30	-51%	59	2012	EAVS	29	2018	Handcount	-11	40	EAVS
TX	MC MULLEN COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	MEDINA COUNTY	-6	-46%	13	2012	EAVS	7	2018	Handcount	N/A	N/A	N/A
TX	MENARD COUNTY	0	0%	3	2012	EAVS	3	2018	EAVS	0	3	EAVS
TX	MIDLAND COUNTY	0	0%	20	2012	EAVS	20	2018	Handcount	0	20	EAVS
TX	MILAM COUNTY	-3	-27%	11	2012	EAVS	8	2018	Handcount	-3	11	EAVS
TX	MILLS COUNTY	0	0%	7	2012	EAVS	7	2018	Handcount	0	7	EAVS
TX	MITCHELL COUNTY	0	0%	6	2012	EAVS	6	2018	Handcount	0	6	EAVS
TX	MONTAGUE COUNTY	-6	-38%	16	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	MONTGOMERY COUNTY	8	9%	86	2012	EAVS	94	2018	Handcount	5	89	EAVS
TX	MOORE COUNTY	0	0%	7	2016	Handcount	7	2018	Handcount	N/A	N/A	N/A
TX	MORRIS COUNTY	-2	-25%	8	2012	EAVS	6	2018	Handcount	-2	8	EAVS
TX	NACOGDOCHES COUNTY	0	0%	17	2012	EAVS	17	2018	Handcount	0	17	EAVS
TX	NAVARRO COUNTY	-10	-33%	30	2012	EAVS	20	2018	Handcount	-2	22	EAVS
TX	NEWTON COUNTY	-6	-27%	22	2012	EAVS	16	2018	Handcount	-6	22	EAVS
TX	NOLAN COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	NUECES COUNTY	-37	-31%	121	2012	EAVS	84	2018	Handcount	-30	114	EAVS
TX	OCHILTREE COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	-1	5	EAVS
TX	OLDHAM COUNTY	-3	-43%	7	2012	EAVS	4	2018	Handcount	-3	7	EAVS
TX	ORANGE COUNTY	-1	-3%	34	2012	EAVS	33	2018	Handcount	-1	34	EAVS
TX	PALO PINTO COUNTY	-4	-24%	17	2012	EAVS	13	2018	Handcount	-4	17	EAVS
TX	PANOLA COUNTY	-1	-5%	20	2012	EAVS	19	2018	Handcount	-1	20	EAVS
TX	PARKER COUNTY	-3	-7%	44	2012	EAVS	41	2018	Handcount	-4	45	EAVS
TX	PARMER COUNTY	0	0%	9	2016	Handcount	9	2018	Handcount	9	0	EAVS
TX	PECOS COUNTY	0	0%	9	2012	EAVS	9	2018	Handcount	0	9	EAVS
TX	POLK COUNTY	0	0%	21	2012	EAVS	21	2018	Handcount	0	21	EAVS
TX	POTTER COUNTY	-8	-33%	24	2012	EAVS	16	2018	Handcount	-8	24	EAVS
TX	PRESIDIO COUNTY	0	0%	2	2012	EAVS	2	2018	Handcount	-1	3	EAVS
TX	RAINS COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	-1	9	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Study Election Count	Post-Study Election Year	Post-Study Election Source	Midterm To Midterm	2016 Midterm Count	2016 Midterm Source
TX	RANDALL COUNTY	-9	-41%	22	2012	EAVS	13	2018	Handcount	-1	14	EAVS
TX	REAGAN COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	REAL COUNTY	0	0%	5	2014	EAVS	5	2018	EAVS	0	5	EAVS
TX	RED RIVER COUNTY	0	0%	19	2014	EAVS	19	2018	EAVS	0	19	EAVS
TX	REEVES COUNTY	-2	-17%	12	2014	EAVS	10	2018	Handcount	-2	12	EAVS
TX	REFUGIO COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	ROBERTS COUNTY	0	0%	2	2012	EAVS	2	2018	EAVS	0	2	EAVS
TX	ROBERTSON COUNTY	-1	-7%	14	2012	EAVS	13	2018	Handcount	0	13	EAVS
TX	ROCKWALL COUNTY	0	0%	17	2012	EAVS	17	2018	Handcount	-1	18	EAVS
TX	RUNNELS COUNTY	1	14%	7	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	RUSK COUNTY	-10	-45%	22	2012	EAVS	12	2018	Handcount	-5	17	EAVS
TX	SABINE COUNTY	0	0%	8	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	SAN AUGUSTINE COUNTY	0	0%	11	2012	EAVS	11	2018	Handcount	0	11	EAVS
TX	SAN JACINTO COUNTY	-1	-9%	11	2012	EAVS	10	2018	Handcount	-1	11	EAVS
TX	SAN PATRICIO COUNTY	-9	-53%	17	2012	EAVS	8	2018	Handcount	-9	17	EAVS
TX	SAN SABA COUNTY	-1	-25%	4	2012	EAVS	3	2018	EAVS	1	2	EAVS
TX	SCHLEICHER COUNTY	-1	-25%	4	2012	EAVS	3	2018	Handcount	-1	4	EAVS
TX	SCURRY COUNTY	-1	-9%	11	2012	EAVS	10	2018	Handcount	-1	11	EAVS
TX	SHACKELFORD COUNTY	0	0%	4	2012	EAVS	4	2018	Handcount	N/A	N/A	N/A
TX	SHELBY COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
TX	SHERMAN COUNTY	0	0%	4	2014	EAVS	4	2018	Handcount	0	4	EAVS
TX	SMITH COUNTY	-14	-29%	48	2012	EAVS	34	2018	Handcount	-8	42	EAVS
TX	SOMERVELL COUNTY	-4	-80%	5	2012	EAVS	1	2018	Handcount	-3	4	EAVS
TX	STARR COUNTY	-1	-9%	11	2018	Handcount	10	2018	Handcount	N/A	N/A	N/A
TX	STEPHENS COUNTY	-1	-17%	6	2012	EAVS	5	2018	Handcount	0	5	EAVS
TX	STERLING COUNTY	0	0%	4	2012	EAVS	4	2018	EAVS	0	4	EAVS
TX	STONEWALL COUNTY	-3	-75%	4	2012	EAVS	1	2018	Handcount	-6	7	EAVS
TX	SUTTON COUNTY	0	0%	4	2012	EAVS	4	2016	Handcount	-1	5	EAVS
TX	SWISHER COUNTY	-1	-20%	5	2012	EAVS	4	2018	Handcount	0	4	EAVS
TX	TARRANT COUNTY	-27	-7%	365	2014	EAVS	338	2018	Handcount	-27	365	EAVS

State	County	# Changed	% Changed	Benchmark Election Count	Benchmark Election Year	Benchmark Election Source	Post-Shealy Election Count	Post-Shealy Election Year	Post-Shealy Election Source	Midterm to Midterm	2014 Midterm Count	2014 Midterm Source
TX	TAYLOR COUNTY	-18	-41%	34	2012	EAVS	20	2018	Handcount	-3	23	EAVS
TX	TERRELL COUNTY	-1	-50%	2	2012	EAVS	1	2018	Handcount	-4	5	EAVS
TX	TERRY COUNTY	-1	-14%	7	2012	EAVS	6	2018	Handcount	-1	7	EAVS
TX	THROCKMORTON COUNTY	-1	-20%	5	2012	EAVS	4	2018	Handcount	-2	6	EAVS
TX	TITUS COUNTY	0	0%	19	2012	EAVS	19	2018	EAVS	0	19	EAVS
TX	TOM GREEN COUNTY	-7	-27%	26	2012	EAVS	19	2018	Handcount	1	18	EAVS
TX	TRAVIS COUNTY	-67	-32%	210	2012	EAVS	143	2018	Handcount	-43	186	EAVS
TX	TRINITY COUNTY	0	0%	20	2012	EAVS	20	2018	Handcount	0	20	EAVS
TX	TYLER COUNTY	0	0%	17	2012	EAVS	17	2018	Handcount	0	17	EAVS
TX	UPSHUR COUNTY	0	0%	16	2012	EAVS	16	2018	Handcount	0	16	EAVS
TX	UPTON COUNTY	0	0%	3	2012	EAVS	3	2018	Handcount	0	3	EAVS
TX	UVALDE COUNTY	0	0%	14	2012	EAVS	14	2018	Handcount	0	14	EAVS
TX	VAL VERDE COUNTY	-3	-18%	17	2012	EAVS	14	2018	Handcount	14	0	EAVS
TX	VAN ZANDT COUNTY	0	0%	18	2012	EAVS	18	2018	Handcount	0	18	EAVS
TX	VICTORIA COUNTY	0	0%	35	2012	EAVS	35	2016	Handcount	0	35	EAVS
TX	WALKER COUNTY	0	0%	16	2012	EAVS	16	2018	Handcount	0	16	EAVS
TX	WALLER COUNTY	0	0%	19	2012	EAVS	19	2018	Handcount	0	19	EAVS
TX	WARD COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	-4	9	EAVS
TX	WASHINGTON COUNTY	0	0%	15	2012	EAVS	15	2018	Handcount	0	15	EAVS
TX	WEBB COUNTY	9	15%	60	2012	EAVS	69	2018	Handcount	2	67	EAVS
TX	WHARTON COUNTY	-4	-33%	12	2012	EAVS	8	2018	Handcount	0	8	EAVS
TX	WHEELER COUNTY	0	0%	10	2012	EAVS	10	2018	Handcount	0	10	EAVS
TX	WICHITA COUNTY	-8	-24%	34	2012	EAVS	26	2018	Handcount	-5	31	EAVS
TX	WILBARGER COUNTY	-2	-33%	6	2012	EAVS	4	2016	Handcount	-3	7	EAVS
TX	WILLACY COUNTY	-1	-9%	11	2012	EAVS	10	2018	Handcount	-1	11	EAVS
TX	WILLIAMSON COUNTY	-27	-31%	86	2012	EAVS	59	2018	Handcount	-3	62	EAVS
TX	WILSON COUNTY	0	0%	16	2012	EAVS	16	2018	Handcount	0	16	EAVS
TX	WINKLER COUNTY	0	0%	5	2012	EAVS	5	2018	Handcount	0	5	EAVS
TX	WISE COUNTY	1	5%	21	2012	EAVS	22	2016	Handcount	1	21	EAVS
TX	WOOD COUNTY	0	0%	11	2012	EAVS	11	2018	Handcount	-1	12	EAVS
TX	YOAKUM COUNTY	0	0%	2	2012	EAVS	2	2018	Handcount	0	2	EAVS
TX	YOUNG COUNTY	-4	-44%	9	2012	EAVS	5	2018	Handcount	-4	9	EAVS
TX	ZAPATA COUNTY	0	0%	7	2012	EAVS	7	2018	Handcount	0	7	EAVS
TX	ZAVALA COUNTY	-2	-33%	6	2012	EAVS	4	2018	EAVS	-3	7	EAVS

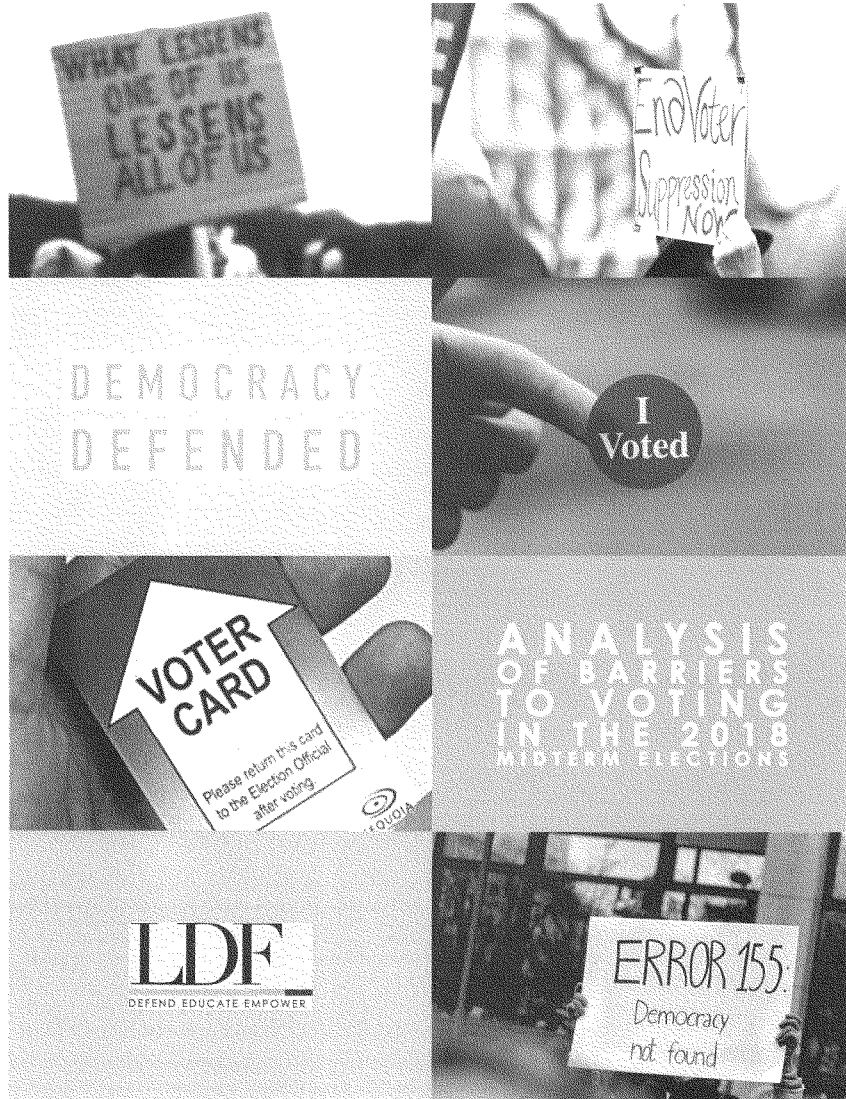


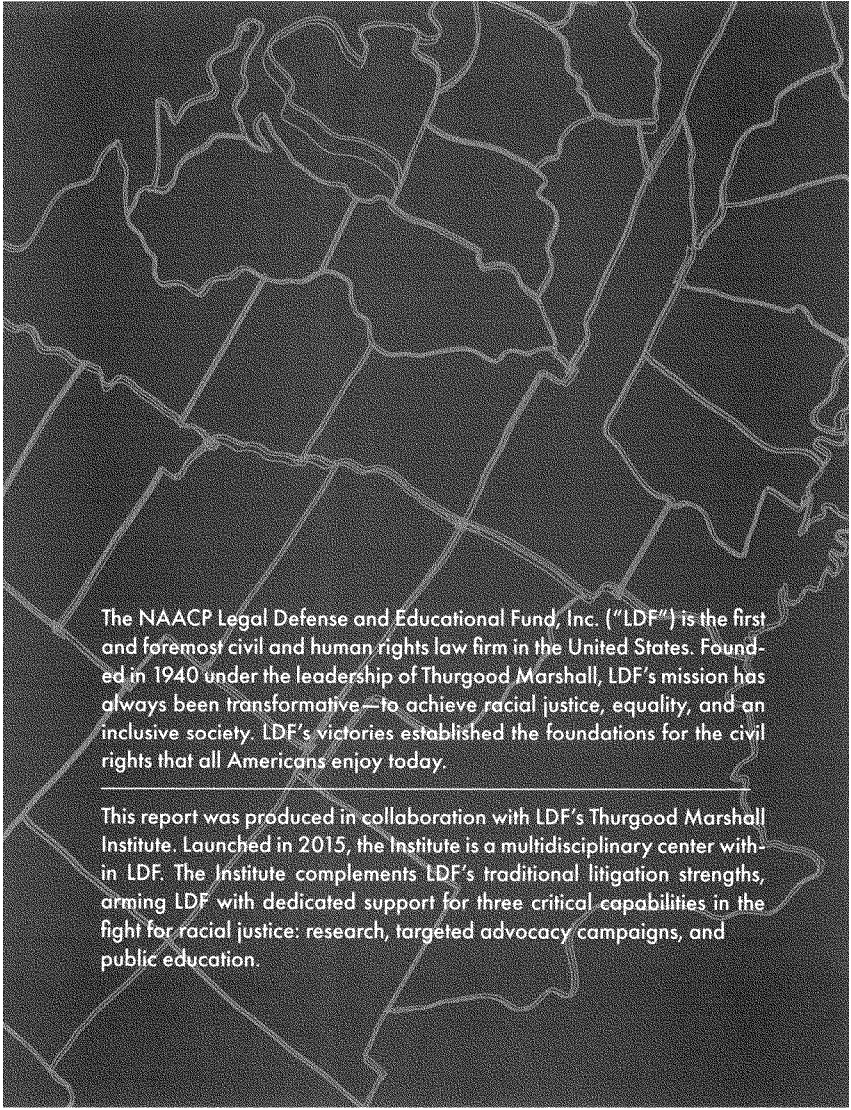


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The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is the first and foremost civil and human rights law firm in the United States. Founded in 1940 under the leadership of Thurgood Marshall, LDF's mission has always been transformative—to achieve racial justice, equality, and an inclusive society. LDF's victories established the foundations for the civil rights that all Americans enjoy today.

This report was produced in collaboration with LDF's Thurgood Marshall Institute. Launched in 2015, the Institute is a multidisciplinary center within LDF. The Institute complements LDF's traditional litigation strengths, arming LDF with dedicated support for three critical capabilities in the fight for racial justice: research, targeted advocacy campaigns, and public education.

# DEMOCRACY DEFENDED

ANALYSIS OF BARRIERS TO VOTING IN  
THE 2018 MIDTERM ELECTIONS

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# INTRODUCTION

*"You get to vote in what might be the most important election of my lifetime, maybe more important than 2008."*

—Former President Barack Obama, rally in Illinois November 2018<sup>1</sup>

*"Our democracy rests on the ability of all individuals, regardless of race, income, or status, to exercise their right to vote."*

—U.S. Supreme Court Justice Sonia Sotomayor, dissenting in a 2018 voting rights case<sup>2</sup>

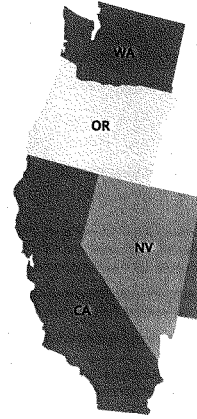
The 2018 elections proved to be record-breaking: 39 million early ballots cast (an increase from the 20 million early ballots in the 2014 midterm elections), \$5.2 billion spent (an increase from the previous \$4.4 billion record in 2016), and the highest voter turnout percentage (49.2) in a midterm election since 1914.<sup>3</sup> The election sent an unprecedented number of women to Congress—more than 100 in total, including the first Native American woman, the first Muslim American woman, and the first openly bisexual woman ever to serve in that body.

Journalists and pundits, politicians and voters, pollsters and organizers all characterized the highly anticipated midterm elections as one of the most critical in recent history. The first midterm under the Trump Administration, these elections were about more than just the individual gubernatorial, Senate, House, or other races. It was about more than the amendments and referenda on the ballot. Questions surrounding our national ethos were also at stake.

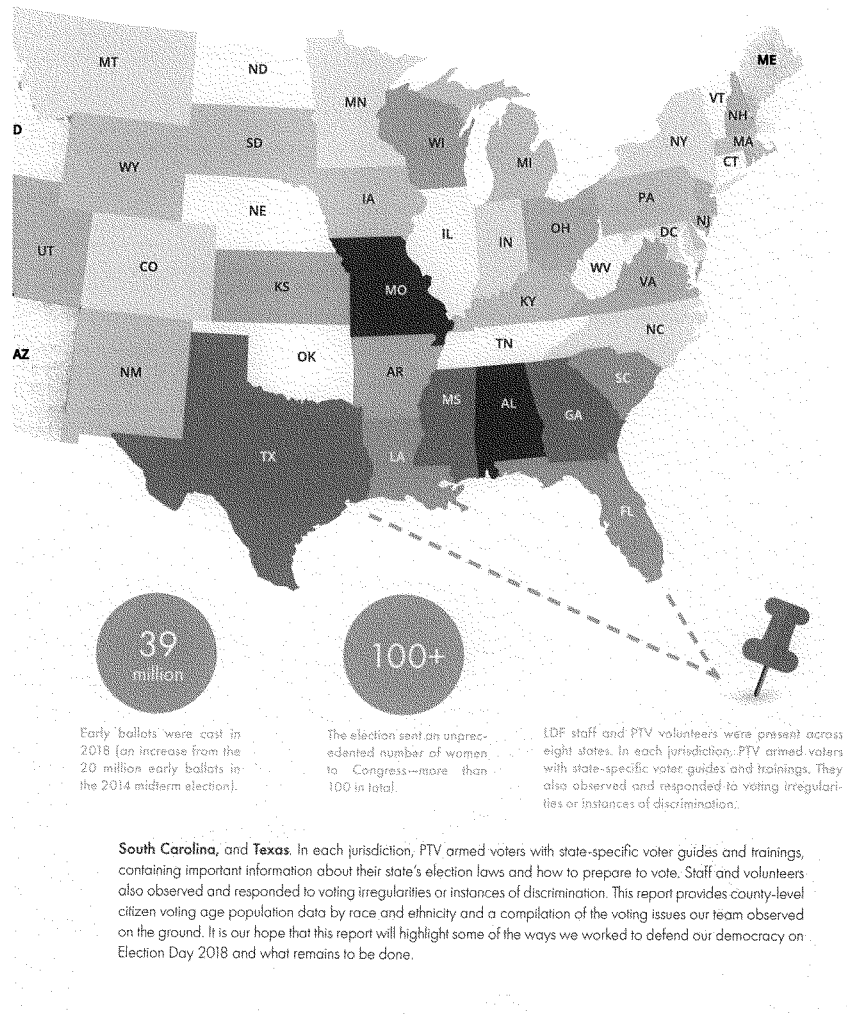
One of these questions was the extent to which our democracy is compromised by the increasing intensity of voter suppression tactics across the country. Following the Supreme Court's 2013 decision in

*Shelby County v. Holder*,<sup>4</sup> which gutted key enforcement provisions of the Voting Rights Act of 1965 (VRA), "states and local jurisdictions have been free to implement changes in voting without the preclearance process to determine whether those changes are racially discriminatory or hurtful to language minorities."<sup>5</sup> Despite high turnout at the 2018 midterm elections, far too many voters faced significant burdens in exercising the right to vote, including malfunctioning machines leading to mis-marked ballots, untrained poll workers, out-of-date poll lists, changed polling sites, and long lines, including instances where it took more than four hours to cast a ballot.<sup>6</sup>

For years, the NAACP Legal Defense and Educational Fund, Inc.'s (LDF) Prepared to Vote (PTV) campaign has marshalled staff and local volunteers on Election Day to protect the ability of voters—particularly voters of color—to cast ballots and participate in the political process. LDF staff and LDF-trained PTV volunteers are on the ground every year to monitor polling sites in both primary and general elections in targeted jurisdictions. For the 2018 midterm elections, LDF staff and PTV volunteers were present in eight states: **Alabama, Florida, Georgia, Louisiana, Mississippi** (for the Senate special election), **Missouri,**



The 2018 election had the highest voter turnout percentage (49.2) in a midterm election since 1914.





RACES:  
Gubernatorial  
House

# ALABAMA



## OVERVIEW OF PRE-ELECTION VOTING ISSUES

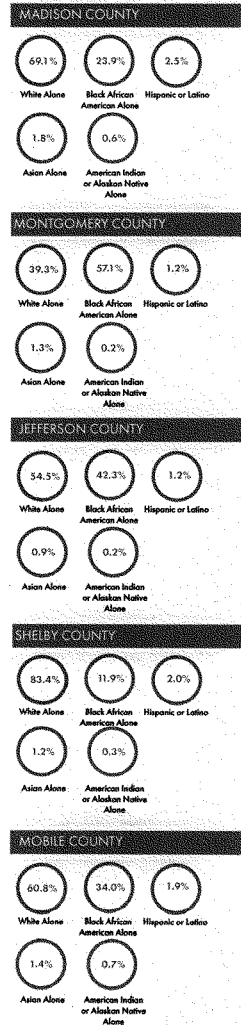
Alabama is a state known as the birthplace of voting rights. Its history includes the 1965 “Bloody Sunday” march over the Edmund Pettus Bridge where armed police beat civil rights demonstrators protesting for the right to vote. For a state with this history, the post-*Shelby County* level of voter suppression is dismaying.

In 2011, the Alabama legislature passed a strict photo ID law, requiring in-person and absentee voters to produce one of seven forms of “valid” photo ID.<sup>7</sup> A prospective in-person voter without the required photo ID cannot cast a regular ballot unless two election officials present at the polling place choose to “positively identify” that person.<sup>8</sup> Although it was passed in 2011, Alabama postponed implementing the law to avoid the preclearance requirements of Section 5 of the VRA, which at the time required the state to prove to a federal court or to the U.S. Department of Justice (DOJ) that voting laws were non-discriminatory before they could go into effect.<sup>9</sup> The day after the Supreme Court’s 2013 decision in *Shelby County*, which invalidated the VRA’s preclearance requirement, Alabama announced that it would enforce the law in the 2014 election cycle.<sup>10</sup> In 2015, LDF filed a federal lawsuit, *Greater Birmingham Ministries et al. v. Alabama et al.*,<sup>11</sup> challenging the photo ID law as racially discriminatory in violation of the U.S. Constitution and the VRA. That lawsuit is currently on appeal in the U.S. Court of Appeals for the Eleventh Circuit.

Alabama’s voter suppression tactics extend even further. In 2015, the state announced that it would close 31 driver’s license offices, situated predominately in rural areas of Alabama’s Black Belt, even though driver’s licenses are one of the few forms of acceptable photo ID to vote in elections. LDF and other advocates voiced opposition to these proposed closures because of their likely impact on Black voters.<sup>12</sup> As a result, rather than permanently close the offices, Alabama decided to keep them open one day a month for the 2018 midterms, which still severely restricted access to photo ID for many individuals.<sup>13</sup>

Additionally, although not currently in effect due to ongoing litigation, Alabama law requires residents to produce proof of citizenship when registering to vote.<sup>14</sup> Specifically, Alabama has requested that the federal Election Administration Commission modify the federal voter registration form to require proof of citizenship to vote in state and local elections. Such a requirement potentially sets up a dual system for voting for federal and state/local elections.<sup>15</sup>

CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>16</sup>



## SNAPSHOT OF 2018 VOTING ISSUES

### MADISON COUNTY

- At Alabama Agricultural and Mechanical University (AAMU), a historically Black university, PTV volunteers encountered a number of students at the polling site who discovered that they were not registered by the Madison County Board of Registrars, although they submitted registration forms during campus registration drives. The completed forms were delivered to the Madison County Registrar, but none of the students were notified of any deficiencies in their registrations. Other students registered online but also were not on the rolls. Some students received a voter card but still did not appear on the voter rolls on Election Day. As a result, over 175 students were forced to vote by provisional ballot. The line to cast a provisional ballot was longer than the line to cast a regular ballot, and the polling location ran out of provisional ballots multiple times, causing students to wait over 90 minutes to cast a provisional ballot. The Madison County probate judge, in the days prior to Election Day, noted that the county Board of Registrars appeared to be engaged in voter suppression because of their hostility to organizers' attempts to register students at AAMU and another historically Black college, Oakwood University. As a result of this election monitoring, LDF filed a lawsuit against Madison County's Board of Registrars and Alabama's Secretary of State John H. Merrill on behalf of four Black students,<sup>17</sup> and talks have begun between AAMU, the Madison County Board of Registrars, and local stakeholders about how to address these issues in future elections.

### MONTGOMERY COUNTY

- At the polling site located at Trenholm State Community College, a school with a majority-Black enrollment, instead of directing voters to the correct polling site, poll workers provided provisional ballots to voters who were registered in other precincts and those whose polling places had changed. These voters were told to cast provisional ballots that, ultimately, would not be counted. This precinct also ran out of provisional ballots during the day, and voters who needed these ballots had to wait for over an hour or return at a later time. PTV volunteers intervened and contacted the county probate judge to correct this issue. At Peter Crump Elementary School, a man who had permanently moved to the area was turned away at the precinct and told to vote at his old polling location. PTV volunteers explained the change of address procedure that would have allowed the man to cast a regular ballot at the precinct, but the chief poll inspector insisted the man cast a provisional ballot or return to his prior precinct. After encountering another woman with the same issue, volunteers escalated the issue to LDF staff to address.
- There were a variety of election administration issues at other polling sites across Montgomery County. For example, at Vaughn Park Church of Christ, the wait time reached 90 minutes almost as soon as the polling place opened. There were machine and ballot issues and a lack of forms elsewhere in Montgomery County. At Wares Ferry Road Elementary School, voting did not start on time because the wrong

machines were delivered, and workers did not allow voters to use paper ballots. At Fitzpatrick Elementary School, poll workers ran out of voter registration update forms for inactive voters and resorted to using the address portion of provisional ballots.

- There was also evidence of intimidation at Whitfield United Methodist Church. Volunteers encountered a police vehicle parked directly outside the location entrance and a sheriff's deputy monitoring the polling place registration table. The deputy later exited the polling place and shadowed a PTV volunteer as she waited to speak with voters leaving the location. At Peter Crump Elementary School, a sheriff's deputy arrived and stood next to the chief poll inspector as volunteers were speaking with her.

#### JEFFERSON COUNTY

- At the Hillview Fire Station precinct, poll workers misinformed voters by telling them that voting a straight-ticket ballot and then selecting an individual sheriff candidate, also known as a "double bubble," would be read by election officials as overvoting and cause the ballot to be rejected. PTV volunteers confirmed that previous guidance allowing the practice still applied in the 2018 midterms; they then reached out to poll workers and the county probate judge to correct this misinformation.
- Prior to the election, the state removed thousands of voters from the active voter list and declared them "inactive" during a required update of voting rolls. In response to local and national advocacy to restore voters to the active voter list, Alabama's Secretary of State Merrill stated that inactive voters would be permitted to cast a regular ballot if they first updated their registration information. However, on Election Day, poll workers gave these inactive voters provisional ballots rather than allowing them to update their registration at the polling site and cast a regular ballot. PTV volunteers on site were able to intervene in some instances by calling the county probate judge. County election officials told PTV volunteers they would issue corrective guidance to poll workers at Homewood Public Library, where one of the first reports originated. Since the issue appeared to be widespread and the same issue had occurred in the 2017 Senate Election, LDF sent a letter on Election Day to Secretary Merrill, explaining that poll workers were unaware that inactive voters must be permitted to cast a regular ballot after updating their information. In response, Secretary Merrill insisted that poll workers were adequately trained on how to deal with inactive voters. LDF's experience on the ground shows otherwise.

#### SHELBY COUNTY

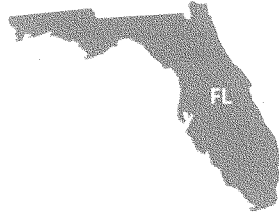
- At Pelham Civic Complex, poll workers did not give voters without ID provisional ballots, which is required by law.
- At Vincent Revival Center and Helena Community Center, volunteers reported seeing police officers and police vehicles near the polling site, although they did not observe any officers attempting to interact with voters nor did they observe the officers engaging in any official activity.
- Machine malfunctions were reported at Montevallo University's Stewart Student Retreat Center, leading poll workers to collect and store ballots to tally later.

#### MOBILE COUNTY

- As in prior election years, there were reports of Mobile County poll workers rejecting voters' photo ID if the address on the ID did not match the one on the voter rolls, even though Alabama law does not require the address on a voter's ID to match their voter registration address. In such instances, poll workers were required to allow voters with eligible ID, regardless of the address on the ID, to cast a regular ballot.







# FLORIDA



## OVERVIEW OF PRE-ELECTION VOTING ISSUES



### RACES:

Gubernatorial

Senate

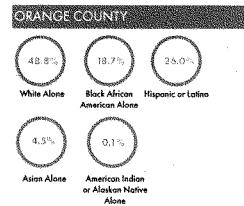
House

A 2018 report found that Florida has purged more than seven percent of voters from the state rolls since 2016.<sup>18</sup> The following counties had the highest rates of purges, eliminating 10 percent of their voters from the rolls: Hardee, Hendry, Palm Beach, and Okaloosa. Indeed, the state has a history of attempted voter roll purges. In 2012, Florida election officials were blocked from using an error-prone list to remove purported non-citizens from the election rolls.<sup>19</sup> In 2013, following the *Shelby County* decision, the Governor attempted to remove voters from the rolls but was unsuccessful due to efforts of county election supervisors.<sup>20</sup> In 2014, the Governor again sought to eliminate alleged non-citizens from the state voter database.<sup>21</sup>

In 2017, thousands of Puerto Rican voters were displaced by Hurricane Maria and resettled in Florida. On the night before Election Day, a federal judge issued an emergency order, reinforcing a September order obtained by *LatinoJustice* to compel over 30 counties in Florida to provide Spanish-language ballots to voters in accordance with the requirements of the VRA.<sup>22</sup> Nevertheless, *LatinoJustice* reported noncompliance or partial compliance with this order in a number of counties.<sup>23</sup>

In 2018, a federal court ordered Florida to provide early voting sites on several college campuses, following a lawsuit brought by pro-democracy groups.<sup>24</sup> Several counties, however, like Tallahassee's Leon County (home of Florida State University and Florida A&M University, a historically Black university) and Miami-Dade County (home of Florida International University, which serves large populations of students of color, and Miami-Dade College, which has more than 160,000 students), decided not to provide early voting sites on college campuses in 2018.<sup>25</sup> In July 2018, advocates complained about issues with Florida's voter registration website, including intermittent access, after organizers tried registering 17 voters in low-income, predominantly Black Orlando neighborhoods but only could successfully register two.<sup>26</sup>

CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:



## SNAPSHOT OF 2018 VOTING ISSUES

### ORANGE COUNTY

- Washington Park Branch Library previously had been a regular voting location. Unfortunately, it was not a voting location on Election Day, but many voters in the surrounding area were under the impression that it was and had not received any notice that it was no longer a polling site. PTV volunteers were unable to clarify the issue because of the steady stream of voters asking poll workers throughout the day for help identifying their correct polling place. Some of our volunteers had to drive voters to their polling place before the polls closed. In total, PTV volunteers interacted with over 100 people at this site.

## POST-ELECTION AMENDMENT 4 UPDATE

On Election Day in November 2018, Florida voters approved ballot initiative Amendment 4, which restored the voting rights of people with a felony conviction, excluding murder or felony sex offenses.

Within months of that historic voter enfranchisement, the Florida legislature passed SB 7066. LDF, in partnership with the Florida NAACP, joined leading groups like the ACLU, ACLU of Florida, and the Brennan Center for Justice to submit multiple letters to both legislative houses in opposition to certain provisions of the bill.<sup>28</sup>

The adopted bill, SB 7066, restricts the ability of returning citizens to register to vote by requiring them to pay all legal financial obligations, including restitution converted to a civil judgment, fines, fees, and costs. The restrictions will have a disproportionate adverse impact on Florida's Black and Latinx citizens. Florida's Governor Ron DeSantis signed the bill into law on June 28, 2019. LDF, the ACLU, ACLU of Florida, and the Brennan Center for Justice immediately filed a federal lawsuit challenging the new law because it "creates wealth-based hurdles to voting and undermines Floridians' overwhelming support for Amendment 4."<sup>29</sup>



# GEORGIA



## OVERVIEW OF PRE-ELECTION VOTING ISSUES

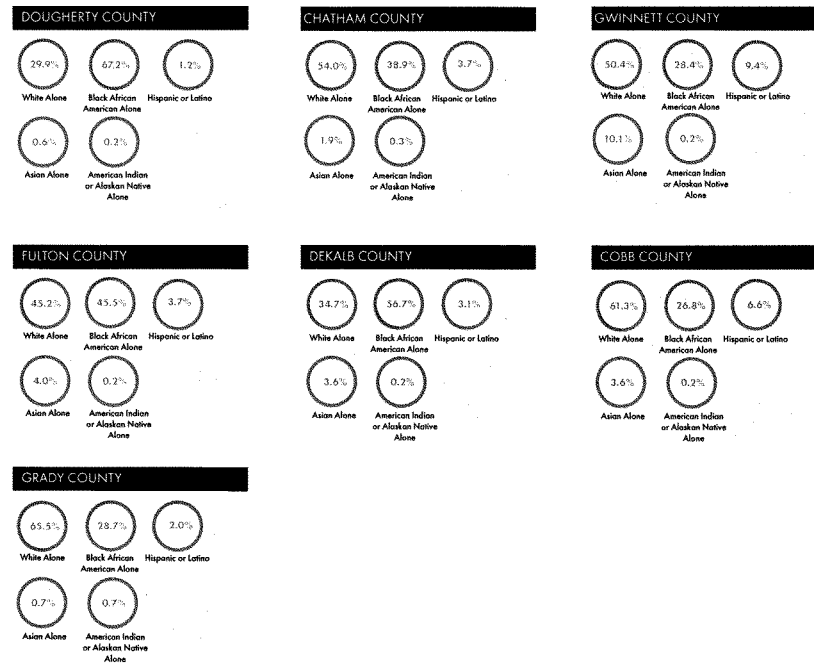
With one of the most hotly contested gubernatorial races in the country, the midterm election in Georgia epitomized the severity of voter disenfranchisement and suppression for the country. Between 2012 and 2016, then-Secretary of State Brian Kemp purged 1.5 million registered voters from the rolls.<sup>30</sup> In 2018, 670,000 voters were purged.<sup>31</sup> The state has further burdened voters, particularly voters of color, by closing 214 voting precincts since 2012.<sup>32</sup> This came to national attention when Randolph County attempted to close seven of nine polling places, which would have impacted the county's under-resourced Black community.<sup>33</sup>

In addition, despite rising calls for his recusal, including from LDF, 2018 gubernatorial candidate Brian Kemp continued to oversee the very election in which he was a candidate.<sup>34</sup> During the 2018 election, former Secretary Kemp was in charge of enforcing Georgia's strict voter laws passed by state legislators, particularly the "exact match" policy that holds voter registration applications if the information provided is not an exact match to the information in Social Security or state driver records. Voter registrations were not processed if they included inconsistencies such as misspelled names, not fully writing out a middle name, a missing hyphen, or signature mismatch on absentee ballots. Out of the 53,000 registrations that were held by former Secretary Kemp's office shortly before the election, 70 percent of the applicants were Black.<sup>35</sup> In fact, CityLab's Brentin Mock reported that "many of these blocked voter registrations [came] from urban areas with high black populations. In areas with smaller black populations, the percentage of pending registrations from black voters often [exceeded] the percentage of black residents living in the area."<sup>36</sup> This abdication of responsibility by the former Secretary of State and now Governor forced advocates to call into question his commitment to election integrity.

Moreover, in October 2018, local officials removed 40 Black senior citizens from a bus heading to the polls for early voting because the Jefferson County Administrator argued that the bus had not been authorized to take the seniors to the polls and the action constituted "political activity" at a county-run senior center.<sup>37</sup>



**RACES:**  
Gubernatorial  
House

CITIZEN VOTING AGE POPULATION PERCENTAGES BY RACE AND ETHNICITY:<sup>38</sup>

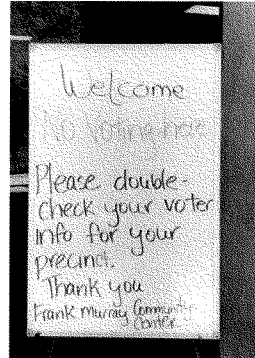
## SNAPSHOT OF 2018 VOTING ISSUES

## DOUGHERTY COUNTY

- Two vote-switching incidents were reported in Dougherty County. On each occasion, voters attempted to vote Democratic straight down the ticket, and the voting machine switched the vote to Republican. The voters noticed the error and reported these incidents. Poll workers were able to fix the error and register the votes correctly.
- At approximately 6:00 pm on Election Day, about 1,000 votes had been cast at the Greenbriar Church polling site. The location manager explained that one of the express voting machines had been down for a few hours, and during that time, the line grew long. By the time voters advanced to the front of the line, some were told that they were in the wrong location. Many voters were unable to continue to wait and opted to cast provisional ballots instead of going to their correct polling place.

## CHATHAM COUNTY

- The Georgia Secretary of State's website, "My Voter Page," had the incorrect address listed for the Frank Murray Community Center polling location. The address the website listed was: 169 Whitmarsh Island Road, Savannah, GA 31410, when the correct address for this location was: 125 Wilmington Island Road, Savannah, GA 31410. When potential voters arrived at the Frank Murray Community Center, they found this sign, which caused several people to leave without voting.

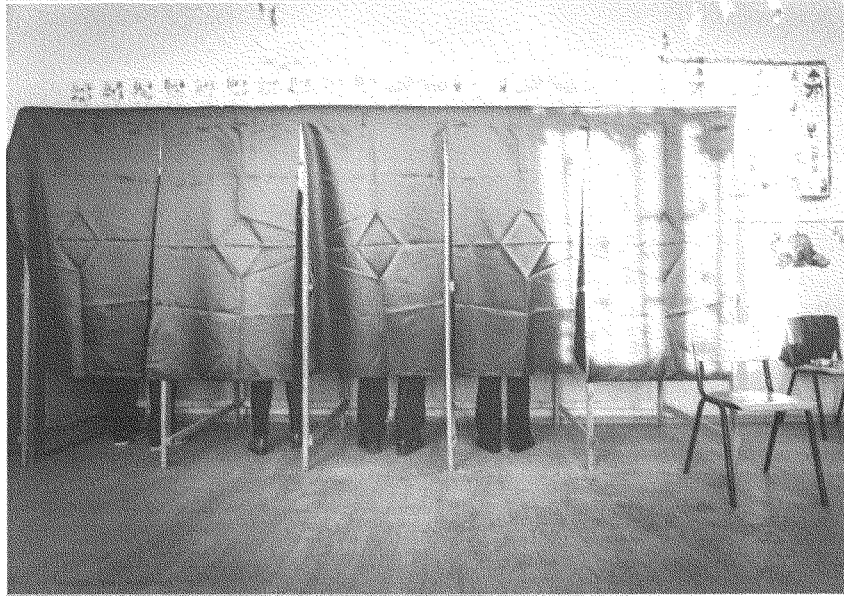


## GWINNETT COUNTY

- Five precincts in Gwinnett County were reported to have significant delays, with one experiencing delays of up to five hours, caused by technical problems including malfunctioning electronic poll books, dead batteries, and missing power cords. These issues were made worse by a lack of access to paper ballots and other means of voting as required by law.
- Given these delays, Gwinnett County announced that the polls would remain open for an extra 25 minutes. LDF immediately sent a letter to the Georgia Secretary of State stating that the 25-minute extension was insufficient and requesting an extension of at least two hours at the precincts affected by voting machine problems. LDF also submitted a request under Georgia's open records law seeking documents related to the causes of the delays and technical problems in Gwinnett County. Ultimately, a Gwinnett County judge ordered three precincts—Annistown Elementary School, Anderson-Livsey Elementary, and Harbins Elementary—to remain open for an additional two hours and 25 minutes, 30 minutes, and 14 minutes, respectively.<sup>39</sup>

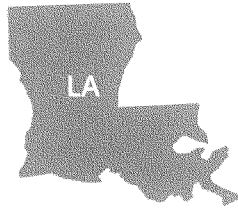
## FULTON, DEKALB, and COBB COUNTIES

- Fulton, DeKalb, and Cobb Counties had significant delays and long lines because of a shortage of voting machines, while hundreds of unused voting machines were sequestered in warehouses. The alleged rationale for this was that doing so was in response to a federal lawsuit claiming that the voting machines were susceptible to hacking. However, it appears that the court did not actually order that all these machines be sequestered, and no party ever made such a request.<sup>40</sup> Dan Abrams's blog, *Law & Crime*, analyzed the court filings and orders in the case and concluded that no county was ordered to set aside more machines than they could spare.<sup>41</sup> First Presbyterian Church in Fulton County only had four voting machines available on Election Day in 2018, while it had up to 15 available for the 2016 election. Altogether, 550 voting machines went unused in Cobb County, 700 in Fulton, and 585 in DeKalb. LDF submitted requests to each of these counties under Georgia's open records law seeking records related to the causes of the delays and the shortage of voting machines. In March 2019, Congressman Elijah Cummings, Chair of the House Committee on Oversight and Reform, sent letters to Governor Brian Kemp and Secretary of State Brad Raffensperger requesting details on the voting machines in the three counties.<sup>42</sup>



## GRADY COUNTY

- LDF sent a letter<sup>43</sup> to Grady County officials documenting inadequate notice to voters in a heavily Black precinct of a change in the location of their polling place. In the past, the Agricenter was used as a polling place but was closed for the 2018 midterm election because it was being used by the Federal Emergency Management Agency for emergency response purposes. The county moved voting for this precinct to the First Baptist Church. Residents reported that they did not receive new precinct cards and did not know about the change in polling place. Moreover, the single sign placed at the Agricenter was inconspicuous, and because there were no county officials stationed at the Agricenter directing would-be voters to the correct polling place, community members volunteered to do it. LDF's letter urged that these problems be rectified before the state's runoff elections on December 4, 2018. The state returned the precinct to its original location for the December election.



## LOUISIANA



### OVERVIEW OF PRE-ELECTION VOTING ISSUES



#### RACES:

House

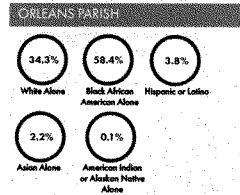
In November 2016, a civil rights organization released a report that studied polling place closures in Louisiana since the *Shelby County* decision and found that "61 percent of Louisiana parishes have closed a total of 103 polling places since 2012,"<sup>44</sup> including in Jefferson and Terrebonne parishes. Although the state gave the justification that cost considerations were a determining factor in the consolidation of precincts (approximately \$1,300 per precinct), "the reduction in the number of polling locations handicaps voter participation."<sup>45</sup> Moreover, according to a 2018 paper, Louisiana eliminated more than 300 precincts by consolidating them with others.<sup>46</sup> These consolidations "had a racially discriminatory effect, in that as the proportion of African-Americans in a precinct increased, so did their likelihood of being consolidated," which made precincts larger and made it harder for voters to get to the polls.<sup>47</sup> In fact, a report from 2018 found that "although the law dictates that only the number of registered voters should be related to the number of polling locations . . . statistical analysis of the data from Louisiana shows that the racial make-up of an area is a predictor of the number of polling locations in that area."<sup>48</sup>

In May 2018, Louisiana passed a law to restore voting rights to persons on probation or parole with the caveat that they cannot have been incarcerated within the five years prior to Election Day.<sup>49</sup> The law had minimal impact, restoring voting rights only to approximately "2,200, or 3 percent of the 70,000 people currently on probation or parole in the state."<sup>50</sup> Further, the legislation did not go into effect until 2019, which meant that the small percentage of those eligible for re-enfranchisement were unable to participate in the 2018 midterm election.

In terms of voter registration, Louisiana provides an array of acceptable voter ID options. However, local organizations, such as the League of Women Voters, reported that they "received a number of complaints that voters were being turned away when they did not present a photo identification."<sup>51</sup> This discretionary action by election officials and poll workers was troubling because a Louisiana law, which was pre-cleared by DOJ in 1997, states that a voter lacking proper identification can "complete and sign an affidavit, which is supplied by the Secretary of State,"<sup>52</sup> as an acceptable alternative to a photo ID.



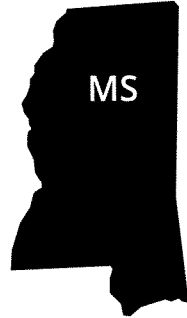
CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>53</sup>



## SNAPSHOT OF 2018 VOTING ISSUES

### ORLEANS PARISH

- Several students at the polling site at Dillard University, a historically Black university, reported that although they had completed voter registration forms, they found they were not registered to vote when they checked the Secretary of State's website.
- The precinct at 830 Jackson Avenue did not have ramps or a handicapped-accessible entrance despite the precinct being close to a senior housing community.
- The precinct at 2733 Esplanade Avenue was not easily accessible for those with mobility issues. While there was a parking lot in the back near the accessible entrance, it was locked on Election Day. Although the lot was eventually unlocked, it did not stay unlocked for the remainder of the voting hours. Two voters with mobility issues stated it was quite difficult to get inside. The lighting in the area was also inadequate. In fact, it was so dark that a poll worker had to use her cell phone as a flashlight to direct voters; even then, visibility remained poor.
- The precinct at 4861 Rosalia Drive had pro-life signs and candidate signs within 600 feet of the polling place, and the Clerk of Court had to have the signs removed. Additionally, the A-frame "Vote Here" sign was not visible from the road. Poll workers said that, from what they understood, the authorities had ordered more "Vote Here" A-frame signs, but the manufacturer had not produced them in time for the election, causing a shortage of signs. Poll workers placed the sign on the curb until voters told them that they were not sure which door of the building was unlocked, then moved the sign next to the unlocked door to help guide voters.



RACES:  
Senate  
House

# MISSISSIPPI



## OVERVIEW OF PRE-ELECTION VOTING ISSUES

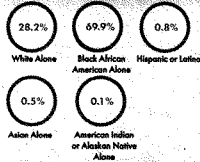
The Mississippi Senate 2018 special election between Cindy Hyde-Smith and Mike Espy became one of the most closely watched races in the nation given its context. Senator Hyde-Smith was appointed to the Senate due to former Senator Thad Cochran retiring earlier in 2018 for health reasons. Her challenger was Mike Espy, a Black former congressman and Agriculture Secretary in the Clinton Administration. The race garnered national headlines after images emerged of Senator Hyde-Smith posing in Confederate paraphernalia and invoking the notion of lynching Mr. Espy.<sup>54</sup> This type of conduct, unfortunately, was not unusual for Mississippi, which has a deep history of racial discrimination against Black voters.<sup>55</sup>

In 2012, the Mississippi legislature passed a voter ID law, but did not implement it prior to the *Shelby County* decision, given that the state was subject to the VRA's preclearance requirements.<sup>56</sup> Following the Supreme Court's 2013 decision, Mississippi's Lieutenant Governor said that preclearance "unfairly applied to certain states [and] should be eliminated in recognition of the progress Mississippi [had] made over the past 48 years."<sup>57</sup> At that time, Mississippi's Secretary of State said he would move forward immediately to implement the state's voter ID law for the June 2014 primaries. Reportedly, hundreds of voters could not vote in the 2014 midterm election because of the photo ID law.<sup>58</sup>

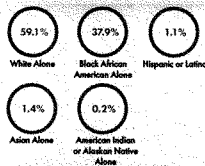
In 2016, researchers at Northern Illinois University conducted a study to rank every state based upon the difficulty of voting.<sup>59</sup> The study created a "Cost of Voting Index" to help interpret the results. The index compiles the "largest assemblage of state election laws" to rank each state based upon the "time and effort it took to vote in each presidential election year from 1996 through 2016."<sup>60</sup> The researchers also used 33 different variables related to registration and voting laws, "with differences in registration deadlines carrying the most weight." The results showed that Mississippi, which is the state with the highest percentage of black residents,<sup>61</sup> is the hardest state to vote in of all 50 states.<sup>62</sup>

CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>53</sup>

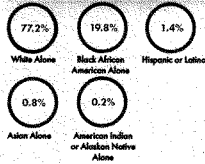
HINDS PARISH



MADISON PARISH



RANKIN PARISH



## SNAPSHOT OF 2018 VOTING ISSUES

(November 27 Special Election Only)

### HINDS COUNTY

- At the Byram City Hall polling place, volunteers encountered voter confusion about whether they were at the correct location. Byram City Hall is used as a polling place in local elections. However, because the precinct and district lines used for the Senate Election were different from those the districts used for other local elections, some voters who were registered elsewhere mistakenly came to vote at Byram City Hall. Poll workers redirected voters to their correct polling place with printed directions. Poll workers also reported 12 affidavit provisional ballots cast.
- Hinds Community College had dismal student registration and turnout. It had essentially no visible or prominent signs directing students and others to the polling place on the central campus and most voters observed at the location appeared to be community residents rather than students. When trying to locate the polling place, PTV volunteers encountered multiple students who did not know where to vote on campus.

### MADISON COUNTY

- At Pleasant Green Memorial Baptist Church, a poll worker stated that eight people had been turned away because their names did not appear on the voter rolls. It was not clear whether the polling place only had access to the voter list for that specific precinct, as some of the eight voters were able to determine their correct polling place. Other voters, however, could not determine their correct polling place, even though a poll manager recognized some of them as having voted at the precinct in 2016. The same poll worker also reported a total of 10 affidavit provisional ballots cast.
- Registration issues at Ridgeland Recreation Center revealed problems with poll worker training and possibly the registration lookup system. Early in the day, volunteers encountered a Black woman on her phone in the parking lot. She stated that she had called the circuit clerk to confirm her registration after the workers could not locate her in the electronic pollbook, even though she had voted there in 2016. The circuit clerk informed the voter that she was registered and that the poll workers should check the supplemental paper list if her name did not appear in the electronic list. The poll workers located the woman's name on the paper list, and she was able to cast a regular ballot. Notably, the poll workers were not aware of this process, and it was the voter's own initiative that ensured that she was able to vote.

- Near the end of the day at Ridgeland Recreation Center, 75 affidavit provisional ballots had been cast. Approximately five were provisional because of a change of address. Most of the affidavit provisional ballots were cast by people whose names did not appear in the pollbook after checking the paper list. Volunteers became concerned after speaking with a Black woman who cast an affidavit provisional ballot near the end of the day when they learned that poll workers were not providing written information about how to follow-up on affidavit provisional ballots. Other polling locations had printed handouts detailing how to check the status of the affidavit provisional ballots.
- Following the election, LDF, One Voice, and the Mississippi Center for Justice filed a public records request with the Madison County Election Commission inquiring about the voter roll purges that took place prior to the election.

#### RANKIN COUNTY

- At the polling site located at Monterey Fire Dept. #2, volunteers encountered a poll worker who was standing close to the ballot scanning machines and reportedly made a voter uncomfortable. A Black male voter expressed discomfort because he was under the impression that the ballots had to be fed in facing up, and the poll worker was hovering over voters as they were feeding their ballots into the machine. The voter was concerned that this made his ballot selection visible to the poll worker, compromising the privacy of his vote. PTV volunteers discussed the issue with the poll commissioner, who stated that the worker was instructing voters that they could scan their ballot face up or face down. However, no other polling places had a worker offering unsolicited help to voters scanning their ballots. In fact, other sites, including McLaurin High School, had a privacy screen attached to the scanner.





# MISSOURI



## OVERVIEW OF PRE-ELECTION VOTING ISSUES



### RACES:

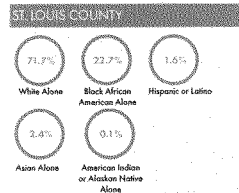
Gubernatorial  
Senate  
House

In the wake of the *Shelby County* decision, Missouri voters passed Amendment 6 to the state constitution to require a state-issued photo ID in order to vote.<sup>64</sup> The measure impacted over 200,000 Missouri voters, mostly young people, poor people, and people of color, who lacked DMV-issued photo identification.<sup>65</sup> An estimated 130,000 additional individuals had photo ID that was expired and could not be used under the new law.<sup>66</sup> The Amendment also required voters without a photo ID, but who had another form of ID, to sign a statement confirming their identity under penalty of perjury.<sup>67</sup> Priorities USA, a national progressive organization, filed a lawsuit challenging the voter ID law. In October 2018, about four weeks before Election Day, a Missouri judge barred the state from requiring voters lacking a photo ID from signing a statement.<sup>68</sup> Given the change in law so close to Election Day, the Commission scrambled to retrain precinct workers.

In addition to the voter ID law, Missouri also aggressively enforced inactive voter designations. If a voter did not vote in the last election and failed to respond to a mailing asking them to confirm their voter registration, they were listed as “inactive.”<sup>69</sup> Many voters who moved or did not realize they needed to return the mailing were unable to confirm their status. If a voter arrived at their precinct to vote and was labeled as “inactive,” a precinct worker had to call the Commission and verify that the person was registered to vote. This additional verification step caused numerous delays.<sup>70</sup> Lastly, the 2018 ballot was one of the longest and most complicated in recent history.

Voter turnout was at an all-time high for a midterm election, but unfortunately, Missouri did not offer in-person early voting.<sup>71</sup> Missouri is one of only a dozen states that does not offer no-excuse absentee voting or any other form of early balloting. Voters can only vote absentee with one of six state-recognized excuses: (1) the voter is absent from area where registered, (2) religious belief or practice, (3) employment as an election authority at a location other than polling place, (4) incarceration, (5) participation in the state’s address confidentiality program, or (6) physical disability, illness, or work as the primary caregiver for someone disabled or ill.<sup>72</sup> As of January 2019, state lawmakers filed two proposals in the Missouri General Assembly that would expand absentee voting.<sup>73</sup>

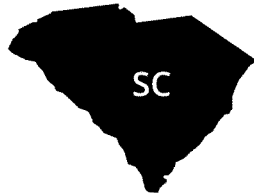
CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>74</sup>



## SNAPSHOT OF 2018 VOTING ISSUES

### ST. LOUIS COUNTY

- At the Clay Community Center in Ward 3, a Black voter furnished an expired state driver's license and the poll worker turned him away without offering a provisional ballot. He returned to the poll with appropriate identification and was able to cast a regular ballot.
- A PTV volunteer at the Clay Community Center observed a woman wearing a yellow Election Protection<sup>75</sup> vest informing people that if they did not have the "right" ID they could not vote, effectively turning people away from the precinct. Our volunteer also heard the woman make comments about the large number of Black people at the precinct relative to her usual voting precinct. PTV volunteers notified Election Protection and she was removed from poll monitoring.
- In Ward 2 at the Nance School, PTV volunteers observed a touchscreen machine that was repeatedly switching multiple votes and/or recording incorrect votes; when voters transitioned to paper ballots, the paper ballot feeder jammed. After three attempted calls to contact the directors of the Election Commission, LDF was able to file a complaint and requested a return call, but never received one. Election Protection and an alderwoman also called the Election Commission multiple times, without success. In the meantime, Election Protection volunteers recommended that people fill out paper ballots. The poll workers eventually figured out how to properly feed the ballots into the machines.
- Depending on the population concentration of non-English speaking voters, Missouri provides ballots in non-English. No precinct population in St. Louis triggers the availability of non-English speaking ballots. However, Ward 9 has a large population of Spanish-speaking voters. A Spanish-speaking PTV volunteer was able to assist a voter with her ballot.
- At the Dunn-Marquette Recreation Center in Ward 9, a voter had trouble presenting the appropriate ID. After being advised that he could use his Medicaid card because it was government issued and had his name and current address on it, he was able to cast a ballot.



# SOUTH CAROLINA



RACES:  
Gubernatorial  
House

## OVERVIEW OF PRE-ELECTION VOTING ISSUES

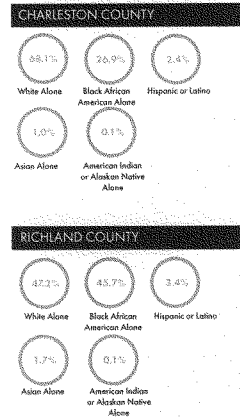
In 2012, South Carolina adopted a restrictive photo ID law, which DOJ and LDF, among other organizations, challenged in *South Carolina v. United States*.<sup>76</sup> In response to that litigation, South Carolina adopted a "reasonable impediment" exception that acknowledges the many reasons a qualified South Carolina voter may be unable to procure acceptable photo identification and establishes a process to enable voters without identification to vote in-person.<sup>77</sup>

Following the *Shelby County* decision in 2013, South Carolina's Attorney General stated: "[t]his is a victory for all voters, as all states can now act equally, without some having to ask for permission or being required to jump through the extraordinary hoops demanded by federal bureaucracy."<sup>78</sup> Nevertheless, the Attorney General reaffirmed the state's 2012 commitment to broadly interpret the reasonable impediment exception to the photo ID law.<sup>79</sup>

Despite this assurance, a 2014 study revealed the burdens South Carolinians face to obtain compliant state ID.<sup>80</sup> Further, there are indicators that the law disproportionately impacts Black South Carolinians. The State estimated that, as of 2016, the approximately 178,000 South Carolinians who lack an acceptable photo ID under the law are disproportionately people of color.<sup>81</sup> Additionally, an analysis of the 2016 elections found that "African-American voters made up 27.6 percent of registered South Carolina voters in 2016, but 38.5 percent of the voters impacted by the ID requirement were African-American," and that "35 percent of voters citing an impediment to getting an ID were Black, and 42 percent of the voters who forgot their ID were Black."<sup>82</sup> Although South Carolina adopted the "reasonable impediment" exception, poll workers typically do not mention the reasonable impediment requirement when someone indicates they do not have a photo ID. Even with the appropriate photo ID, at least one eligible voter was told that he was "dead" when presenting himself at the polls with a valid photo ID.<sup>83</sup>



CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>54</sup>



## SNAPSHOT OF 2018 VOTING ISSUES

### CHARLESTON COUNTY

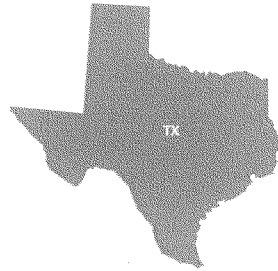
- Some voters at St. John's High School waited three to four hours to vote. Volunteers contacted the County Board of Elections to request more voter registration list laptops and voting machines, but the bottlenecks continued throughout the day. At Ladson Elementary School, a poll worker shortage caused some voters to have to wait up to two-and-a-half-hours to cast a ballot. A.C. Corcoran Elementary School also had lines with up to a two-and-a-half-hour wait time. At all of these locations, voters stood in line well past 7:00 pm, when the polls closed. Although the long lines may be attributed in part to increased voter enthusiasm and turnout, PTV volunteers saw varying degrees of efficiency and competency at each polling location. Voters shared positive experiences at locations where technical issues were promptly addressed, staff were generally competent, and workers had enough functioning equipment like voting machines and registration laptops. However, locations that lacked any one of these elements quickly devolved into sites with excessive wait times.
- At St. Andrews Middle School, electrical problems delayed the set-up of the voting machines, and three out of the four voter registration laptops were not working properly when poll workers arrived. These technical issues were resolved when a technician from the county arrived, but voters remained in long, unmoving lines while waiting for the precinct to open. Voting machine and laptop malfunctions were also observed at Haunt Gap Middle School, W.L. Stephens Aquatic Center, and James Island Charter High School. A shortage of laptops to check in voters created bottlenecks in many precincts, leading to issues like the four-hour wait time at St. Johns High School.
- At St. James Church, poorly-trained poll workers with resource limitations and troublesome equipment led to very slow processing of voter IDs and a two-and-a-half-hour wait time. Despite having 13 voting machines at St. James Church, only seven or so were in use until about 6:00 pm because workers were slowly checking in voters on the three laptops.
- At James Island Elementary School, curbside voting, which is required by law in the state, was not set up until half an hour after the polls opened. There, two of the three poll workers trained to operate the electronic voter registration laptops left to work on curbside voting, which left only one poll worker to check voter IDs and registrations. At other locations, like St. Andrews School of Math and Science, poll workers instructed voters who wanted to vote curbside to exit their vehicles and bring their IDs inside the polling site to be checked, despite their disability or age. When those disabled voters got inside the precinct, they were told to stand and wait in another line for a poll worker to check them in before they could return to their vehicles.
- At St. James Church, one woman who was nine months pregnant and could not stand for two hours in the heat had trouble obtaining curbside help. These issues were reported to the County Election Board and volunteers requested more workers.

- James Island Charter High School had proactive poll workers who sought out older and disabled voters to provide them seats, shelter them from the heat, and offer curbside voting. Yet even apparently well-run polling locations still had issues with inadequate signage for curbside voting. Ashley River Creative Arts Elementary School was an example of this. Volunteers saw the most complete set of signage educating voters, including a flow chart of options showing voters when they would be able to vote a regular ballot versus a failsafe or provisional ballot, but the site still lacked adequate information about curbside voting.
- Volunteers encountered poll workers refusing to provide provisional ballots at St. John Catholic Church, St. Andrews School of Math and Science, and W.L. Stephens Aquatic Center.
- At St. Andrews School of Math and Science, where lines stretched to over two hours, at least 10 voters waiting outside appeared to be listed as inactive despite reporting that they voted in the 2016 general election.
- At St. John Catholic Church, one older voter, who insisted that she voted at the precinct in 2008 and 2012, was told that there was no record of her voter registration anywhere in the state. Poll workers refused to give her a provisional or challenge ballot and instructed her to go to the county election headquarters.
- An hour before the polls closed, volunteers at St. Andrews Middle School reported that one woman with a small child was sent to two other locations with long lines before finally being sent to the correct polling site. No poll worker informed her she could vote at the county election headquarters.
- Another woman at St. Andrews Middle School asked PTV volunteers to confirm that she was in the correct location. She had attempted to vote at the same location as the other voters living in her townhouse but was told that her address was in another precinct. She was able to vote, but the voter and poll manager confirmed that she was not voting on races that affected where she lived.

#### RICHLAND COUNTY

- Throughout Richland County, voters reported voting machines mismarking their votes or switching their selection to another name. The county offered the rationale that aging touch-screen machines caused calibration problems, which led to the issues the voters experienced. Following reports on the matter, Richland County Election Director Rokey Suleman advised all voters to review their ballots before casting their final vote. Although the director confirmed that "no one had their vote switched" and "the issues were another symptom of aging voting equipment," his hope is for a "new voting infrastructure [to be] in place before the next general election in 2020."<sup>95</sup>
- Voters who had moved, updated their driver's license address, and reportedly checked the "register to vote" box on their DMV change of address form found that their registration had not been updated to the new address. Voters who moved from a different county in South Carolina more than 30 days before the election were prohibited from voting. Voters who moved within the same county were told to return to their old polling place or head to the County Board of Elections headquarters to cast a ballot that would count. This failure to update voter registrations is troubling enough on its own, but voters with unchanged registrations sometimes only learned of the problem after waiting in line at some precincts for an hour or more. One woman at North Star Church learned, after waiting in line for an hour, that the DMV had not sent her voter registration and she would be unable to cast a ballot this election.
- A mother of a newborn baby, who had already spent her day trying to vote, found that she had supposedly been sent an absentee ballot for the general election after requesting an absentee ballot for the primary in June. When she tried to vote on November 6, she was told that she could not cast a regular ballot because they could not be certain that she had not already voted absentee in the general election. Despite not receiving the absentee ballot or voting absentee for the general election, the Board of Election told the voter over the phone that she could cast a provisional ballot and attend the Friday hearing or visit the headquarters in person that day to resolve the issue.
- At Precincts Ridge View 1 and 2, a precinct had been split up and it was unclear if or when voters had been given notice of the change.





## TEXAS



### OVERVIEW OF PRE-ELECTION VOTING ISSUES



#### RACES:

Gubernatorial  
Senate  
House

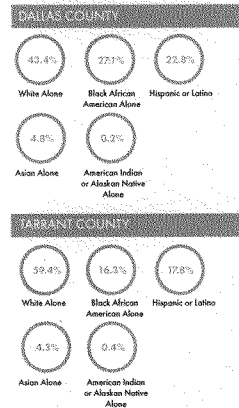
Immediately after the *Shelby County* decision, the Texas Attorney General and Secretary of State announced that the state's photo ID law would go into effect immediately.<sup>86</sup> The law had been rejected previously by a federal court as the most discriminatory measure of its kind in the country following litigation under Section 5 of the VRA by LDF,<sup>87</sup> DOJ, and others.<sup>88</sup> In response, LDF, DOJ, and other groups filed suit against Texas under Section 2 of the VRA and a federal court ultimately struck down the voter ID law. The U.S. Court of Appeals for the Fifth Circuit, however, allowed Texas to implement a different version of the photo ID law, even though the lower court had determined that it perpetuated the discriminatory intent of the original law.<sup>89</sup>

In September 2018, LDF, along with the Texas Civil Rights Project, Texas State Conference of the NAACP and the Anti-Defamation League of South Texas, Texoma, and Austin, sent a letter to the Texas Secretary of State Rolando Pablo, urging his office to provide notice to voter registrars and other relevant election officials throughout the state outlining and explaining the procedures for challenging a person's eligibility to vote.<sup>90</sup> In August 2018, the *Houston Chronicle* reported that approximately 4,000 registered voters in Harris County were challenged by True the Vote, an organization that has been accused of voter intimidation in the past.<sup>91</sup>

For the 2018 elections, Waller County election commissioners failed to provide polling sites on the Prairie View A&M University (PVAMU) campus, a historically Black college in Waller County, and in the surrounding city of Prairie View during the first week of early voting. In the second week of early voting, the city provided five early voting days, but two of the polling sites were off-campus at locations that were not accessible to many PVAMU students who lacked transportation.<sup>92</sup> In the majority-White city of Waller, by contrast, voters had two locations to vote during the first week and 11 days of early voting in total.<sup>93</sup> In response to public pressure and a lawsuit filed by LDF, election commissioners in Waller County took a modest but important step forward to provide equal opportunities to vote through early voting at PVAMU.<sup>94</sup>

LDF also sent a letter to the Texas Secretary of State in October 2018 expressing serious concern about reports of irregularities caused by Hart eSlate electronic voting machines and sent a letter to officials in McLennan County, Texas asking that they relieve an election worker from her duties for failing to comply with state election law.<sup>95</sup>

CITIZEN VOTING AGE  
POPULATION PERCENTAGES BY  
RACE AND ETHNICITY:<sup>96</sup>



## SNAPSHOT OF 2018 VOTING ISSUES

### DALLAS COUNTY

- About half of the voters who arrived at Lakeside Activity Center were turned away because they were at the wrong polling location. A tally kept by a volunteer at the site totaled 390 voters turned away in the course of the day. Most of the voters who were turned away were people of color, particularly Black voters. All voters informed PTV volunteers that this was their regular polling location, and they had not received notice of the location change. One voter had a particularly complex story. He reported that he voted at Lakeside in the 2016 election, as he had in every election since moving to the county and updating his registration in 2008. This Election Day, the workers told him he was not listed as a Dallas County voter at all. He discovered by calling the Secretary of State's office that he was still registered at his former address, in a county from which he moved in 2008. The Secretary of State tried to claim that he was not registered in Dallas County, even though his 2016 voting history was visible to the Secretary of State (by that office's own report). Eventually, the poll workers told him to vote at a nearby polling location.
- At Precincts 3802 and 3803, officials gave incorrect information about acceptable photo IDs to voters and failed to inform voters about alternatives.
- At Precinct 3056, a complaint was lodged with the precinct chair stating that campaign workers were electioneering within 100 feet of the entrance to the building. The sheriff's office showed up to the polling location with lights and sirens activated. The sheriff was accompanied by an election official and followed by two deputies in unmarked cars. The election official stated they had received a report of a fight or argument over the polling line dispute. However, PTV volunteers present did not witness any fight or argument.
- At Atwell Academy, a sheriff car parked outside the polling location and refused to leave.
- Precincts 1040 and 1041 used a fire station as a polling location. Voters used the garage area, which posed a risk to their safety because fire trucks come and go during voting hours.

## TARRANT COUNTY

- In Fort Worth, there was a similar pattern of voters who had voted in the same place for years being removed from the rolls of those polling locations for this election. A voter at Grace Temple Seventh-day Adventist was told he was not on the list, then discovered that his voting status was "suspended." The Secretary of State's website indicated he could vote at a polling site in Tarrant County by completing a residence form. The voter asked the PTV volunteer to accompany him inside to assist, but the election worker told the volunteer she had to leave. When the voter came out, he stated he was told he had to return to his prior address in Arlington to fill out the form and vote.
- At the polling place for Precinct 1005, a voter reported that there was no bell available for disabled voters to notify clerks that they needed assistance for curbside voting. This was a particular problem because many older and disabled people live in this precinct. Further, the voter complained of inadequate signage outside the location.
- At Precinct 1278, officials gave incorrect information about acceptable photo IDs to voters and failed to inform voters about alternatives.



## CONCLUSION

This report highlights some of the means by which the eight states that are covered in the report acted to suppress voting and numerous instances of voter suppression observed by our PTV volunteers in those states. It is in no way an exhaustive account of all the challenges voters, especially Black voters in these states, encountered in the 2018 midterm elections. This report along with others shows that it is imperative that Congress acts swiftly to remedy the myriad failures of our election administration that undermine the integrity of our democracy. Access to fair elections is a right guaranteed by citizenship. The year 2020 will mark the 150th anniversary of the passage of the 15th Amendment to the U.S. Constitution, yet, it is clear that the full rights and protections of that Amendment still operate as an unfulfilled promise. The next national election cycle is upon us, and it is our collective duty to ensure that it is free of racial discrimination and other unlawful barriers to voting and that the right to vote is honored and protected for all.



# ENDNOTES

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# NOTES



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### **DEMOCRACY DEFENDED**

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**STATEMENT**

of

**Reverend Jesse L. Jackson, Sr.**  
Founder and President, Rainbow PUSH Coalition

and

**Reverend Dr. Sheridan Todd Yeary\***  
Senior Vice-President, Rainbow PUSH Coalition

to the

**Subcommittee on Elections of the  
Committee on House Administration**

Hearing  
"Voting Rights and Election Administration in America"

October 17, 2019  
10:00 AM

\*For more information, contact Rev. Dr. S. Todd Yeary at [styeary@rainbowpush.org](mailto:styeary@rainbowpush.org).

### BACKGROUND:

The Rainbow PUSH Coalition (RPC) is an international civil and human rights organization committed to the causes of social, political, and economic justice in the United States and around the world. Founded by the Reverend Jesse L. Jackson, Sr., RPC fights to enroll, encourage, and protect the rights of all citizens to participate in full, fair, free and open elections.

### INTRODUCTION:

In *Federalist* 52, Publius (the pseudonymous writer of *The Federalist Papers*) stresses the importance of the right to vote:

“As it is essential to liberty, that the government in general should have a common interest with the people; so it is particularly essential, that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy, by which this dependence and sympathy can be effectually secured.”<sup>1</sup>

The foundation of representative government is the right to vote itself. While the history of this nation reminds us that this “right” has come to most of the people by protest, struggle, legislation, and constitutional amendment, it cannot be lost that the efforts to extend the right to the franchise were born, and are sustained by the reminder that this is the peoples’ government.<sup>2</sup> To this end, the recent, blatant efforts to suppress the vote through creative methods like voter purging, internet trolling, repositioning polling places out of reach of poor people and people of color, requiring voter identification, constraining the hours and locations to cast a ballot, and further limiting the ability to vote by absentee ballot serve to remind us all that the attempts to deny citizens the full benefit of the right of citizenship continue. These efforts to deny and dissuade participation in the franchise cannot be left unchecked or unchallenged. They must be met with the full protective force of law, enacted by those who have been chosen by the people.

#### I. The Supreme Court decision in *Shelby v. Holder* predates the current efforts to suppress the African American vote.

Chief Justice Roberts notes, at the beginning of his opinion in *Shelby*, that the Voting Rights Act of 1965 was enacted to address an “extraordinary problem.”<sup>3</sup> CJ Roberts went further, noting “[C]ongress determined [the Voting Rights Act] was needed

<sup>1</sup> Hamilton, Alexander, John Jay, and James Madison. *The Federalist Papers, Number 52*. Indianapolis: Liberty Fund, 2001, p. 337.

<sup>2</sup> See United States Constitution. The 15<sup>th</sup> Amendment to the Constitution was ratified after the Civil War in February, 1870. The 19<sup>th</sup> Amendment to the Constitution was ratified in August, 1920. In both instances, some states deferred ratification until the late 20<sup>th</sup> century.

<sup>3</sup> *Shelby Cnty v. Holder*, 570 US 529 (2013), at 535.

to address entrenched radical discrimination in voting, 'an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.'"<sup>4</sup>

Section 5 of the Voting Rights Act provided essential protections against the arbitrary adjustments by states with a history of overt racial discrimination. When the Court struck down this important voter protection tool, it asserted that the formula by which pre-clearance would be triggered needed to be updated to fit the current historical reality. However, Chief Justice Roberts and the Court did not know then what we know now. Namely, the efforts to update voter suppression tactics would take on a new energy and creativity against the interests and rights of those who have endured such actions throughout history – African American voters.

The "ingenious defiance of the Constitution" since *Shelby* includes deliberate acts of racial gerrymandering, voter purging, and constraining access to the ballot box by the arbitrary movement and/or closure of polling places in or near communities of color. These factors, taken in consideration of the Court's determination that a more modern calculus be applied, warrant a more robust oversight of election administration than could have even been considered prior to the decision in *Shelby*. Not only should the protections of Section 5 be restored, they ought be expanded consistent with the Court's own assessment.

**II. The assertion that there is widespread voter fraud lacks sufficient documentary evidence, and provides further false justification to infringe upon the right to vote for people of color.**

The Trump Administration's has understated significant effort to demonize and stigmatize minority voter participation during the 2016 election by characterizing the popular vote for Hillary Clinton as a by-product of voter fraud. The assignment of stigma has created a new level of suspicion concerning the legitimate participation of minority voters.

The Presidential Advisory Commission on Election Integrity was established under the guise of addressing alleged voter fraud that cost the President the popular vote in 2016. The Brennan Center, in its reporting on the disbanding of the commission, noted, "The work of the commission could have resulted in a wave of serious, new barriers preventing Americans from exercising their fundamental right to vote."<sup>5</sup> We have seen the efforts of this new wave of attempted barriers that have been identified by the Transformative Justice Coalition and other civil rights organizations. It is this caution about the potential for creating new barriers to voting that warrants a serious legislative response to protect voter rights that is sufficiently robust to meet the ongoing and persistent challenges of voter suppression and intimidation.

<sup>4</sup> *Id.*, quoting *South Carolina v. Katzenbach*, 383 US 301 (1966), at 309.

<sup>5</sup> See "Disbanded: Trump's 'Voter Fraud' Commission." <https://www.brennancenter.org/our-work/research-reports/disbanded-trumps-voter-fraud-commission>.

### III. Suffrage is a fundamental right under the Universal Declaration of Human Rights, and must be protected.

The Universal Declaration of Human Rights uses precise and unequivocal language concerning suffrage. Article 21, Section 3 clearly states, “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>6</sup> Universal and equal suffrage requires that the United States, having ratified the UDHR, do all within its power and under its laws to realize the spirit and letter of Article 21.

In order to fulfill the human rights obligations under the UDHR, particular attention should be given to “equal suffrage.” This includes expanding access to the ballot through early voting opportunities, automatic voter registration upon reaching voting age, and significant monitoring of polling places and chain of custody of paper ballots. Most importantly, it must be made evident that all citizens have the constitutional right to vote.

### IV. Congress has the Constitutional power to enforce.

The protection of the election system in the United States is constitutionally bound, and the power to enforce is delegated to the Congress. With the power to enforce comes the duty to enforce. Therefore, it is incumbent upon this body to do everything in its power to protect the people from the crafty, sinister efforts to trick, discourage, deny, and intimidate qualified electors from affirming their franchise rights. Any legislation that is advanced must put forth the full protective force of law, and insure that the rights affirmed by the supreme law of the land (the Constitution), are protected by the states.

The current landscape of voter suppression is not only widespread, but is clearly sufficient to satisfy the Court’s holding in *Katzenbach*, that “...exceptional conditions can justify legislative measures not otherwise appropriate.”<sup>7</sup> What we know now, we did not know when the *Shelby* decision came down: we did not know the extent of the trickery that our government would embrace to invite foreign interference in our election that targeted minority voters<sup>8</sup>; we did not know the extent to which the several states would engage in voter purging contaminated with erroneous deletions of legitimate voters; we

<sup>6</sup> See Universal Declaration of Human Rights, Art. 21. The principles of Article 21 of the UDHR are restated in Article 25 of the International Covenant on Civil and Political Rights, which was signed by the United States in 1977, and ratified in 1992. Although ratified as “non self-executing,” the treaty provisions in the Constitution warrant treatment of the principles of the Covenant as supreme law of the land, and subject to the Constitutional protections intended.

<sup>7</sup> *Shelby*, quoting *Katzenbach*, at 535.

<sup>8</sup> See United States Senate. “Report of the Select Committee on Intelligence on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, v2. (2019), 6. The report notes, “[N]o single group of Americans was targeted by IRA information operatives more than African-Americans. By far, race and related issues were the preferred target of the information warfare campaign designed to divide the country in 2016.” The reports goes on to cite examples of how this division was executed using social media and targeted messaging.

did not know the extent to which a false narrative from our national government would be advanced in order to cast doubt on the popular vote of the 2016 election.

What we did not know then, we know now. When we know better, we ought do better. We can, and we must do better, to protect the sole trophy of our American citizenship - the right to vote.

#### CONCLUSION:

One need only read the record of the ratification of the Fifteenth and Nineteenth Amendments to the Constitution, respectively, to note that many of the states for which there is great concern about state action infringing on the right to vote, were reluctant to affirm these amendments until late in the 20th century. It is no surprise to those who fight for civil rights in this country that some of these states have enacted some of the most notorious and nefarious voting rules to be found anywhere. The reluctance to ratify the 15th and 19th Amendments by some of these states has now become the fuel for sustained resistance by some of these states to offend the right to vote for people of color, African Americans in particular.

One need only recall the history of the past half-century-or-so to remember that the advancement of the right to vote in the Deep South was often met with physical threat, violence, or even death. We cannot forget the ultimate sacrifice of those noble and committed workers, James Cheney, Andrew Goodman, and Michael Schwerner; we cannot forget the sacrifices of young people who faced fire hoses and police dogs; we cannot forget the injuries sustained due to police force on Bloody Sunday while crossing the Edmond Pettus Bridge. These freedom fighters gave all they could to make freedom possible for everyone. We cannot abandon the work and the memory of these martyrs to demanded full citizenship participation by turning away from the challenges of enforcement and oversight of voting rights protections. There is too much at stake. Even President Johnson noted before a Joint Session of Congress on March 15, 1965 the principle that would become the Voting Rights Act of 1965:

“Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.”<sup>9</sup>

If we don't protect the right to vote for every American, we become co-conspirators in the efforts by some to sustain and expand the injustices many have fought so hard to overcome. We pray for the wisdom and courage of this legislative body, that you will insure that the sacrifices that have been made for us to get to this moment don't end up worthless contributions in the assessment of history because we have failed to protect the “fundamental article of republican government”<sup>10</sup> that too many have died to attain.

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<sup>9</sup> Johnson, President Lyndon. “Speech Before a Joint Session of Congress” (1965)

Advisory Memorandum

**To:** U.S. Commission on Civil Rights  
**From:** Rhode Island Advisory Committee to the U.S. Commission on Civil Rights  
**Date:** October 16, 2018  
**Subject:** Advisory Memorandum on Voting Rights Briefing

In 2011, the Rhode Island legislature passed a law requiring voters to provide proof of identity before voting in a primary, special, or general election. In support of the Commission's 2018 Statutory Enforcement Report on voting rights, the Rhode Island State Advisory Committee to the United States Commission on Civil Rights (Committee) sought to examine the impact of the voter identification legislation. The Committee held videoconference briefing on May 29, 2018. To help it better understand the statute's impact on voting rights in Rhode Island, the Committee invited three advocates to share information. Briefly summarized, the issues that the speakers identified as relevant and potentially discriminatorily affecting voting rights based on race, color, sex, disability status, and national origin included the following:

- Voter identification laws disproportionately impact communities of color;
- There are issues with polling places;
- There are problems with the issuance and execution of provisional ballots;
- The state has a modern voting system, using online voter registration and automatic voter registration; but has antiquated practices in voter registration requirements and out-of-date practices in early voting.

This Advisory Memorandum provides assertions and themes based on the information provided to the Committee at the briefing.

## II. Background

"Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies." <sup>1</sup> The fundamental right of all citizens age eighteen and over to vote is constitutionally guaranteed cumulatively by the 14th,<sup>2</sup> 15th,<sup>3</sup> 19th,<sup>4</sup> and 26th<sup>5</sup> Amendments to the United States Constitution. These amendments prohibit discrimination against potential voters on the basis of race, sex, and age. Nonetheless, various legal and procedural obstacles have historically hindered the exercise of this right for certain

<sup>1</sup> President Lyndon B. Johnson, 1965 Signing Ceremony for the Voting Rights Act (Aug. 6, 1965) (quoting his own 1957 remarks in support of legislation to expand voting rights). The transcript of the 1965 Signing Ceremony is available at <http://www.presidency.ucsb.edu/ws/?pid=27140> (last visited Aug. 16, 2018).

<sup>2</sup> U.S. Const. amend. XIV, § 2 (voting rights for male citizens over 21, except those who "participat[e] in rebellion . . . or other crime").

<sup>3</sup> U.S. Const. amend. XV, § 1 (voting rights irrespective of "race, color, or previous condition of servitude").

<sup>4</sup> U.S. Const. amend. XIX (voting rights irrespective of sex).

<sup>5</sup> U.S. Const. amend. XXVI (voting rights to citizens "18 years of age or older").

groups of potential voters. As a result, during the modern civil rights movement, federal legislation was enacted to correct the imbalance between voting rights in theory and in practice. It worked not only by guaranteeing that individuals have the right to vote regardless of their minority status, but also by ensuring they can exercise it by casting a ballot.<sup>6</sup>

Despite great progress in the decades that followed, many recent changes in election laws enacted by state and local governments, as well as Supreme Court decisions,<sup>7</sup> have created or caused barriers to voting for communities of color and other minority groups.

Subsequent to the briefing, the Commission issued its voting rights report, “An Assessment of Minority Voting Rights Access in the United States,” which includes a comprehensive discussion about the history of voter suppression.<sup>8</sup>

#### Voting Rights in Rhode Island

To be eligible to register to vote in Rhode Island, a person must be a citizen of the United States, a resident of the Rhode Island city or town in which they plan to vote, and at least sixteen years of age (though they cannot vote until the age of eighteen).<sup>9</sup> Rhode Island’s constitution also requires that a citizen is only eligible to vote if registered at least 30 days prior to an election.<sup>10</sup> Since 2016, citizens of Rhode Island have been able to fulfil this requirement through an online registration system.<sup>11</sup> In May 2017, the Rhode Island House of Representatives unanimously passed a bill allowing automatic voter registration through the Department of Motor Vehicles (DMV)<sup>12</sup> and the bill was signed into law in July 2017, making Rhode Island the ninth state to approve automatic voter registration.<sup>13</sup> The law requires every eligible person applying for or renewing a license at the DMV be registered to vote, unless the person declines. It also authorizes additional state agencies, to be determined by the Secretary of State, to also engage in automatic voter registration.<sup>14</sup>

<sup>6</sup> Voting Rights Act of 1965 (VRA), originally codified at 42 U.S.C. § 1973 et seq.; subsequently transferred to 52 U.S.C. subtit. I, ch. 103, scattered sections.

<sup>7</sup> Especially relevant are Supreme Court cases interpreting the Voting Rights Act, such as *Shelby County v. Holder*, 570 U.S. 2 (2013) (holding that the preclearance formula of the VRA was unconstitutional).

<sup>8</sup> U.S. Commission on Civil Rights, “An Assessment of Minority Voting Rights Access in the United States,” pp. 15-26. [https://www.usccr.gov/pubs/2018/Minority\\_Voting\\_Access\\_2018.pdf](https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf)

<sup>9</sup> *Register to Vote*, R.I. DEP’T OF ST., [https://vote.sos.ri.gov/ovr/voters/how\\_to\\_register\\_to\\_vote](https://vote.sos.ri.gov/ovr/voters/how_to_register_to_vote) (last visited June 6, 2018). It is worth noting that Rhode Island does allow same day registration for the Presidential Election. See [https://vote.sos.ri.gov/ovr/voters/how\\_to\\_register\\_to\\_vote](https://vote.sos.ri.gov/ovr/voters/how_to_register_to_vote) “Rhode Island allows for same day voter registration for the Presidential Election only. If you miss the voter registration deadline, you can register to vote on Election Day, but you will only be able to vote for President and Vice President. You will not be able to vote in any state, local, or other federal races. You can only register and vote on Election Day at the location designated by your local board of canvassers.”

<sup>10</sup> R.I. CONST. art. II § 1.

<sup>11</sup> R.I. GEN. LAWS § 17-9.1-34.

<sup>12</sup> *Statement by Secretary of State Gorte on House Passage of Automatic Voter Registration Bill*, R.I.GOV (May 31, 2017), <https://www.ri.gov/press/view/30522>.

<sup>13</sup> *Rhode Island becomes ninth state to enact Automatic Voter Registration*, R.I.GOV (July 19, 2017), <https://www.ri.gov/press/view/30957>.

<sup>14</sup> R.I. GEN. LAWS § 17-9.1-7.

In 2011, Rhode Island passed a law requiring voters to provide proof of identity before voting in a primary, special, or general election.<sup>15</sup> Examples of an acceptable photo ID today include a Rhode Island driver's license, Rhode Island voter identification card, United States passport, United States school ID card, United States military card, United States or Rhode Island ID card, and government-issued medical card. The law allowed for an introductory period in which residents could use an ID that did not include a photograph, but since January 1, 2014, only a valid and current voter ID is acceptable. The law also provides an option for voters without proper identification on election day to complete a provisional ballot, which is then verified by comparing the voter's signature on the ballot and at registration.<sup>16</sup> If the local board of elections determines that the signatures match, the provisional ballot may be counted.

The voter identification law in Rhode Island made national news because Rhode Island was the only state in which a Democrat-controlled legislature and Democrat governor passed a voter ID law.<sup>17</sup> Proponents of the bill cited alleged but unsubstantiated<sup>18</sup> claims of voter fraud in the state, but a perceived history of political corruption in the state and legislative anxiety over the state's changing demographics likely also contributed to the push for a voter identification law. Some argued that the recent influx of Latino immigrants threatened the political power balance in the state held by whites and some blacks, and that this law served as an attempt by those in power effectively to disenfranchise some of those new potential voters.<sup>19</sup> Because most black and Latino legislators favored the voter ID bill, there were virtually no objections to its passage.<sup>20</sup>

Rhode Island does not currently allow for in-person early voting, but a bill introduced in the 2018 state legislature would have changed that.<sup>21</sup> The bill proposed allowed for in-person early voting during normal business hours throughout a twenty-day period prior to an election and for limited hours on the weekend prior to the election. It allowed local governments to provide additional early voting hours. The proposed bill modified absentee mail voting as well. The bill, however, did not pass. Both Rhode Island's House and Senate judiciary committees recommended the measure be held for further study.<sup>22</sup>

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<sup>15</sup> R.I. GEN. LAWS § 17-19-24.2.

<sup>16</sup> R.I. GEN. LAWS § 17-19-24.3.

<sup>17</sup> Spencer Woodman, *The Strange Case of Rhode Island's Voter-ID Law*, VICE (Apr. 26, 2016), available at [https://www.vice.com/en\\_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law](https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law) (last visited July 6, 2018) [hereinafter Woodman].

<sup>18</sup> Simon van Zuylen-Wood, *Why Did Liberal African-Americans in Rhode Island Help Pass a Voter ID Law?*, THE NEW REPUBLIC (Feb. 7, 2012), available at <https://newrepublic.com/article/100429/rhode-island-voter-id-laws-hispanic> (last visited Aug. 14, 2018) [hereinafter Zuylen-Wood].

<sup>19</sup> Woodman, available at [https://www.vice.com/en\\_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law](https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law) (last visited July 6, 2018).

<sup>20</sup> See e.g., Zuylen-Wood, <https://newrepublic.com/article/100429/rhode-island-voter-id-laws-hispanic>; Woodman, [https://www.vice.com/en\\_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law](https://www.vice.com/en_us/article/qbx7j5/the-strange-case-of-rhode-islands-voter-id-law) (last visited July 6, 2018).

<sup>21</sup> S. 2419, LC004341, R.I. Gen. Assem., Jan. Sess. (R.I. 2018), available at <http://webserver.rilin.state.ri.us/BillText/BillText18/SenateText18/S2419.pdf>; H. 7501, LC004521, R.I. Gen. Assem., Jan. Sess. (R.I. 2018), available at

<http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H7501.pdf>.

<sup>22</sup> *Legislative Status Report*, R.I. GEN. ASSEM., S. 2149 (May 3, 2018), available at <http://status.rilin.state.ri.us/documents/agenda-14528.pdf> (last visited Aug. 14, 2018); H. 7501 (Mar. 14, 2018), available at <http://status.rilin.state.ri.us/documents/agenda-14302.pdf> (last visited Aug. 14, 2018).



**Assertions and Themes from the May 29, 2018 Briefing:**

1. **Modern and Antiquated Voting:** Rhode Island has taken a modern approach to its voter registration laws and voting technology, but its recent voter ID law, lack of early voting options, and certain aspects of voting administration are more antiquated.<sup>23</sup>
2. **Voter Registration:** In 2016, Rhode Island implemented online registration. In 2017, it became the ninth state to adopt automatic registration at the DMV, also allowing possible automatic registration with other state agencies in the future.<sup>24</sup> Automatic registration makes allows many unregistered potential voters to get registered.<sup>25</sup>
3. **Voting Technology:** Rhode Island was an early state to adopt the use of paper ballots, which Common Cause Rhode Island believes is a superior method of recording votes.<sup>26</sup> It also has at least one (the AutoMARK) machine<sup>27</sup> at every polling place, and in 2016 moved from optical to digital scanners.<sup>28</sup> The state Board of Elections is planning to purchase additional machines and use multiple scanners at the busiest polling places. This should reduce the wait times seen in recent elections caused by the slower processing speed of the new digital scanners. After such technical ballot issues in the 2016 election, Rhode Island also established risk-limiting post-election audit procedures.<sup>29</sup>
4. **Voter ID:** Rhode Island's 2011 voter ID law has a discriminatory impact on people of color and poor voters, and was passed without any hard evidence of voter fraud.<sup>30</sup> A large number of Rhode Island citizens do not have the required ID, and communities of color are disproportionately affected.<sup>31</sup> The Rhode Island Secretary of State issued over 900 District Eight identification documents for voting purposes in the first year of implementation.<sup>32</sup> Steve Brown and Jim Vincent, however, maintain that number represents only a fraction of the total number of citizens without the kind of ID required by the law.<sup>33</sup> Voter advocates Brown and Vincent favor repealing the voter ID law in order to reduce its adverse impact on affected groups.<sup>34</sup>
5. **Provisional Ballot Issues:**
  - a. *Evaluation of provisional ballots:* The validity of a provisional ballot depends in part on whether the signature on the ballot is judged to match the signature on the voter rolls. Vincent suggests that this process to determine the comparability of the signatures on provisional ballots is less than "pure," because it is susceptible to erroneous judgments.<sup>35</sup>

<sup>23</sup> John Marion, testimony before the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights, briefing, audio- and videoconference, May 29, 2018, transcript pp. 4-6 (hereinafter cited as *Briefing Transcript*).

<sup>24</sup> Testimony, *Briefing Transcript*, p. 5.

<sup>25</sup> Vincent Testimony, *Briefing Transcript* p. 7.

<sup>26</sup> Marion Testimony, *Briefing Transcript*, p. 4.

<sup>27</sup> According to Marion, AutoMARK machines are more accessible to voters with disabilities. Marion Testimony, *Briefing Transcript*, p. 4.

<sup>28</sup> Marion Testimony, *Briefing Transcript*, pp. 4-5.

<sup>29</sup> Marion Testimony, *Briefing Transcript*, pp. 4-5.

<sup>30</sup> Vincent Testimony, *Briefing Transcript*, pp. 6-7.

<sup>31</sup> Brown Testimony, *Briefing Transcript*, pp. 2-3; Vincent Testimony, *Briefing Transcript*, p. 6.

<sup>32</sup> Brown Testimony, *Briefing Transcript*, p. 3; Vincent Testimony, *Briefing Transcript*, p. 6.

<sup>33</sup> Brown Testimony, *Briefing Transcript*, p. 3; Vincent Testimony, *Briefing Transcript*, p. 6.

<sup>34</sup> Brown Testimony, *Briefing Transcript*, p. 2; Vincent Testimony, *Briefing Transcript*, pp. 6-7.

<sup>35</sup> Vincent Testimony, *Briefing Transcript*, pp. 6-7.

- b. *Provisional ballots for incorrect polling place:* If a voter goes to the wrong polling place, he or she has two options: go to the correct polling place, or fill out a provisional ballot at the incorrect polling place. However, only votes for federal office are counted on provisional ballots filled out at the incorrect polling place. Thousands of provisional ballots are cast in Rhode Island each election and many are counted only partially. This is a barrier to full voting rights that the Committee believes can and should be changed.<sup>36</sup>
  - c. *Need for Additional Data:* Brown suggests more data on the use and counting of provisional ballots is needed, and that advocates should continue to lobby the state Board of Elections for better informational transparency.<sup>37</sup>
- 6. **Polling Place Training:** The voter ID law is not properly implemented, further exacerbating its discriminatory impact. Poll monitors have reported that people who came without a proper ID or who went to the wrong polling place were often not informed of their right to cast a provisional ballot or were given misinformation about this process.<sup>38</sup>
- 7. **Polling Place Issues:**
  - a. *Polling place locations:* Polling places change often and these changes are not always communicated to voters.<sup>39</sup> The Committee, like Brown, believes there should be a requirement that Rhode Island voters be provided notice of polling place changes.<sup>40</sup>
  - b. *Polling place availability:* Determining how many and which polling places to use during an election of any sort are administrative decisions made by the Board of Elections. In the Rhode Island presidential preference primary held in April 2016, only a third of the polling places traditionally open during a general election were open for voting.<sup>41</sup> For the upcoming elections, the Committee believes voting rights organizations should lobby the Board of Elections to ensure a more appropriate number of primary polling places is provided.<sup>42</sup>
- 8. **Lack of Early Voting:**
  - a. *Current Status:* Unlike 33 other states, Rhode Island does not offer any form of in-person early voting; the only available method to vote early is absentee. In 2011, an “excuse” category for absentee voting was added, permitting voters who “may not be able to vote at [their] polling place in [their] city or town on the day of the election” to vote absentee.<sup>43</sup> Certain communities have advertised this “excuse” category as a method of early voting, but, across the state, absentee “early voting” is still uncommon. Ninety percent of voting in Rhode Island still happens in person at precincts on Election Day.<sup>44</sup>
  - b. *Consequences of no early voting in Rhode Island:* The traditional method of voting only on Election Day often prevents some working people from voting; the

<sup>36</sup> Brown Testimony, *Briefing Transcript*, p. 3; see also Vincent, *Briefing Transcript*, pp. 6-7.

<sup>37</sup> Brown Testimony, *Briefing Transcript*, pp. 2-3; Marion Testimony, *Briefing Transcript*, p. 9.

<sup>38</sup> Brown Testimony, *Briefing Transcript*, pp. 2-3.

<sup>39</sup> Brown Testimony, *Briefing Transcript*, pp. 2-3, 8.

<sup>40</sup> See Brown Testimony, *Briefing Transcript*, p. 8.

<sup>41</sup> See Marion Testimony, *Briefing Transcript*, p. 8.

<sup>42</sup> See Marion Testimony, *Briefing Transcript*, p. 8.

<sup>43</sup> R.I. GEN. LAWS § 17-19-24.2 (2011); see also Marion Testimony, *Briefing Transcript*, p. 5.

<sup>44</sup> Marion Testimony, *Briefing Transcript*, p. 5.

in-person early voting bill submitted in 2018 would rectify this by allowing weekend or evening voting options.<sup>45</sup>

- c. *Benefits of early voting:* Early voting in *primary* elections also helps assess *voter interest* and needs, allowing the state to allocate its resources properly on the true Election Day.<sup>46</sup>
- 9. **Thirty-Day Registration Requirement:** Rhode Island's Constitutional thirty-day registration window, whereby voters may not vote if they register less than 30 days from an upcoming election, is the longest of all states.<sup>47</sup> There is an exception during presidential election years when a voter can register on Election Day and complete a ballot only for president and vice president.<sup>48</sup>
- 10. **Late Primary:** Rhode Island also holds its primary election in September, the latest primary in the country. In the event of a long primary recount, this late primary could potentially prevent the state from sending general election ballots overseas and to the military because the federal government requires such ballots to be sent 45 days prior to the general election.<sup>49</sup>
- 11. **Wednesday Primary:** This year's primary falls on a Wednesday instead of a traditional Tuesday election day. As of the USCCR briefing on May 29, 2018, this fact had not yet been communicated to voters adequately. Brown and Marion urged voting rights organizations to contact the Secretary of State and state and local boards of elections, impressing upon them the need to announce and advertise this change to the public.<sup>50</sup>

The Committee submits this Advisory Memorandum in support of the Commission's 2018 Statutory Enforcement Report and concludes its work on voting rights.

<sup>45</sup> Marion Testimony, *Briefing Transcript*, pp. 5-6.

<sup>46</sup> Marion Testimony, *Briefing Transcript*, p. 8.

<sup>47</sup> Marion Testimony, *Briefing Transcript*, p. 6.

<sup>48</sup> Marion Testimony, *Briefing Transcript*, p. 6.

<sup>49</sup> Marion Testimony, *Briefing Transcript*, p. 6.

<sup>50</sup> Brown Testimony, *Briefing Transcript*, p. 9; Marion Testimony, *Briefing Transcript*, p. 9.



**Statement of the North Dakota Advisory Committee  
Concerned by Potential for Voter Suppression  
October 26, 2018**

Herein, the North Dakota Advisory Committee informs the U.S. Commission on Civil Rights about recent developments regarding a voter ID law in North Dakota. The North Dakota Advisory Committee believes that voting is the foundation of our government, our society, and our way of life. Without the right to vote, we have no say in the decisions that affect our lives every day. This month, just weeks before the election, the U.S. Supreme Court allowed a new North Dakota voter identification requirement to take effect. The new law requires voters to present an ID that includes a residential address. This decision may adversely affect many voters throughout the state, especially Native Americans living on reservations, because many of them do not have residential addresses.

Prior to the primaries this year, the District Court had stopped the law from taking effect because it would have a disproportionate and discriminatory effect on Native Americans, many of whom live on reservations and do not have residential addresses. The Appeals Court, however, removed the hold. The consequence is that North Dakota voters will be voting under different rules than in the primary election. There is likely to be voter confusion since those eligible to vote in the primary may presume that the IDs allowing them to vote just months ago would remain valid for general election on November 6.

The North Dakota Advisory Committee is troubled that this restrictive voter ID law targets Native Americans, the largest minority group in the state, constituting 5.5 percent of the population. The Committee's primary concern is that the law may deny eligible voters access to the ballot. The District Court found that (1) 70,000 North Dakota residents—almost 20 percent of the turnout in a regular quadrennial election—lack a qualifying ID; and (2) approximately 18,000 North Dakota residents also lack supplemental documentation sufficient to permit them to vote without a qualifying ID.

As a consequence of the new law, there may be serious risk of large-scale disfranchisement when North Dakota voters arrive at their polling place on November 6, only to find that they cannot vote because their formerly valid ID is now insufficient.

In September, the Commission on Civil Rights, noting that voter access issues continue to challenge the country, observed that the "right to vote is the bedrock of American democracy." We agree and echo the Commission's call for robust protections of a right that has proven fragile.

In signing the Voting Rights Act, President Johnson said the right to vote is the basic right "without which all others are meaningless." We strongly urge all eligible North Dakota voters to check with the Elections Board in their area or to seek advice on whether their ID complies with current law in order to vote in the November election.

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*The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7<sup>th</sup> decade, a continuing legacy of influence in civil rights. For more information about the Commission and our Committees, please visit [www.usccr.gov](http://www.usccr.gov) and follow us on [Twitter](#) and [Facebook](#).*

# **Alaska Native Voting Rights**



A Report of the  
Alaska Advisory Committee to the  
U.S. Commission on Civil Rights

June 2019

**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Alaska Advisory Committee to the  
U.S. Commission on Civil Rights**

The Alaska Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this report regarding the effectiveness of the implementation of the *Toyukak v. Mallott* settlement and court order related to language access, and the potential disparate impact of a statewide vote by mail system on Alaska Native voters. The Committee submits this report, a more extensive analysis than the advisory memorandum submitted to the U.S. Commission on Civil Rights in March of 2018, as part of its responsibility to study and report on civil rights issues in the state of Alaska. The contents of this report are based on testimony the Committee heard during a public briefing on August 24, 2017 in Anchorage, Alaska; and two web hearings on June 19, 2018 and August 1, 2018.

This report documents an evaluation of the state's effort in 2016 to implement the *Toyukak v. Mallott* settlement and court order related to language access for Alaska Native voters, and examines concerns regarding the potential impact of vote by mail—a move that the State was considering during the gathering of evidence and before the production of this report. The State has since decided it will not implement a vote by mail system at this time. This could change at any time, so the information contained in this report is still relevant and being presented in its entirety. Based on the findings of this report, the Committee offers to the U.S. Commission on Civil Rights recommendations for addressing the issue of voting rights for Alaska Natives and communities requiring language assistance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here continues the efforts of the Commission in protecting voting rights across the nation.

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## I. EXECUTIVE SUMMARY

When Congress extended the Voting Rights Act in 1975 to include the language assistance provisions in Section 203, they recognized that certain minority citizens experienced historical discrimination and disenfranchisement due to limited English proficiency. As a result, Congress mandated that political subdivisions provide English-language voting also in minority languages. Congress also mandated that covered political subdivisions provide written materials, oral assistance at polling sites, and publicity prior to Election Day about the availability of language assistance at polling sites. In Alaska, there are 14 census areas that are covered jurisdictions, and each must provide language assistance in at least one Alaska Native language.

In the last three decades, Alaska has undergone and lost two significant court cases regarding compliance with Section 203, despite having a legal obligation to provide language access to limited English proficient voters since the 1975 extension of the VRA. Of concern to the Alaska Advisory Committee is *Toyukak v. Mallott*, only the second Section 203 case fully tried and the first one since the Reagan Administration, and the quality of the State's 2016 implementation of the 2014 federal court ruling. Secondly, when the State considered implementing a vote by mail election system,<sup>1</sup> the Committee sought to determine its potential impact on Alaska Native voters and rural voters alike. However, as the Committee was in the process of drafting this report, the State announced it would not move forward with implementing a vote by mail system at this time, in response to results from studies and feedback from focus groups. Moreover, the State alleges any fundamental voting methods or systems would have to be determined by the Alaska Legislature. Thus, while the issue may be on hold for now, the Committee believes the findings related to the potential impact of vote by mail are very useful and instructive because this issue can resurface at any time.

The following report is divided into three sections and results from the testimony provided during three public meetings<sup>2</sup> and testimony submitted to the Committee in writing during the thirty-day open period for public comment. The first section provides background information about the Voting Rights Act and its minority language requirement; a discussion about Alaska Native demography and physical landscape; a brief history of Alaska Native voting rights; information on *Toyukak v. Mallott*, the voting rights case concerning minority language access and focus of this report; and information concerning the State's initial plan to implement a vote by mail election system. The second section is a summary of themes derived from testimony. Finally, it concludes with findings identified by the Committee and recommendations in response to findings directed to federal and state entities.

<sup>1</sup> The Division of Elections report it will not move forward with implementing a vote by mail system; see Appendix F for Josie Bahnke, former director of the Division of Elections, Letter to the Election Policy Work Group.

<sup>2</sup> On August 24, 2017, the Committee convened a public briefing in Anchorage, Alaska to hear testimony from election officials, Alaska Native voters, vote by mail experts, and other stakeholders regarding the implementation of the *Toyukak v. Mallott* settlement and court order and the potential impact of a vote by mail election system. To examine the potential impact of implementing a vote by mail election system on Alaska Native voters, the Committee held two web briefings on June 19, 2018 and August 1, 2018, to receive updates on relevant research.

The findings in this report are divided into two sections: findings regarding the implementation of the Toyukak Order and findings concerning the potential impact of implementing a vote by mail system.

**Findings regarding the implementation of the Toyukak Order:**

1. While the Toyukak Order requires language assistance and election materials in Yup'ik and Gwich'in in the Dillingham, Kusilvak, and Yukon-Koyukuk Census Areas, the State is also obligated to comply with Section 203 covered languages in other regions within the state.
2. Federal observers present during the 2016 Primary and General Elections documented the following training deficiencies under Section 203 and the Toyukak Order:
  - a. Although training for poll workers is supposed to be mandatory, and is supposed to emphasize in-person training, it fell short of that goal. In 2016, 46 percent (55 poll workers) received training, 4 percent (5 poll workers) received training at least a year earlier, 10 percent (12 poll workers) received training two or more years earlier, and 39 percent (47 poll workers) had never been trained.
  - b. Trainings were conducted exclusively in English by a non-Native instructor from the Division of Elections.
  - c. Bilingual poll workers were not trained on how to translate contents of the ballot or how to provide procedural instructions in Yup'ik and Gwich'in.
3. The Division of Elections is required to conduct pre-election outreach through arranging informational meetings community wide, in small groups, or one-on-one meetings to register voters and provide election information such as what will be on the ballot. While the Division of Elections claimed to have met these requirements, they were unable to adequately report/log the frequency and effectiveness of mandatory pre-election outreach.
4. Inadequate staffing of bilingual poll workers in the three Census Areas suggests that some limited English proficient voters may have not received bilingual assistance and translations necessary to cast their ballot on Election Day. For example, federal observers found that some villages had no bilingual poll worker available, bilingual poll workers were only available on call or available for a limited time, poll workers left the polling location with no assistance available during their absence, or poll workers left early before the polls closed and did not return.
5. The Division of Elections fell short of complying with translation requirements. The Division of Elections reported that they were able to complete all translation requirements for election materials in Gwich'in, but not all materials in Yup'ik dialects.
6. Translated written materials required under the Toyukak Order were unavailable in numerous locations. Federal observers monitoring the 2016 Primary and General Elections identified the following deficiencies:

- a. During the 2016 Primary Election, no translated voting materials were available in 6 of the 19 villages; the “I voted” sticker was the only material in an Alaska Native language in Marshall and Mountain Village; in Emmonak, the Yup’ik glossary was the only translated material available; and only two villages, Koliganek and Manokotak, had written translations of the candidate lists.
  - b. During the 2016 General Election, half of polling places observed had a translated sample ballot available for voters. Five of those villages had no sample ballot at all or if a translated ballot did exist, it was not made available for voter use.
7. In comparison with New Mexico, a state with a high number of limited English proficient voters requiring American Indian language accommodations, it employs eight full-time language coordinators, whereas Alaska has just two full-time bilingual workers to carry out the implementation of the Toyukak Order. Alaska also relies on Yup’ik and Gwich’in language panels and part-time outreach workers. While the Toyukak Order requires hiring one permanent elections language compliance manager to implement it, there is concern that current language access efforts may be insufficient to accomplish meaningful implementation.
8. The Division of Elections has no procedures in place to assess the effectiveness of poll worker training or outreach worker training.
9. While the Division of Elections reported to the Committee that it had implemented most of the remedies in the Toyukak Order and even expanded the language panels to include the Inupiat panel, testimony indicates that the Division of Elections still falls short on quality and usefulness of translations. For example, some voters indicated they had difficulty reading the Yup’ik ballot due to small font size.
10. There is a statutory inconsistency regarding the rights of voters to receive the OEP in that one statute requires that it is sent to each household and another statute states that it should be sent to each voter. A Koliganek voter official reported that she never received an OEP in advance of the general election and state elections but according to Alaska Statute 15.58.010, the Division of Elections must mail “at least one election pamphlet to each *household* identified from the official registration list.” However, Alaska Statute 15.58.080 requires that the Division of Elections must mail to every registered *voter* one copy of the pamphlet prepared for the region in which the voter resides at least 22 days before the general election.
11. There is an unequal distribution of election equipment among urban and rural polling stations. Some panelists expressed concern that equipment lacked privacy and was inadequate to serve rural voters.
12. Although the *Nick, et al. v. Bethel, et al* case alleged the State of Alaska had been out of compliance with the VRA since the language assistance provisions were passed in 1975, testimony by Alaska Federation of Natives and individuals indicated that Governor Walker’s Administration was making efforts to comply.

**Findings concerning the potential impact of implementing a vote by mail system:**

1. Voters expressed grave concern over the State's interest in implementing a vote by mail system due to slow mail delivery that often takes up to 2-3 weeks. Mail delivery relies on air service but, according to testimony, villages may be inaccessible by air for several weeks due to inclement weather, and at times flights may be cancelled even in good weather conditions. To compound the issue further, the Regional Educational Attendance Areas elections and statewide general elections are held in October and November, when weather conditions are usually the most challenging, and delays in mail service are likely to disenfranchise rural voters.
2. There has been no study examining the impact of vote by mail on Alaska Natives, limited English proficient voters, geographically and linguistically isolated communities, and voters who receive mail exclusively by P.O. Box.
3. However, there is a related study focused on the impact of vote by mail on Native American voters in Washington, a state that administers elections exclusively by mail and voter turnout. Research indicated there is no evidence that vote by mail had any significant effect on increasing voting turnout among Native Americans. In a related study commissioned by the State's Election Policy Work Group, rural voters who were dissatisfied or very dissatisfied with their mail service preferred to keep voting the way it is now when asked about their assessment of their mail service and preferred method to vote.
4. A recent study conducted on reservations in Arizona, New Mexico, Nevada and South Dakota indicated that native voters have a low level of trust in a vote by mail system. For example, 39 percent of Nevada residents in Duck Valley, Yerington, Pyramid Lake, and Walker River reservations trusted that their vote would count as intended.
5. At a recent hearing in North Dakota, a tribal member who is also a current member of the Montana House of Representatives testified that offering only a vote by mail system disenfranchises voters in native communities because they have irregular mail and inconsistent or nontraditional addresses.
6. Some rural Alaska Native villages have unreliable internet service or may even lack access to broadband internet that may be necessary to meaningfully participate in the election process. Internet access would allow voters to access the Division of Election's website to download election forms and the OEP. According to testimony, an Alaska Native elder walked two miles from her home to the nearest public library that had internet access to download the necessary election forms to participate in early voting.
7. Testimony indicated the following concerns with implementing a vote by mail system:
  - a. There are challenges with employing and retaining postmasters residing in rural parts of the state. This poses a concern as voters rely heavily on postmasters to keep post offices open to receive mail and obtain mail services.

- b. Since rural residents often share P.O. boxes, sometimes multiple families sharing one P.O. box, voters may not be receiving all election-related material. This is critical to ensuring privacy and enfranchisement.
    - c. Researchers argue that a vote by mail system causes five issues:
      - i. distance to post offices or mailboxes is an impediment to casting ballots;
      - ii. it does nothing to counter the lack of trust in the veracity of government institutions, especially among Native American communities;
      - iii. it fails to tangibly link citizens to the democratic process;
      - iv. it has little impact in broadly increasing participation among Native American voters;
      - v. and there are no systems in place to address lost ballots.
8. Nearly half of rural voters from the Bethel, Dillingham, and Kusilvak Census Areas prefer to keep the current voting method the same and the second preference is to receive their ballot in the mail and have different ways to return it.
9. The settlement agreement mandates that language assistance be provided prior to and during the voting process. It was not clear, if language assistance could or would be provided prior to and during the possible implementation of a vote by mail system.
10. At the time of the August 24, 2017 public briefing in Anchorage, the Division of Elections testified that adopting a hybrid model that consists of a vote by mail and in person voting system was seen more favorably rather than implementing a vote by mail system exclusively. However, they have since indicated that due to the challenges that geography would pose for mail service, implementing an all vote by mail system is not an option for Alaska. Testimony indicated that the application of a hybrid model may only work if the Division of Elections established a voting center in each of the over 200 Alaska Native villages and required that each of them be open for the same period as other early voting locations.
11. Panelists noted that when considering a vote by mail system, the State is still required to abide by the terms of the Toyukak Order. Those terms require significant in-person assistance and therefore vote by mail can only potentially work if there was a "voting center" in each village covered by Section 203 of the VRA.
12. According to a vote by mail expert, developing a remedy process and signature verification system is a necessary component when considering a vote by mail system.
13. Panelists suggested strong and ongoing collaboration among the Alaska Native communities, rural communities, state election officials, and the U.S. Postal Service to deter voter disenfranchisement especially among Alaska Native voters in need of language assistance.

14. According to the U.S. Postal Service, when inclement weather impacts delivery to rural areas, passengers and luggage are the priority, not mail. This means that election-related mail is considered secondary in importance.
15. Because the U.S. Postal Service transfers mail from villages to the Anchorage central hub, where it is postmarked, rural residents who vote in a village may not have their ballots counted due to the possibility of late postmarking.
16. Testimony indicated that U.S. Postal Service training on handling election-related material is inadequate due to the high number of U.S. Postal Service employees who need to be trained.
17. Presently, state election officials have not yet determined how to directly distribute ballots and the translated OEPs to Section 203-covered households due to limited data sources that indicate languages spoken at home. Efforts to circulate the OEP were done through respective regional tribes, local governments, online, the Alaska Federation of Natives' conference, and other advocacy organizations prior to the 2016 presidential election and will continue to be circulated in this fashion.
18. Testimony indicated the following potential impacts of implementing a vote by mail system:
  - a. It may have the potential for improving voter registration rolls.
  - b. It has increased voter turnout in state and local elections among certain populations in other states. However, factors such as socioeconomic status, demographics, educational attainment and the issues on the ballot are primary determinants of voter turnout.
  - c. It creates the potential for logistical and administrative problems and even increased potential for malfeasance.
19. A study conducted asking English-speaking rural voters, most of whom are Alaska Native, how they prefer to receive their ballots. Roughly 60 percent replied they prefer to receive it in person on Election Day, 21 percent prefer to receive it by mail, and 17 percent prefer to receive it online.

In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Alaska Advisory Committee submits the following recommendations to the Commission:

The U.S. Commission on Civil Rights should send this report and issue a formal request to the U.S. Department of Justice to:

- Vigorously enforce Section 203 of the Voting Rights Act in Alaska.
- Continue to send federal observers to monitor state elections even after the Toyukak Order expires, to ensure its implementation remains in place.



The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the U.S. Postal Service to:

- Require specific training of all Alaska postal service employees to handle election material to ensure prompt delivery.
- Ensure prompt postmarking of election mail, especially in rural areas of the state. This may include proactive recruitment of postmasters in rural post offices to ensure adequate support to rural residents.
- Prioritize handling election mail as among other mail.

The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Alaska Congressional Delegation to:

- Provide appropriations from the Help America Vote Act to support language assistance efforts in Alaska.

The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the State of Alaska Legislature urging the State to:

- Provide appropriations to ensure the Division of Elections has the funding to continue complying with Section 203 of the Voting Rights Act, the Toyukak Order, and Title VI of the Civil Rights Act.
- Provide subsidies to deliver broadband service in rural areas of the state, to ensure that voters have access to all online election material, including translated official election pamphlets provided by the Division of Elections.
- Enact legislation resembling Title VI of the Civil Rights Act to help ensure statewide access to voting materials for voters with limited English proficiency.

The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Alaska Governor, Lieutenant Governor, and the State of Alaska Division of Elections:

- Conduct analyses on the vote by mail system and its potential impact on the following communities: (i) Alaska Natives, (ii) rural residents, (iii) linguistically isolated and limited English proficient residents, and (vi) the illiterate voting age population.
- Pause plans to move forward with a vote by mail system in any census area covered by the *Toyukak v. Mallott* settlement agreement, unless the Division of Elections can ensure that all terms of the Toyukak Order will be fully complied with.
- Comply with the entire Toyukak Order.

- Implement a hybrid voting system that includes: a strong early voting option; in-person voting both in early/absentee voting and on Election Day; and a vote by mail system to avoid voter disenfranchisement.
- Continue to convene community speaker-based language panels to strengthen language access efforts and consider identifying additional panel members from the University of Alaska Fairbanks, Alaska Native Language Center, if available.
- Consider implementing recommendations and best practices from the President's Commission on Election Administration regarding access to the polls and polling place management.
- Review Title VI language access requirements to ensure compliance.
- Evaluate the effectiveness of poll worker and outreach worker training to identify areas for improvement.
- Based upon testimony heard regarding the substantial undertaking to implement a state-wide language assistance program and the testimony indicating that problems and challenges remain, the State should extend the Toyukak Order past 2020.
- Given the lack of broadband access in most parts of rural Alaska, require alternative methods for receiving election materials such as sending election material directly to voting centers and inform voters by broadcasting informational commercials on radio and television.
- Continue convening the Election Policy Work Group to analyze the impact of mail in voting.

## II. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On June 13, 2017, the Alaska Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to take up a proposal examining Alaska Native voting rights. Specifically, the Committee sought to evaluate the State's implementation efforts regarding language assistance to its Alaska Native population after a 2014 federal court ruling. Secondly, when the State considered implementing a vote by mail election system in 2017, the Committee sought to determine its potential impact on Alaska Native voters and rural voters alike. However, after drafting this report, the State announced it would not move forward with implementing a vote by mail system at this time. This could change at any time, so the information contained in this report is still relevant and being presented in its entirety.

On August 24, 2017, the Committee convened a public briefing in Anchorage, Alaska to hear testimony regarding the implementation of the *Toyukak v. Mallott* settlement and court order that directly affects Alaska Native voters and to examine the potential impact of a vote by mail election system. The following report is an extension of an advisory memorandum submitted to the U.S. Commission on Civil Rights on March 27, 2018. Contents within this report results from the testimony provided during the public briefing, testimony submitted to the Committee in writing during the thirty-day open period of public comment, and testimony provided during two web briefings on June 19, 2018 and August 1, 2018. To view a timeline of events relevant to the Committee's inquiry, see Appendix A.

This report and the recommendations included within were adopted by the majority of the Committee on June 10, 2019.

#### IV. BACKGROUND

Voter restrictions have historically been used as a political tool, creating hurdles for voters based on party affiliation and racial and ethnic background, thereby preventing already marginalized populations from participating in the franchise. During the Reconstruction, states attempted to circumnavigate the law by enacting grandfather clauses, or clauses that appeared to treat all voters equally but allowed an exemption to the literacy tests for voters whose fathers or grandfathers were previously able to vote before 1867, or before the Fourteenth and Fifteenth Amendments.<sup>3</sup> By creating this loophole, state laws benefited potential white voters and disenfranchised minority voters whose grandfathers were likely to have been unable to vote previously. The Supreme Court subsequently held that grandfather clauses were unconstitutional and in violation of the Fifteenth Amendment.<sup>4</sup>

Nonetheless, some states continued to require voters to have the ability to read and write in English. In *Lassiter v. Northampton County Board of Education*, the Supreme Court upheld a North Carolina law that required potential voters to read and write any section of the state constitution in English.<sup>5</sup> The law had the purported purpose of raising the standard of voters and protecting the integrity of the election system, despite its devastating impact on the voting abilities of communities of color.<sup>6</sup> The Court decided that the law was permissible because it applied to members of all races and was for the purpose of raising the standard of voters.<sup>7</sup> The use of constitutional interpretation or understanding tests were also enacted under the pretext of being “citizenship” tests that were uniform and objective. For example, in *Louisiana v. United States*, registrars were given wide discretion and able to deny voter registration applications if the applicant was unable to “give a reasonable interpretation” of clauses in the Louisiana or United States Constitution.<sup>8</sup> The requirement only applied to new applicants, and white voters had their applications approved while discriminatory practices were still in effect, being given far less rigorous terms than African American voters.<sup>9</sup> The Court held that the requirement was unconstitutional and contrary to the Fifteenth Amendment.<sup>10</sup> The implied requirement that voters be able to read and write in English has chilled the rights of many individuals, who would have otherwise been able to participate in the democratic process.

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<sup>3</sup> See e.g., *Guinn v. United States*, 238 U.S. 347, 358-60 (1915) (discussing the Oklahoma legislature’s decision to enact a grandfather clause exemption from literacy tests after allowing men of all races to vote, following the Fifteenth Amendment).

<sup>4</sup> *Guinn v. United States*, 238 U.S. 347 (1915).

<sup>5</sup> *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Louisiana v. United States*, 380 U.S. 145, 148 (1965).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### A. The United States Voting Rights Act

President Lyndon B. Johnson signed into law the Voting Rights Act<sup>11</sup> on August 6, 1965, (the “VRA”) in response to Jim Crow laws and other restrictions of African Americans’ voting rights primarily in the Deep South. The Voting Rights Act was passed as a means of protection against targeted disenfranchisement.<sup>12</sup> Leading up to its passage, civil rights activists had been working for years to obtain voting rights for all Americans but had only achieved minimal success.<sup>13</sup> It was not until March 7, 1965 that the Johnson Administration supported voting rights legislation. The call was in response to an event now known as Bloody Sunday, in which state troopers descended on peaceful protestors who were en route to the state capital in Montgomery in an unprovoked attack on Edmund Pettus Bridge in Selma, Alabama.<sup>14</sup>

This landmark federal legislation codified the Fifteenth Amendment’s guarantee that no person shall be denied the right to vote because of their race or color.<sup>15</sup> The VRA included key provisions for voter access, including banning the use of literacy tests<sup>16</sup> and giving courts the power to send federal examiners and observers to monitor elections in proceedings instituted by the U.S. Attorney General.<sup>17</sup> Up until 2013, Section 5 of the VRA also froze new election practices or procedures in certain states until the new procedures had been reviewed by the Attorney General of the United States, or before the United States District Court for the District of Columbia.<sup>18</sup> During the review, the procedures were examined for discriminatory purpose or effect, prior to the potentially negative impact on minority voting rights. However, in *Shelby County v. Holder*, the Court determined that the formula determining which jurisdictions were held to the preclearance requirement, Section 4(b) of the VRA, was unconstitutional.<sup>19</sup> Without the coverage formula, Section 5 was rendered inoperative until and unless Congress enacts a law establishing a new coverage formula.<sup>20</sup> The majority distinguished *Shelby* from the Court’s earlier opinion in *South Carolina v. Katzenbach*—which established the constitutionality of the VRA<sup>21</sup>—by reasoning that the preclearance formula had been enacted at a time when states had voter requirements that

<sup>11</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10101–10702).

<sup>12</sup> U.S. Dep’t of Justice, *History of Federal Voting Rights Laws*, <https://www.justice.gov/crt/history-federal-voting-rights-laws> (last accessed July 23, 2019).

<sup>13</sup> *Ibid.*

<sup>14</sup> Klein, Christopher. “Remembering Selma’s ‘Bloody Sunday,’” *History.com*, March 6, 2015, <https://www.history.com/news/selmas-bloody-sunday-50-years-ago> (last accessed July 23, 2019).

<sup>15</sup> U.S. Dep’t of Justice, “Introduction to Federal Voting Rights Laws,” <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-1> (last accessed July 23, 2019).

<sup>16</sup> 52 U.S.C. §§ 10301, 10303.

<sup>17</sup> 52 U.S.C. §§ 10302–10303, 10305.

<sup>18</sup> See *Shelby County v. Holder*, 570 U.S. 529, 534–37 (2013).

<sup>19</sup> *Id.* at 556–57.

<sup>20</sup> American Bar.org, “ABA panel examines the effect of *Shelby County v. Holder*,” Sept. 17, 2014, [https://www.americanbar.org/news/abanews/aba-news-archives/2014/08/aba\\_panel\\_examined/](https://www.americanbar.org/news/abanews/aba-news-archives/2014/08/aba_panel_examined/) (last accessed July 23, 2019).

<sup>21</sup> *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

prevented African Americans from voting, and that unlike the *Katzenbach* decision in 1966, the formula, designating Shelby County as a covered jurisdiction, was no longer relevant.<sup>22</sup>

The 1965 VRA was amended in 1975, extending the Act to include protections against voter discrimination toward “language minority citizens,” and bringing more jurisdictions under its preclearance requirements.<sup>23</sup> In 1982, the VRA was again amended to allow violations of the VRA’s nondiscrimination section to be established without having to prove discriminatory purpose.<sup>24</sup> That is to say, under Section 2 of the VRA, if the voting requirements of a particular jurisdiction have a discriminatory impact, a VRA violation can be found regardless of intent.

### *I. Section 203 of the United States Voting Rights Act*

The 1975 amendment to the VRA included the provision Section 203, which protects certain minority groups who have experienced historical discrimination and disenfranchisement due to limited English-speaking abilities.<sup>25</sup> Congress singled out Latinos, Asian Americans, American Indians, and Alaska Natives for protection under Section 203, finding that:

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.<sup>26</sup>

Section 203 of the VRA requires geographically targeted jurisdictions or covered state or political subdivisions, to make voting materials and information, including ballots, available in minority languages in addition to English.<sup>27</sup> The simple goal of these accessibility efforts is to ensure that all voters have an “effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.”<sup>28</sup>

Congress developed a triggering formula to determine whether a specific jurisdiction is “covered” under the statute and therefore required to provide language assistance to certain minority language

<sup>22</sup> *Shelby*, 570 U.S. at 530-531.

<sup>23</sup> Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400.

<sup>24</sup> Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131.

<sup>25</sup> 52 U.S.C. § 10503(a) (previously codified as 42 U.S.C. § 1973b(f)(1)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> U.S. Dep’t of Justice, “About Language Minority Voting Rights,” (Mar. 27, 2019),

<https://www.justice.gov/crt/about-language-minority-voting-rights#coveredjuris>.

speaking voters.<sup>29</sup> There are two criteria under Section 203's coverage formula which must be satisfied for the provision to apply in a given state or jurisdiction. First, the Americans of voting age in a single protected language group needing minority language materials must: (1) number more than 10,000; (2) comprise more than five percent of all citizens of voting age; or (3) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation.<sup>30</sup> Second, the illiteracy rate of the citizens of the minority language group must exceed the national illiteracy rate.<sup>31</sup> Section 203 applies only to Spanish, Asian languages, and Native American and Alaska Native languages, and is governed by a coverage formula that is updated every five years.<sup>32</sup> The statute also specifically addresses Alaska Natives and American Indians, providing "[t]hat where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting."<sup>33</sup> Alaska is a covered jurisdiction because protected language groups comprise more than five percent of all citizens of voting age and comprise more than five percent of all Alaska Natives of a single language group residing on Indian reservations.<sup>34</sup>

In order to keep up with demographic changes, the U.S. Census Bureau maintains a list of jurisdictions subject to Section 203 coverage based upon the most recent five years of the American Community Survey census data.<sup>35</sup> In December of 2016, the Director of the U.S. Census Bureau released an updated list of jurisdictions that are required to provide language assistance under Section 203, replacing the last list, made in October of 2011.<sup>36</sup> The new determination found a total national population of over 21 million voting-age citizens that require minority language assistance, residing in 263 covered jurisdictions.<sup>37</sup> This is an increase of 13.2 percent, compared to the roughly 19 million and 248 jurisdictions in 2011.<sup>38</sup> The 2016 Census determination

<sup>29</sup> *Ibid.*

<sup>30</sup> 52 U.S.C. § 10503(b)(2)(A).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; see also U.S. Census Bureau, *Section 203 Language Determinations; Decennial Census of Population and Housing*, <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/voting-rights-determination-file.html>; Voting Rights Act Amendments of 2006, Determinations under Section 203, 81 Fed. Reg. 87532 (Dec. 5, 2016) <https://www.govinfo.gov/content/pkg/FR-2016-12-05/pdf/2016-28969.pdf> [hereinafter cited as 2016 Section 203 Determinations].

<sup>33</sup> 52 U.S.C. § 10503(c).

<sup>34</sup> 52 U.S.C. § 10503(b)(2)(A)(i)(III); see U.S. Census Bureau, *Section 203 Determinations Table* (Dec. 5, 2016), <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>.

<sup>35</sup> 52 U.S.C. § 10503(b)(2)(A).

<sup>36</sup> 2016 Section 203 Determinations, *supra* note 34.

<sup>37</sup> Cohn, D'Vera. "More Voters Will Have Access to Non-English Ballots in the Next Election Cycle." Pew Research Center. <https://www.pewresearch.org/fact-tank/2016/12/16/more-voters-will-have-access-to-non-english-ballots-in-the-next-election-cycle/> (accessed August 2, 2019).

<sup>38</sup> *Ibid.*

illustrates that there are significant concentrations of citizens who primarily speak various Asian, Native American, and Alaska Native languages.<sup>39</sup> In Alaska, the covered languages include Yup'ik, Aleut, Inupiat, Alaska Athabaskan, Filipino, and Hispanic in the respective Census Areas:<sup>40</sup>

<b>Jurisdiction</b>	<b>Language</b>
Aleutians East Borough	Filipino
Aleutians East Borough	Hispanic
Aleutians East Borough	Yup'ik
Aleutians West Census Area	Aleut
Aleutians West Census Area	Filipino
Bethel Census Area	Inupiat
Bethel Census Area	Yup'ik
Bristol Bay Borough	Yup'ik
Dillingham Census Area	Yup'ik
Kenai Peninsula Borough	Yup'ik
Kodiak Island Borough	Yup'ik
Lake and Peninsula Borough	Yup'ik
Nome Census Area	Inupiat
Nome Census Area	Yup'ik
North Slope Borough	Inupiat
Northwest Arctic Borough	Inupiat
Southeast Fairbanks Census Area	Alaskan Athabaskan
Valdez-Cordova Census Area	Alaskan Athabaskan
Wade Hampton Census Area	Inupiat
Wade Hampton Census Area	Yup'ik
Yukon-Koyukuk Census Area	Alaskan Athabaskan
Yukon-Koyukuk Census Area	Inupiat

The Department of Justice has been successful in enforcing the provision since its enactment, demonstrating Section 203's impact across the nation. Specifically, between 1992 and 2006, the Department of Justice brought twenty-six successful cases in twelve of the states covered in whole or in part by Section 203 and participated as an intervening party or submitted amicus briefs in many others.<sup>41</sup>

<sup>39</sup> 2016 Section 203 Determinations, 81 Fed. Reg. 87532. These languages include: Athabaskan, Bangladeshi, Chinese, Choctaw, Filipino, Hindi, Hopi, Inupiat, Japanese, Khmer, Kickapoo, Korean, Navajo, Pueblo, Tohono 'O'Odham, Vietnamese, Yaqui, Yuma, or Yup'ik.

<sup>40</sup> *Id.*

<sup>41</sup> James Thomas Tucker, *The Ballot of Bilingual Ballots Shifts to the Courts: A Post-Boerne Assessment of 203 of the Voting Rights Act*, 45 HARV. J. ON LEGIS. 507, 576–77 (Summer 2008); see also, e.g., *Nick v. Bethel, Alaska*, No. 3:07-



### *I. Alaska Native Demography and Landscape*

To understand Alaska Native voter participation in Alaska, an explanation of the demography and physical landscape deserves attention. Alaska is unique in that it has the largest percentage of Native voters in any state with roughly 17.7 percent of Alaska's citizen voting-age population.<sup>42</sup> In addition, Alaska Natives are more geographically isolated than American Indians in the lower forty-eight states.<sup>43</sup> Geographically, many Alaska Native villages are inaccessible by road and are only accessible by boat or air and may be unreachable due to unpredictable weather (see Figure 1).<sup>44</sup>

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cv-00098 TMB, 2010 WL 1145611134 (D. Alaska July 30, 2008) (A federal court issued a preliminary injunction and specific relief after finding that the Bethel Census Area of Alaska had not complied with its obligations under Section 203 of the VRA since 1975).

<sup>42</sup> See U.S. Census Bureau, *2006–2010 American Community Survey American Indian and Alaska Native Tables*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_AIAN\\_B05003&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_AIAN_B05003&prodType=table).

<sup>43</sup> James T. Tucker, Natalie A. Landreth & Erin Dougherty Lynch, *Why Should I Go Vote Without Understanding What I Am Going to Vote For? The Impact of First Generation Voting Barriers on Alaska Natives*, 22 Mich. J. Race & L. 327 (2017), <http://repository.law.umich.edu/mjrl/vol22/iss2/5>.

<sup>44</sup> Natalie Landreth & Moira Smith, *Voting Rights in Alaska 1982-2006*, RenewtheVRA.org, 3 (2006), <http://www.protectcivilrights.org/pdf/voting/AlaskaVRA.pdf> (noting that Alaska has nearly 200 native villages and communities that are inaccessible by road).

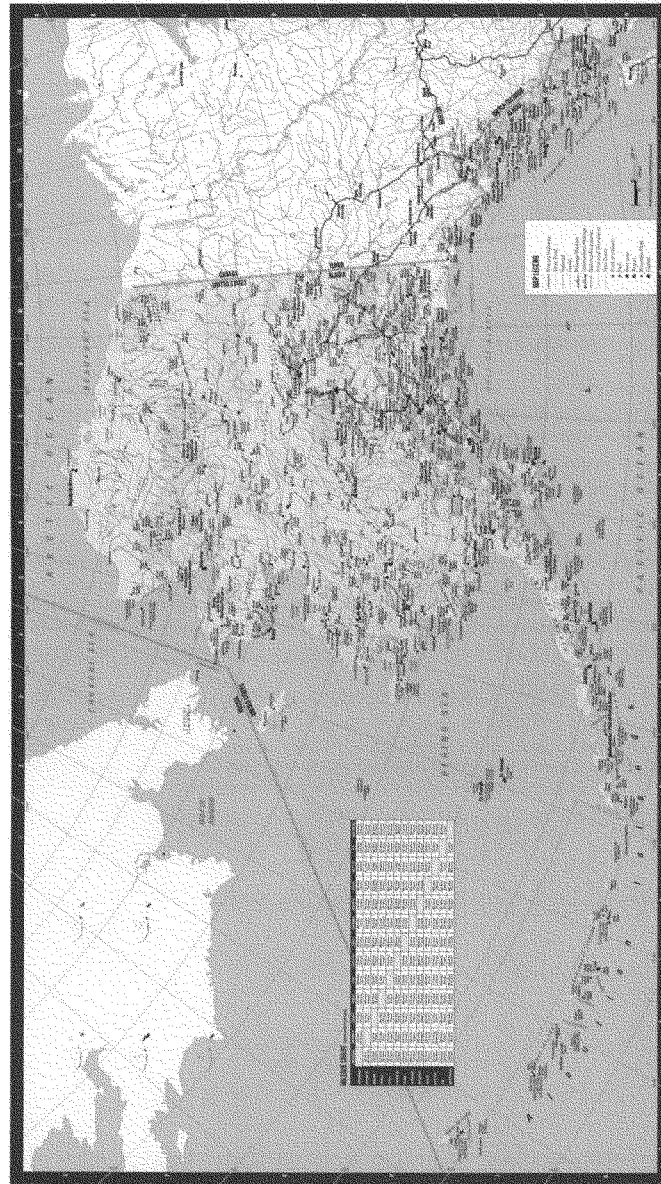


Figure 1. Map of Alaska Demonstrating Road Access. The roads are represented in red and largely concentrated in the areas around Anchorage and between Anchorage and Fairbanks

## II. *Brief History of Alaska Native Voting Rights*

Alaska has a long history of problems ensuring the rights of Alaska Natives to vote. In 1915, Alaska passed an “Act to define and establish the political status of certain Native Indians within the Territory of Alaska,” which imposed a burdensome and discriminatory pre-registration process on Natives seeking citizenship.<sup>45</sup> The pre-registration process imposed seven requirements, one of which being that applicants obtain endorsements from five white citizens and “sever[] all tribal relationships and adopted the habits of a civilized life.”<sup>46</sup> This posed the difficult question of choosing between participating in the democracy or retaining one’s identity and cultural ties.

While the law was rendered obsolete nine years later because of the passage of the Indian Citizenship Act of 1924, the Territorial Legislature responded by enacting a law that required an English literacy test as a prerequisite to voting.<sup>47</sup> This English literacy test is significant because Alaska had an official government policy that established a segregated school system and discouraged building high schools in rural villages. This systemic form of educational discrimination had a profound impact on the illiteracy rate of Alaska Natives, where greater than 50 percent were limited English proficient.<sup>48</sup> In comparison to the 1970 Census, Alaska Natives illiteracy rate was approximately 36 percent.<sup>49</sup> Many Alaska Native students had no local schools in their villages and were forced to travel to great distances or attend boarding school to obtain an education.<sup>50</sup> By the time the VRA was extended in 1975, only roughly 2000 Alaska Native students had completed a high school education.<sup>51</sup> In addition to the difficulty of securing local schools in

<sup>45</sup> 1915 Alaska Sess. Laws 52.

<sup>46</sup> *Id.*

<sup>47</sup> Stephen Haycox, “William Paul, Sr. and the Alaska Voters’ Literacy Act of 1925,” *Alaska Hist. Soc’y*, Vol. 2 (Winter 1986–1987), p. 17, [http://www.alaskool.org/native\\_ed/articles/literacy\\_act/LiteracyTxt.html](http://www.alaskool.org/native_ed/articles/literacy_act/LiteracyTxt.html).

Article V, section 1 of the Alaska Constitution currently reads: “Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty-day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions.” ALASKA CONST. art. V, § 1. “The original version included a provision requiring that ‘a person otherwise qualified to vote in state or local elections be able to read or speak the English language as a prerequisite for voting.’ This measure was repealed with a vote of 34,079 to 32,578 on August 25, 1970, after H. J. Res. 51, introduced by Rep. Chancy Croft, placed Constitutional Amendment 2 on the 1970 ballot.” Landreth & Smith, *Voting Rights in Alaska 1982-2006*, *supra* note 46 at 14 n. 46.

<sup>48</sup> Landreth & Smith, *Voting Rights in Alaska 1982-2006*, *supra* note 46 at 22.

<sup>49</sup> James T. Tucker, *The Battle Over Bilingual Ballots: Language Minorities and Political Access Under the Voting Rights Act* (New York: Ashgate Pub., Ltd. 2013), p. 256.

<sup>50</sup> Tucker, Landreth, and Lynch, *Why Should I Go Vote*, pp. 330-33.

<sup>51</sup> Landreth and Smith, *Voting Rights in Alaska 1982-2006*, p. 22.

villages, Alaska Natives also faced inequality in obtaining education funding because the State used racially discriminatory procedures to disperse funds.<sup>52</sup>

These discriminatory practices made it difficult for Alaska Native voters to participate in the electoral process for several years.<sup>53</sup> Despite the passage of key laws that sought to remedy discrimination against Alaska Natives, such as the Indian Citizenship Act of 1924, Alaska Equal Rights Act of 1945, and the Voting Rights Act of 1965 and its language minority requirements, Alaska continues to face challenges with providing its residents equitable access to the polls.

In the last three decades, the State of Alaska's Division of Elections, the state entity responsible for administering elections, was sued twice due to its failure to comply with the language assistance provision of the VRA.<sup>54</sup> Before the first lawsuit was filed in 2007, the Division of Elections had done little to provide complete, clear, and accurate translations of all voting materials and information to Alaska Native voters.<sup>55</sup> In 2007, Yup'ik-speaking voters and tribes located in the Bethel Census Area sued the Lieutenant Governor and the Division of Elections.<sup>56</sup> The plaintiffs alleged that state election officials had violated Section 203 (the minority language accommodation requirement), Section 208 (the provision that allows voters with disabilities including voters who have difficulty with English the right to assistance in the voting booth) and Section 5 (the provision requiring certain jurisdictions to receive federal approval before changing voting or election laws) of the VRA by failing to provide translations of all voting information and assistance in Native languages for voter registration, absentee voting, and Election Day activities.<sup>57</sup> After three years, the Court found that the State violated all three provisions and required the Division of Elections to provide a number of remedies through the end of 2012. These remedies, among others, included:

- ensure that poll workers who were fluent in English and Yup'ik are present at each polling location in the Bethel Region;
- train poll workers on the requirements for language and voter assistance;
- hire a language coordinator fluent in Yup'ik to serve as a liaison to the tribal councils and Yup'ik-speaking community to review the State's efforts to provide effective language assistance;
- broadcast and publish any pre-election publicity provided to voters in English to be also offered in Yup'ik; and,
- work with Yup'ik language experts to ensure accurate translations of election materials.<sup>58</sup>

<sup>52</sup> Tucker, Landreth, and Lynch, *Why Should I Go Vote*, pp. 330-33.

<sup>53</sup> Landreth and Smith, *Voting Rights in Alaska 1982-2006*, pp. 99-101.

<sup>54</sup> *Nick v. Bethel*, 3:07-cv-00098-TMB (D. Alaska Dec. 4, 2008); *Toyukak v. Mallott*, No. 3:13-cv00137-SLG (D. Alaska July 19, 2013).

<sup>55</sup> Tucker, Landreth, and Lynch *Why Should I Go Vote*, pp. 350-54.

<sup>56</sup> *Nick v. Bethel*, 3:07-cv-00098-TMB (D. Alaska Dec. 4, 2008).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

The remedies outlined in the settlement were meant to address the needs of all Yup'ik speaking populations, and all Native language speakers in general. However, that did not happen. Three years later, a second lawsuit, *Toyukak v. Mallott*, raised similar allegations with regard to the Census areas directly above and below the one at issue in the *Nick* case. It is this second case, *Toyukak v. Mallott*, that is the subject of the Alaska Advisory Committee's study regarding the implementation of the settlement and court order.

### **B. *Toyukak v. Mallott***

On July 19, 2013, two Alaska Native citizens, (Mike Toyukak and Fred Augustine) and four Alaska Native tribal governments (Arctic Village, Hooper Bay, Togiak, and Venetie) sued the Lieutenant Governor of the State of Alaska, and the Division of Elections, for failing to provide effective language assistance to limited English proficient Alaska Native voters in three Census Areas that were covered by Section 203 (see Figure 2).<sup>59</sup> The Defendants had been notified that the relevant jurisdictions, by way of census data, had triggered Section 203 coverage in 2011 and were effective upon publication of the determinations in the Federal Register. The complaint specifically alleged that the State failed to provide Yup'ik or Gwich'in language voting materials to Alaska Native U.S. citizens who were voting-age and either registered to vote or eligible to vote in federal and state elections, in violation of Section 203.<sup>60</sup> According to state law, Alaska is required to mail its Official Election Pamphlet<sup>61</sup> to every household with a registered voter at least twenty-two days prior to a state-wide general election or an election with a ballot measure.<sup>62</sup> The complaint alleged that the state did not produce an Official Election Pamphlet and any other pre-election information disseminated to voters in English in any of the covered Alaska Native languages, effectively denying Alaska Native voters the opportunity to a meaningfully participate in the election process.<sup>63</sup>

<sup>59</sup> Complaint, *Toyukak v. Mallott*, No. 3:13-cv-00137-SLG (D. Alaska September 8, 2015), (Dkt. No. 1).

<sup>60</sup> Complaint, *Toyukak*, Case No. 3:13-cv-00137-SLG (Dkt. No. 1). The *Toyukak* plaintiffs originally made constitutional claims under the Fourteenth and Fifteenth Amendments and requested a claim for relief under Section 3(c) of the Voting Rights Act, but they agreed to dismiss those issues under the terms of the Stipulated Judgement and Order.

<sup>61</sup> The Official Election Pamphlet contains over a 100 pages of important election information that includes: candidate statements; Judicial Council recommendations for retention of judicial candidates; sample ballots; thorough information on ballot propositions, materials submitted by political parties; constitutional convention questions; and any other information on voting procedures the lieutenant governor considers important.

<sup>62</sup> Alaska Stat. §§ 15.58.010, 15.58.080.

<sup>63</sup> Complaint, *Toyukak*, Case No. 3:13-cv-00137-SLG (Dkt. No. 1).

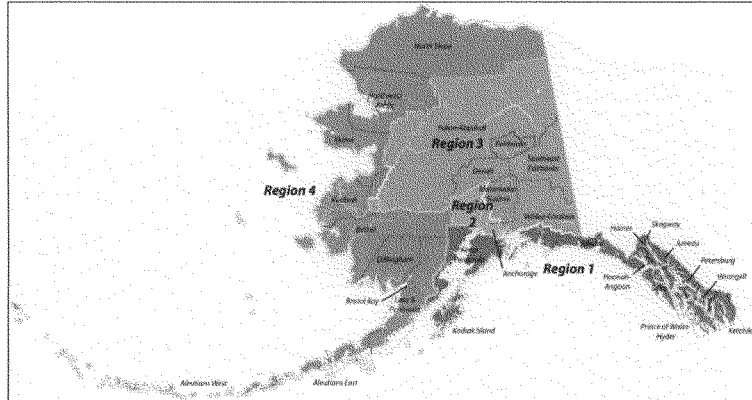


Figure 2. Map of Alaska Census Areas. Alaska is unique in that it is not organized by county, but instead "subdivides the unorganized areas of the state into census areas for the purpose of presenting statistical data."<sup>64</sup> In *Toyukak v. Mallott*, the settlement areas include Region 3 which is composed of Yukon-Koyukuk Census Area; and Region 4, which is composed of Kusilvak and Dillingham Census Areas.

On September 3, 2014, the federal court for the District of Alaska found that the State had again violated Section 203 of the VRA by failing to provide election materials in Yup'ik and Gwich'in and ordered the parties to confer to be implemented immediately and report back to the court.<sup>65</sup> Notably, the court did not resolve the Constitutional claim at that time. The parties submitted to the court a host of remedies and then entered into settlement discussions to dispose of the remaining Constitutional claim. After this briefing, on September 22, 2014, the Court ordered interim remedies for the 2014 elections.<sup>66</sup> The Court later directed the parties to engage in settlement discussions and, on September 8, 2015 and the parties reached a settlement agreement that required numerous changes to the administration of elections. This agreement was approved by Judge Gleason on September 30, 2015.<sup>67</sup> Among the changes was a requirement of the State to provide increased language assistance for Yup'ik-speaking voters in the Dillingham and the Kusilvak Census Area (formerly Wade Hampton Census Area) and for Gwich'in-speaking voters

<sup>64</sup> U.S. Census Bureau, Geographic Areas Reference Manual 4-2 (Nov. 1994), <https://www.census.gov/geo/reference/garm.html> (italics in original). Much of Alaska's land mass is included in the ten designated census areas.

<sup>65</sup> Transcript of Status Conference, *Toyukak*, No. 3:13-cv-137-SLG (D. Alaska September 3, 2014) (Dkt. No. 223).  
<sup>66</sup> *Id.* at No. 226.

<sup>67</sup> Joint Motion for Settlement, *Toyukak*, No. 3:13-cv-00137-SLG-LCL, (No. 269); Order approving Stipulated Judgment and Order, *Toyukak*, No. 3:13-cv-00137-SLG-LCL (No. 282).

in the Yukon-Koyukuk Census Area.<sup>68</sup> Pursuant to Section 3(a) of the Voting Rights Act, Election Observers were to be appointed who were authorized to attend and observe elections and election activities in the three areas. The State also agreed to translate the entire Official Election Pamphlet in Gwich'in and Yup'ik. The Court agreed to retain jurisdiction of the action until December 31, 2020, to enter further relief or other orders as necessary to effectuate the terms of the order, and to ensure compliance with Section 203 and the Fourteenth and Fifteenth Amendments. The settlement agreement included the following conditions, among others:<sup>69</sup>

- Increasing pre-election resources, including a summary of available language assistance materials and an explanation to voters that help is available both on and before Election Day;
- A requirement that there be at least one trained bilingual outreach worker and poll worker in each village, whose language abilities have been verified by the Defendants with written confirmation from the tribal council;
- Provide the translations of election materials and language assistance in various Yup'ik and Gwich'in dialects;
- Provide glossaries of election terms in the Yup'ik dialects and Gwich'in to assist outreach workers and poll workers with their translations;
- Provide a toll-free number for voters to identify bilingual workers in the voter's village and when events are scheduled, providing language assistance in all dialects;
- Institute a Yup'ik translation panel comprised of eight members and a Gwich'in translation panel comprised of at least three;
- Implement additional procedures to ensure translations are accurate;
- Require that the State maintain a full-time employee to oversee compliance with Section 203 and to administer the language assistance program;
- Requiring that the Division provide between ten and thirty hours of outreach for each election, depending on whether pamphlets are available;
- Require that there be language assistance in all villages in the Dillingham and Kusilvak Census Areas, and in seven villages in the Yukon-Koyukuk Census Area;
- Mandate training for poll workers and outreach workers, for which the Division maintain records of and handle travel arrangements for workers;
- Mandating pre-election outreach to voters to explain information regarding election administration, deadlines, voter registration, absentee voting, voter identification requirements, what will be on the ballot, the toll-free number assistance, all in the covered language and dialect;
- Governing record-keeping procedures and requirements;
- Providing Election Day publicity translations on all radio stations in the impacted census areas; and

<sup>68</sup> See *id.* Dialects noting Nunivak Island Cup'ig is also part of the Toyukak Order, albeit under different conditions.

<sup>69</sup> See Appendix B.

- Providing translated sample ballots, voter registration forms, permanent absentee voting procedures, and touchscreen voting machines.

Effective September 30, 2015 the Division of Elections was ordered to implement the settlement terms that are slated to remain in effect in 29 communities through December 2020. While the court has retained primary jurisdiction to oversee the State's compliance with the settlement agreement, this body is similarly concerned with evaluating the quality and progress of the implementation to date.

*Toyukak v. Mallot* is the second Section 203 case fully tried through a decision in 34 years. Attorneys for the plaintiffs noted, "[t]he voters in these cases had been entitled to equality for 40 years, but they had to fight for nearly a decade in two federal court cases to get it."<sup>70</sup>

### C. Vote by Mail System

Only three states nationwide conduct all elections *exclusively* by mail: Oregon (adopted in 2000), Washington (2011), and Colorado (2013). Largely, in a vote by mail system, a ballot is automatically mailed to every registered voter in advance of Election Day, and traditional in-person voting precincts are not available. While a vote by mail election means that every registered voter receives a ballot by mail, states do not preclude in-person voting opportunities on and/or before Election Day. Other states permit all-mail elections in certain circumstances, such as for special districts, municipal elections, when candidates are unopposed, or at the discretion of the county clerk. In Alaska, the Anchorage Assembly approved a change to their municipal code on March 22, 2016, making Anchorage the only municipality in the state that conducts elections solely by mail.<sup>71</sup>

Jurisdictions elect to conduct vote by mail elections for a variety of reasons such as the perception that it might increase voter turnout, financial savings, and voter convenience and satisfaction. For Alaska, its Division of Elections is suggesting a shift to a vote by mail system in large part due to its current fiscal challenges. This suggestion was largely prompted by a 2017 internal audit of the Division of Elections, state auditors raised concern regarding the aging precinct-based ballot tabulation system nearing its end-of-life that will require eventual replacement and would provide "a good opportunity for the State to consider alternative voting methods for state and federal elections."<sup>72</sup> Although the Division of Elections had not yet conducted a full cost analysis of

<sup>70</sup> Tucker, Landreth, and Lynch, *Why Should I Go Vote*, p. 329.

<sup>71</sup> Anchorage, Alaska, AO No. 2018-4 (2018); see also Municipality of Anchorage, "Elections: Frequently Asked Questions: How Was the Decision to Change to Vote by Mail Elections Made," <https://www.muni.org/Departments/Assembly/Clerk/Elections/Pages/Frequentlyaskdquestions.aspx#S7Q1> (last accessed July 24, 2019).

<sup>72</sup> State of Alaska, Division of Elections, *2017 Fiscal & Policy Challenges*, p. 19, <http://www.elections.alaska.gov/doc/info/Fiscal%20Challenges.pdf> (hereafter cited as *Division of Elections 2017 Fiscal & Policy Challenges*).



conducting elections by mail, they acknowledge that it may have cost-savings benefits. In considering this move, the Division of Elections noted “unique considerations of mail service in rural Alaska would need to be carefully considered.”<sup>73</sup>

To advance policy discussions about the future of the State’s election administration, Lieutenant Governor Mallott convened a new body called the Election Policy Work Group, with the aim of replacing Alaska’s voting system by 2020. In 2017, the Election Policy Work Group “[e]xplored a Hybrid/Universal Ballot Delivery method that includes by-mail and in person voting,” noting that “[i]f it doesn’t work for rural Alaska, it won’t work for Alaska.”<sup>74</sup> In 2018, the Group hosted “focus groups” (consisting of approximately eight people of which identified as Alaska Native) in Bethel with a Division of Elections Yup’ik interpreter to facilitate discussion amongst Elders and Tribal leadership on pros, cons, and concerns around current voting methods and the universal ballot delivery system being considered by the Election Policy Work Group.<sup>75</sup> In July of 2018, the Division of Elections engaged in research to assist the Election Policy Work Group in formulating recommendations for future state and federal elections.<sup>76</sup> The Division presented three research reports,<sup>77</sup> with varying methodologies and sample sizes on ballot delivery systems from the perspective of voters in rural Alaska, research from focus groups in Bethel and research from a voting methods survey.

The first report surveyed respondents on their preferences for methods of voting and potential hurdles in participants’ abilities to vote. The study, *Perceptions of Universal Ballot Delivery Systems: Findings from A Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska*,<sup>78</sup> found that after hearing a description of various voting methods (the current system,

<sup>73</sup> Division of Elections 2017 Fiscal & Policy Challenges, p. 20.

<sup>74</sup> Alaska Division of Elections, Election Policy Work Group, 2017-2018 Timeline, [https://www.elections.alaska.gov/doc/info/180416%20EPWG%202017\\_2018%20Timeline%20%20Accomplishment%20s.pdf](https://www.elections.alaska.gov/doc/info/180416%20EPWG%202017_2018%20Timeline%20%20Accomplishment%20s.pdf)

<sup>75</sup> Ibid.

<sup>76</sup> Josie Bahnke, Director, State of Alaska Division of Elections, letter to the Election Policy Work Group, Jul. 18, 2018, Alaska Online Public Notices, <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113377> (hereafter cited as DOE Letter to Election Policy Work Group).

<sup>77</sup> Ibid.; see also Appendix C. The three reports are attached to the letter written by Director Josie Bahnke of the State of Alaska Division of Election’s direct to the Election Policy Work Group.

<sup>78</sup> Virgene Hanna & Jessica Passini, *Perceptions of Universal Ballot Delivery Systems: Findings from a Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska*, Institute of Social and Economic Research U. of Alaska, pp. 18-21, (noting the methodology, which included conducting the survey entirely in English), [https://pubs.iseralaska.org/media/d2ea4bda-7817-4e0c-a6a6-ab86ded14a75/2018\\_06-PerceptionsOfUniversalBallotDeliverySystems.pdf](https://pubs.iseralaska.org/media/d2ea4bda-7817-4e0c-a6a6-ab86ded14a75/2018_06-PerceptionsOfUniversalBallotDeliverySystems.pdf), (hereafter cited as *Perceptions of Universal Ballot Delivery Systems*); see also Virgene Hanna, testimony, *Web Hearing Before the Alaska Advisory Committee to the U.S. Commission on Civil Rights*, Aug. 2, 2018, transcript, p. 4, (hereafter cited as *Web Hearing II*), <https://gsa-geo.my.salesforce.com/sfc/p/#t00000000Gvj0/a/t000000005vUm/QqB1TYFMxBx92u9Ep9g8fmmFWwRfMxQdwtQ>

mailing out and back, and receiving ballot in the mail with different methods of return), 49 percent of respondents preferred to maintain the status quo.<sup>79</sup> In addition, 46 percent said that the ballot being written in English made it difficult for people in their community to vote.<sup>80</sup> While over half of respondents reported they are satisfied with their mail service, only 17 percent of those who were satisfied said they would prefer to receive or return their ballot by mail.<sup>81</sup>

The second report, *Bethel Focus Groups*,<sup>82</sup> which summarized findings from three focus groups<sup>83</sup> consisting of varying number of participants<sup>84</sup> who gathered in Bethel, aimed to gather insight from residents of rural Alaska on revitalizing Alaska's voting systems.<sup>85</sup> Most of the adult voters preferred changing the voting system to one in which they had the option of voting by mail in advance of the election or going to a polling location on Election Day.<sup>86</sup> The second choice option was maintaining the current system, and the last choice option was voting by mail due to concerns about rural delivery.<sup>87</sup> These focus groups also noted that accessibility to the post office and stamps were also difficult, which is notable because most rural residents pick up their mail from a box at the post office, rather than receive delivery to their home.<sup>88</sup> Additional concerns were centered around privacy and security, as well as relying on relatives for translations if no translators were provided. Some of the concerns raised about the current system, namely transportation to polling places and the poor accessibility of the locations, could be resolved by vote by mail system. In contrast to the adult focus group high school students preferred keeping the current system by a wide margin.<sup>89</sup>

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OqaAfAgo (Institute of Social and Economic Research (ISER) responded to Committee questions concerning methodology).

<sup>79</sup> *Perceptions of Universal Ballot Delivery Systems*, pp. 20-21; Hanna Testimony, *Web Hearing II*, pp. 6-7.

<sup>80</sup> *Perceptions of Universal Ballot Delivery Systems*, pp. 5, 27; Hanna Testimony, *Web Hearing II*, pp. 9-13.

<sup>81</sup> *Perceptions of Universal Ballot Delivery Systems*, p. 5.

<sup>82</sup> See DOE Letter to Election Policy Work Group which includes the Bethel Focus Groups report.

<sup>83</sup> The Committee finds that the Division of Election's use of focus groups is not representative of the broader public, especially in the composition of the three focus groups to obtain conclusions regarding voters' preference for voting in elections.

<sup>84</sup> Two focus groups consisted of a total of eight adult participants and one focus group consisted of an unknown number of students.

<sup>85</sup> The Bethel Focus Group report describes methodology in its "Overview" section and does not provide the final count of focus group participants from April 16-17, 2018. This section notes the focus group was conducted in English and handouts provided were in prepared in English and Yup'ik. In addition, two employees from the Division of Elections were available to provide Yup'ik translation as needed.

<sup>86</sup> DOE Letter to Election Policy Work Group, p. 1 (which includes the Bethel Focus Groups report).

<sup>87</sup> *Ibid.*, pp. 1-2.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

The third report, *Voting Methods*,<sup>90</sup> surveyed participants from Division of Elections presentations in Anchorage on their perspectives on various voting methods.<sup>91</sup> This survey was conducted at the Alaska Municipal League and City Clerks' meeting where the majority of respondents were from incorporated communities and organized boroughs, unlike the communities addressed in *Toyukak v. Mallot* and the majority of communities covered by Section 203. More than half of the participants were from a city and worked for the Clerk's Office. Eighty percent of respondents viewed precinct/poll voting and absentee/early voting as very effective, with mixed responses for vote by mail.<sup>92</sup> Notably, 55 percent<sup>93</sup> reported that they did not provide language assistance for limited-English proficient voters nor bilingual worker training.<sup>94</sup>

As of July 2018, the Election Policy Work Group continued to meet to discuss the potential impact of a vote by mail system and its effect on language access until the November 2018 midterm election. In a letter to the Election Policy Work Group, Josie Bahnke, noted:

“In a nutshell, the research informed the group that an exclusive all vote by mail (VBM) system is not an option for Alaska. This is primarily due to unique challenges of rural mail service, N[ational] V[oter] R[egistration] A[ct] requirements to provide language assistance, and a desire for communities to retain the social aspect of going to the polls on Election Day. However, Alaskans support expanding voter options for ballot access to increase voter participation and the concept of a universal (hybrid) ballot delivery system.”<sup>95</sup>

In effect, the Division of Elections will move forward with replacing the aging ballot tabulation equipment and will examine expanding voter choice by developing a legislative strategy but had decided as of the time of this report, not to pursue a vote by mail system. This could change at any time, so the information contained in this report is still relevant and being presented in its entirety.

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<sup>90</sup> See DOE Letter to Election Policy Work Group which includes the Division of Elections: Voting Methods Survey report.

<sup>91</sup> Ibid., p. 1 (noting the Alaska State Division of Elections surveyed participants attending the 2017 Alaska Municipal League (AML) and the Alaska Association of Municipal Clerks (AAMC) conferences held in Anchorage on the week of November 13-17, 2017. “The total number of surveys distributed was 88, 49 of which were returned, constituting a 56 percent response rate. The survey was informal, did not employ a random sample methodology and is therefore not representative of all incorporated places in Alaska. The survey is meant to benchmark responses at the conferences and may be used to supplement other research in order to inform the Division on current perspectives on different voting methods.”).

<sup>92</sup> Ibid., p. 4.

<sup>93</sup> This number represents incorporated communities, the majority of which are on the road system, and/or reside in Regions I or II who were not subject to Section 203 requirements in 2016. As such, the Division of Elections alleges it was not required to provide language assistance. Whether or not this is accurate at this time is beyond the scope of this report.

<sup>94</sup> Ibid., p. 7.

<sup>95</sup> Josie Bahnke, Recap of EPWG email, Thursday, July 26, 2018; see Appendix F.

## V. SUMMARY OF PANEL TESTIMONY

### A. Division of Elections Implementation of *Toyukak v. Mallott* Settlement and Court Order

The State of Alaska Division of Elections presented a written report<sup>96</sup> on the language assistance provided per the *Toyukak v. Mallott* settlement and court order (Toyukak Order) for the 2016 election cycle. Indra Arriaga, the Language Assistance Program Compliance Manager who was hired to carry out certain provisions of the *Toyukak* order, testified to explain major aspects of that report. Specifically, the Toyukak Order related to three Census Areas — Dillingham, Yukon-Koyukuk, and Wade Hampton, which was renamed as Kusilvak — and the following languages: Bristol Bay Yup'ik, General Central Yup'ik, Hooper Bay Yup'ik, Chevak Cup'ik, Norton Sound [Kotlik] Yup'ik, Yukon Yup'ik and Gwich'in.

#### I. Current Progress

##### a) Translation Panels and Language Glossaries+

As part of the Toyukak Order, the Division of Elections is required to create translation panels for the Yup'ik and Gwich'in dialects to translate all election materials. These materials include election term glossaries, ballots and sample ballots, public service announcements, official election pamphlets, and other election-related material.

For the identified Yup'ik dialects, the Yup'ik translation panel translated all materials, to varying degrees of completeness, as time and resources allowed.<sup>97</sup> The Division of Elections reported they were able to fully comply in regard to translations of Gwich'in materials.<sup>98</sup>

To develop the Yup'ik glossary of election terms, the Division of Elections utilized an existing glossary of standard election terms in General Central Yup'ik coupled with a larger list of terms provided by the Native American Rights Fund totaling to a list of 179 terms.<sup>99</sup> The Yup'ik translation panel was able to translate the majority of those terms into the six Yup'ik dialects and

<sup>96</sup> State of Alaska, Division of Elections, *Alaska Native Language Assistance Court Report for 2016 Primary, Regional Educational Attendance Area (REAA), and General Election, 2016*, <https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t0000000lwhR/dY38ZXYtMYlprZrG9Y89AEQBt6igJEQ04EHuzMSdsY> (hereafter cited as *2016 Division of Elections Compliance Report*).

<sup>97</sup> *2016 Division of Elections Compliance Report*, p. 2 (noting that translation priority is given to election materials that are crucial for voters to make informed decisions, however due to statutory deadlines for the dissemination of these materials, printing schedules, and limited access to translators, secondary materials are not always translated).

<sup>98</sup> *Ibid.*, p. 4.

<sup>99</sup> *Ibid.*, p. 5.

reach consensus after full discussion. A remaining group of 68 terms was reviewed, but the panel did not reach consensus on the desired translation which remain to be finalized after the 2016 election cycle.

In addition to creating a written glossary, the Division of Elections is required to create an audio glossary for the election terms available in General Central Yup'ik. The Division of Elections reported recording only 74 of the election terms in General Central Yup'ik, however the remaining 105 terms were not updated and recorded for the 2016 election cycle.<sup>100</sup>

The Gwich'in translation panel was given the same list of 179 terms developed for the Yup'ik panel and was able to fully complete both a written glossary of terms and the Gwich'in audio glossary before the deadline.<sup>101</sup>

#### ***(1) Composition***

For each of these panels, the Toyukak Order required the Division of Elections to select a specific number of members who understand and speak Yup'ik and Gwich'in dialects based on recommendations from the Native American Rights Fund. Election officials must also support their travel expenses and compensate members while participating on the panel. The Yup'ik translation panel must have at least eight members and the Gwich'in panel must have at least three bilingual speakers.

The Division of Elections reported exceeding the number panel members for the Yup'ik panel by one (nine total members) and for the Gwich'in panel by two (five total members).

#### ***(2) Procedures for Translations***

In many cases, English terms are not found in other languages. Taking this into account, the Toyukak Order noted specific procedures for the translation panels to implement. These procedures include documenting differences in the various Alaska Native dialects in footnotes in order to produce uniform oral and written translation of election-related terminology. To confirm translations, each panel must have a majority of the members present.

The Division of Elections was able to implement this mandate which resulted in the Yup'ik glossary of election terms that included all Yup'ik dialects and Nunivak Cup'ig in on single publication. Wherever there were differences, the Division of Elections noted dialect abbreviation in the footnotes. The two panels followed varying approaches to the translation of supporting materials. The Yup'ik translation panel, due to working with multiple dialects, began by doing seed translations of materials from English into General Central Yup'ik. Materials were then given to panel members with expertise in particular dialects and their work was returned to Indra Arriaga

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<sup>100</sup> Ibid., p. 7.

<sup>101</sup> Ibid., p. 8.

or other panel members for review. The Gwich'in translation panel began by giving materials to two panel members who resided in the same village and who consulted with a third panel member in Fairbanks. Their translations were then sent to the Division of Elections and assigned to another panel member for verification.<sup>102</sup>

The Division of Elections noted that both panels worked with all members to complete the election material and stayed employed as translators and recorders.

The official election pamphlets (OEPs) presented a special challenge to the translation panels as these original materials had to be provided to Division of Elections with a 30-day window prior to the statutory guideline for submitting materials in time for inclusion in the publications. A total of 70 OEPs representing different dialects and election districts were distributed by Division of Elections by mail, email and online to the tribal councils,<sup>103</sup> regions, communities and the general public as listed in Appendix D.<sup>104</sup>

**b) Language Assistance**

The Toyukak Order requires the Division of Elections to provide Yup'ik language assistance in all villages in the Dillingham Census Area and Kusilvak Census Areas. It must also provide Gwich'in language assistance in the following villages in the Yukon-Koyukuk Census Area: Arctic Village, Beaver, Birch Creek, Chalkyitsik, Circle, Fort Yukon, and Venetie.

**(1) Bi-lingual Assistance at the Polls**

This bilingual language assistance must be available at the polls in the jurisdictions noted above. While the Toyukak Order did not require the Division of Elections to recruit a specific number of bilingual outreach workers in each village covered, it did require documentation of how many instances of language assistance at the polls in both the primary and general elections. A total of 235 instances of language assistance were documented where more than 80 percent of the instances involved Alaska Native languages.<sup>105</sup>

**(2) Toll-Free Numbers for Language Assistance**

Having at least one bilingual translator available for each language and dialect spoken in the Dillingham Census Area, Kusilvak Census Area, and Yukon-Koyukuk Census Area to provide language assistance by phone was also required. The Toyukak Order also outlined a procedure to ensure voters received appropriate language assistance and reporting requirements to document instances of language assistance. This information includes documenting the translator's name,

<sup>102</sup> Ibid., pp. 18-20.

<sup>103</sup> See Appendix D.

<sup>104</sup> Ibid., pp. 21-24.

<sup>105</sup> Ibid., pp. 26-27.

their language and dialect, date, and duration of the call with the voter calling the toll-free number.

The Division of Elections established a toll-free number for language assistance and distributed this number via written materials, PSAs, and the Division of Election's website. During the 2016 election cycle, only 3 of the 27 calls received were related to language assistance; all calls were for Spanish.<sup>106</sup> The toll-free line was staffed by the language assistance native language coordinator who speaks Yup'ik.

The Division of Elections reported language assistance in the mandated languages was available for the 2016 primary election and general election. During the general election, the Division of Elections provided language assistance in Yup'ik, Chevak Cup'ik Gwich'in, and Inupiaq. They received 25 calls, but only three were language related and no calls for Alaska Native languages support.

### **(3) Training for Bilingual Poll Workers**

In-person training was also required per the Toyukak Order. The Division of Elections must also provide an opportunity for bilingual poll workers to reschedule a training or replace that poll worker if he or she is unable to attend an in-person training. In-person trainings must also be done every even-numbered year and for odd-numbered years in which a special ballot measure appears. Also, during those odd-numbered years where there is no special ballot measure, the Division of Elections must provide telephonic trainings.

With the goal of conducting an effective training, the Division of Elections must provide a reasonable amount of time to cover training topics such as election procedures, Alaska elections law, and practicing available translations among other topics.<sup>107</sup> The Division of Elections must also cover the costs for election workers who must travel to the training location this includes travel, lodging, and per diem.

The Division of Election complied by providing in-person trainings by regional office prior to the primary election and to the general election. The Region III office provided trainings in Fairbanks: trainings were one day in duration but delivered on multiple days to accommodate workers' needs. The Region IV office provided trainings in hub communities.<sup>108</sup> Dillingham and St. Mary's and Kotzebue. The contents of these trainings included information on federal voting requirements, guidelines, materials available and procedures for rendering language assistance.<sup>109</sup>

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<sup>106</sup> Ibid., pp. 9-12.

<sup>107</sup> Ibid., p. 31 (noting complete list of training topics).

<sup>108</sup> Hub communities are communities that receive frequent air service or are connected to roads.

<sup>109</sup> Ibid., pp. 29-32.

c) *Mandatory Pre-Election Outreach*

As part of pre-election outreach, the Division of Elections must arrange informational meetings community wide, in small groups, or one-on-one meetings to register voters and to discuss various election topics before the election such as announcing upcoming election dates, explaining ballot questions, explaining the absentee ballot application, and others.<sup>110</sup>

Pre-election outreach efforts were conducted largely through regions and through multiple avenues. The regional Division of Elections offices worked with outreach workers to ensure VHF radio announcements and notices for upcoming elections were posted. Outreach workers were also given translated PSAs to ensure consistent messages were shared across the regions. Election officials also utilized social media such as Facebook and collaborated with partner organizations such as Get out the Native Vote and Alaska Federation of Natives to keep the public informed of important dates and information needed. While several pre-election outreach efforts were made, the Division of Elections noted they were unable to adequately report/log the frequency and effectiveness of these efforts.<sup>111</sup>

d) *Publicity for Voter Registration and List Maintenance*

Who to target, how and when to conduct publicity, and frequency was specified in the Toyukak Order.<sup>112</sup> The Division of Elections was required to broadcast public service announcements to specific radio stations in specific dialects and be made at least five days before each election and each deadline at least three announcements a day on weekdays for three days. The content of the PSA included deadlines to register to vote, toll-free number for language assistance for any questions, availability of absentee voting, and others.<sup>113</sup> With regard to list maintenance, the PSA must include information pertaining to the importance, steps to take to ensure the voter remains on the rolls, and a toll-free number for language assistance for any questions.<sup>114</sup>

The Division of Elections reported translations of PSAs were made available in written form to the tribes and outreach workers, as well as posted online. In addition, translated PSAs were broadcast by numerous radio stations, on multiple occasions and frequencies throughout the mandated regions and in the specified languages during the periods prior to the primary election and to the general election. Similarly, the list maintenance PSA was broadcasted on multiple dates and times, in several languages and regions. Based on the report, there was no documentation that broadcasts were made in the Gwich'in language.<sup>115</sup>

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<sup>110</sup> Ibid., p. 35.

<sup>111</sup> Ibid., p. 36.

<sup>112</sup> Ibid., pp. 36-37.

<sup>113</sup> Ibid., pp. 38-39.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., pp. 37-45.



*e) Touchscreen Voting Machines*

According to the Toyukak Order, touchscreen voting machines must be available at all polling places on Election Day when there are federal races on the ballot. If more than one language and dialect for a village is mandated, then the audio translation on the touchscreen voting machine must be provided in one language and dialect identified by the Yup'ik translation panel. Audio translations must also be included for all audio information and instructions provided on the machine in English. In the event audio translations cannot be uploaded onto the touchscreen voting machines, the Division was asked to provide the voter with access to the audio translation in an alternative format and provide the voter with a translated sample ballot. Finally, poll workers must be trained on how to use the audio language assistance on these machines.

The Division of Elections reported successfully loading respective regional/precinct languages onto all touch screen voting machines with the audio files recorded by language panel members. They also reported that translated ballots and sample ballots were available for every election.<sup>116</sup>

*f) Sample Ballot*

The Division of Elections was also required to continue posting on its webpage and provide written sample ballots to tribal councils, outreach workers, and poll workers. Written bilingual sample ballots must also be available at the Division of Election's four regional offices and at the Mat-Su Office.

Election officials asserted they made the appropriate bilingual sample ballots available throughout the election cycle, including primary, Regional Educational Attendance Area, and the general election.<sup>117</sup> These were posted online, given to outreach workers, sent to tribes, included in the official election pamphlets, and made available at the appropriate voting locations. During the period prior to the primary election, a mail-out of sample ballots/instructions was not sent to the tribes. The Division of Elections corrected this error by sending the materials via e-mail.<sup>118</sup>

*g) Voter Registration*

The Division of Elections must ensure that each tribal council has an adequate supply of voter registration forms. Similarly, it must post proper signage in the applicable language in the village identifying the availability of voter registration forms, language assistance to register, and the name and phone number of the bilingual registrar and/or the Division of Election's toll-free number for language assistance.<sup>119</sup>

<sup>116</sup> Ibid., pp. 45-46.

<sup>117</sup> Ibid., pp. 47-51.; *But see infra* section II on the Division of Elections' Current Challenges

<sup>118</sup> Ibid., pp. 47-51; *See* Appendix E

<sup>119</sup> Ibid., p. 52.

Election officials reported voter registration forms were available at all voting locations, online and were sent to the tribes and the Alaska Federation of Natives.<sup>120</sup> To increase voter registration, the Division of Elections also worked with other partners and registrars.

**h) Permanent Absentee Voting**

In the three census areas subject to the Toyukak Order, the Division of Elections must have at its permanent absentee voting sites resident bilingual workers available throughout scheduled absentee voting with a notice posted in public places in the covered languages. Signage must include the name, phone number, location of the bilingual worker informing voters that language assistance is available. Bilingual poll workers must be trained in-person and be fully bilingual and literate in English and the dialect spoken in the village.

Notably, the Division of Elections reported major staffing difficulties in maintaining consistent bilingual services for permanent absentee voting in both sites in Region III and in Region IV.<sup>121</sup> In Pitka's Point, one of the two Region IV permanent absentee voting sites,<sup>122</sup> staffing was present, but the Division of Elections was unable to document a proper log, so the nature of language assistance offered is unknown.<sup>123</sup> As a result of inconsistent staffing of bilingual poll workers to help at the permanent absentee voting sites in Region III, the Division of Elections worked with the Tanana Chiefs Conference (TCC) to fly a TCC employee to receive training to provide language assistance on Election Day.

**i) Questioned Ballots**

The Division of Elections are required to provide all voters who vote a questioned ballot process in the covered language and dialect. Bilingual poll workers may provide information and notices about the questioned ballot processes orally.<sup>124</sup>

Election officials note that bilingual election workers were trained in handling questioned ballots, but logs do not indicate any instances of questioned ballots needing language assistance.<sup>125</sup>

<sup>120</sup> Ibid.

<sup>121</sup> See *supra* Figure 2 for map of settlement areas.

<sup>122</sup> The two sites are Pitka's Point and Twin Hills.

<sup>123</sup> 2016 Division of Elections Compliance Report, pp. 52-54.

<sup>124</sup> Ibid., p. 54.

<sup>125</sup> Ibid., pp. 52-54.

## II. Division of Elections' Current Challenges

Following the issuance of the Toyukak Order the Division of Elections made progress in improving the language assistance mandated by the settlement. In many aspects, developing translations of materials, finding and training staff for outreach and assistance at the polls, the Division of Elections was obliged to start virtually from scratch to fulfill the required outcomes. Thus, their report exhibits a great number of accomplishments and a noteworthy effort to achieve near compliance. Indeed, in some respects, the Division of Elections took beneficial steps beyond the minimal standards of the Toyukak Order.<sup>126</sup> Nonetheless, the Report also identifies areas that remain challenges for the Division in the areas of completing language access materials and outreach efforts.

### a) Language Access Materials

Election officials recognized that some glossary and supporting materials remained to be completed: (i) 68 terms in the Yup'ik glossary required consensus;<sup>127</sup> (ii) the audio glossary did not yet include the additional Yup'ik terms beyond the previously existing list of 74 items;<sup>128</sup> (iii) though the Division of Elections asserts that no demand existed for translations in the Nunivak area for the 2016 election cycle, the Division of Elections anticipates establishing a translation panel for those materials as future needs are likely to arise;<sup>129</sup> and (vi) some translations of election materials in Bristol Bay Yup'ik, Norton Sound Yup'ik, and Yukon Yup'ik dialects were either incomplete or unverified at time of election.<sup>130</sup>

Completing the OEP presented an ongoing challenge for the Division of Election's translation capabilities as it relies on the progress of language panels. Given that materials to be translated in the OEP can be submitted until a date relatively close to the election itself, the translations must be completed on a short timeline. The large number of languages/dialects and the likelihood that such a number will increase necessitates a great amount of work at a time of the year when many of the translation panel members have other demands on their schedules.<sup>131</sup>

<sup>126</sup> For example, the Division of Elections hosted a ballot measure listening station at Alaska Federation of Natives, was in partnership with Division of Community and Regional Affairs for additional support, provided a presentation for organizations, created video PSAs, engaged voters through social media, and hosted a language summit.

<sup>127</sup> 2016 Division of Elections Compliance Report, p. 4; Indra Arriaga, testimony, *Briefing before the Alaska Advisory Committee to the U.S. Commission on Civil Rights*, Anchorage, AK, August 2, 2017, transcript, p. 4, [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t00000005oAp/JcEJVBDfrc2eeWt\\_drdzORPLr4XxzNw777boxfHzQ\\_](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t00000005oAp/JcEJVBDfrc2eeWt_drdzORPLr4XxzNw777boxfHzQ_) (hereafter cited as *Anchorage Briefing*).

<sup>128</sup> 2016 Division of Elections Compliance Report, p. 7.

<sup>129</sup> Ibid., p. 4; Arriaga Testimony, *Anchorage Briefing*, p. 44.

<sup>130</sup> 2016 Division of Elections Compliance Report, p. 19.

<sup>131</sup> Ibid., p. 21.

Distributing the OEP is also challenge when targeting households who have limited English proficient and Alaska Native language speaking registered voters.<sup>132</sup> In the 2016 election cycle, the Division of Elections produced 70 OEPs<sup>133</sup> translated in Alaska Native languages and that number may increase in future cycles. At present, the distribution of the official election pamphlet is governed by conflicting statutes. One mandate specifies that official election pamphlet must be distributed to households;<sup>134</sup> however, the Division of Elections argues that it does not have a means of identifying which languages (and consequently which official election pamphlet) are needed in which households. The alternative requirement is to send the official election pamphlet to various tribal authorities and partnerships, though this is not necessarily the most direct means of distribution.<sup>135</sup>

**b) Outreach to Alaska Native Communities**

Staffing for bilingual poll workers and outreach workers represents an ongoing challenge to the Division of Elections. The number of polling places, coupled with the number of dialects which must be provided, establishes a framework for staffing which is inherently difficult. Further, the issue of compensation exacerbates the difficulty; existing rates of pay for election workers may be insufficient to provide a pool of qualified staff.<sup>136</sup>

One admittedly small sample which may nonetheless be illustrative of the staffing difficulties can be seen with the Permanent Absentee Voting sites in Region III and IV. In only these four sites, two in each region, the Division of Elections experienced a trained worker who withdrew prior to the election; a replacement worker who received training but apparently provided no services and then left the community; two workers who did not submit a log reporting requests for language assistance; and a replacement worker who had to be minimally trained and flown into a site on Election Day.<sup>137</sup>

Training of poll workers and outreach workers was provided at the regional level. The settlement order specifies a very full list of content items for these trainings: 17 items to be covered in language assistance trainings, with another 12 topics to be covered in outreach sessions.<sup>138</sup> While the Division of Elections was able to report where and when in-person trainings were held, the Division of Elections reports the need for developing better materials for tracking the frequency and impact of training and outreach efforts.<sup>139</sup> Furthermore, the Division acknowledges that each

<sup>132</sup> Arriaga Testimony, *Anchorage Briefing*, p. 47.

<sup>133</sup> See Appendix D.

<sup>134</sup> *Ibid.*, pp. 60-64

<sup>135</sup> *Ibid.*, p. 22

<sup>136</sup> *Ibid.*, p. 54.

<sup>137</sup> 2016 Division of Elections Compliance Report, pp. 52-54.

<sup>138</sup> *Ibid.*, pp. 30-36.

<sup>139</sup> *Ibid.*, p. 37; Arriaga Testimony, *Anchorage Briefing*, p. 54.

regional office conducts their own procedures to solicit feedback on the quality and effectiveness of their training and will examine ways to assess the effectiveness of their trainings.<sup>140</sup>

The Division of Elections acknowledges the need to develop more effective internal data management processes to track the effectiveness of its efforts in providing materials, training, and outreach.<sup>141</sup> For example, the Division of Elections distributed surveys for feedback on the quality of the OEPs. While 70 surveys were distributed, only seven were returned.<sup>142</sup>

## **B. Implementation in Practice Through the Lens of Alaska Voters**

The previous section explains the Toyukak Order in some detail, while this section focuses on implementation “in practice,” meaning the way in which the judgment was put into effect. As directed by the Toyukak Order, most of the implementation was performed by the Division of Elections of the State of Alaska, but all levels of government (federal, state, borough, city) were involved, as were Alaska Native organizations.

The first two sections of this section are drawn from the compliance report of the Division of Elections and the response of Dr. James Tucker, who noted, “the Division of Elections had made a lot of progress, but they’ve got a lot of work left to do because we’re dealing with the situation where...no language assistance was provided for the first four decades of [Section 203] coverage”<sup>143</sup> and recognizes that “you can’t come to compliance overnight”<sup>144</sup> when referring to the challenges with providing training and producing and distributing election materials. In turn, Tucker’s testimony is based on documented federal observer reports noting deficiencies under Section 203 and the Toyukak order in the August and November 2016 elections.

### **I. Poll Worker Training**

While the Division of Elections reported on substantive progress in implementing the Toyukak Order in the area of poll worker training, Dr. James Tucker testified on deficiencies in training of election poll workers based on a report documented by federal observers present at the August 2016 primary and November 2016 general elections. He asserted, “overall, training fell far short of the goal of mandatory training (with an emphasis on in-person training) for poll workers.” Mr. Tucker explained less than half—46 percent (55 poll workers)—received training in 2016; 4 percent (5 poll workers) received training at least a year earlier, in 2015; 10 percent (12 poll workers) received training two or more years earlier (mandatory training was to have been done biennially); 39 percent (47 poll workers) had never been trained. He added that those who received training reported it was conducted in English by a non-Native instructor from the Division of

<sup>140</sup> Arriaga Testimony, *Anchorage Briefing*, p. 55.

<sup>141</sup> 2016 Division of Elections Compliance Report, p. 37; Arriaga Testimony, *Anchorage Briefing*, p. 59.

<sup>142</sup> 2016 Division of Elections Compliance Report, pp. 22, 24.

<sup>143</sup> Tucker Testimony, *Anchorage Briefing*, p. 66.

<sup>144</sup> *Ibid.*

Elections and bilingual poll workers were not trained on how to translate the contents of the ballot or how to provide procedural instructions in Yup'ik and Gwich'in.

In analyzing the amount of language assistance provided, Mr. Tucker argued there was inadequate staffing at the 2016 primary and general elections. Notably, “federal observers were unable to document how much bilingual assistance and translations, if any, were available in covered villages in the three census areas prior to Election Day. However, the lack of bilingual poll workers in many polling places in those areas suggests that much work remains to be done to provide full and equal access to the election process before and on Election Day.”<sup>145</sup> He referenced the following instances noted in the federal observers’ reports:

- During the August 2016 Primary Election, no bilingual poll worker was available at any time in 3 out of 19 villages. Among the other 16 villages, in Koliganek, a bilingual poll worker was only available “on call” and was not present in the polling place; and in three villages (Dillingham, Kotlik, and Marshall) the bilingual poll workers left the polling place during a portion of the time the polls were open, and there was no assistance available during their absence.
- During the November 2016 General Election, no bilingual poll worker was available at any time in 1 out of the 12 villages observed. In Fort Yukon, there was no language assistance available for at least 80 minutes when the bilingual poll worker left and in Venetie, the only bilingual poll worker left the polling place 3 ½ hours before the polls closed and did not return.<sup>146</sup>

## II. Translation of Election Materials

Dr. Tucker testified that there was a lack of translated written materials required under the Toyukak Order despite reporting from the Division of Elections that the majority of materials had been translated. For example, when federal observers visited 19 villages during the August 2016 primary election, they found: no translated voting materials were available in six villages (Alakanuk, Kotlik, Arctic Village, Beaver, Fort Yukon, and Venetie);<sup>147</sup> the ‘I voted’ sticker was the only material in an Alaska Native language in Marshall and Mountain Village; in Emmonak, the Yup'ik glossary was the only translated material available; and 10 villages had a sample ballot written in Yup'ik but only two (Koliganek and Manokotak) had written translations of the candidate lists.<sup>148</sup>

<sup>145</sup> James Tucker, Written Statement for the Alaska Advisory Committee to the U.S. Commission on Civil Rights, p. 4, <https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DT4TAAW> (hereafter cited as *Written Testimony*); See Appendix G.

<sup>146</sup> *Ibid.*, p. 5.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

When federal observers returned to investigate the November 2016 general election, among 12 villages, six out of 12 polling places did not have a translated sample ballot available for voters; five of those villages had no sample ballot at all (New Stuyakok, Alakanuk, Hooper Bay, Arctic Village, and Venetie); and Fort Yukon had a Gwich'in sample ballot that was kept at the poll worker's table and not made available for voter use. Notably, federal observers stated the absence of translated voting materials had its greatest impact in polling places that did not have a bilingual poll worker present during all election hours. More pointedly, the lack of written translations in those locations meant no language assistance of any kind was provided and the lack of trained bilingual poll workers in some polling places contributed to the lack of language assistance.<sup>149</sup> Based on these observations, Mr. Tucker commented that Alaska "is still far short of compliance with the mandates of the Toyukak Order and Section 203's requirements,"<sup>150</sup> and recommended that the Division of Elections to use its resources to comply with the two language groups and attendant dialects covered by the Order as well as making efforts to comply with the 2016 update of the Section 203 covered languages.<sup>151</sup>

### III. Disparate Impact

Panelists asserted the implementation of the Toyukak Order did not have an even impact throughout Alaska. In particular, panelists argued that language assistance and translation services varied between rural and urban areas of Alaska; between Alaska Native and non-Native areas; and areas covered by Section 203 and other areas with Native or other significant language minorities. Nicole Borromeo observed that during the Parnell Administration, absentee voting opportunities were not provided in rural Alaska on a par with urban areas of Alaska.<sup>152</sup> In the area of training opportunities, an election worker remarked that training time in rural areas was conducted over the phone for 10-20 minutes, which she found to be insufficient to administer early/absentee voting effectively.<sup>153</sup>

Staffing was also in question regarding its potential impact on Alaska Native voters who may require language assistance. Mr. Tucker offered an example by comparing the size of Alaska census areas to those in the lower-48 states and the number of bilingual election staff. He stated, "despite the tremendous size of Section 203-covered areas and the distances between rural villages and permanent Division of Elections offices, the number of personnel working on administering elections in those areas is minimal." Comparing New Mexico, a state with an area substantially smaller than one of Alaska's covered census areas, the state has more full-time language coordinators fluent in native languages and has bilingual county clerks and support staff, whereas Alaska has just two full time bilingual workers and "relies heavily on a patchwork of contract

<sup>149</sup> Ibid., pp. 5-6.

<sup>150</sup> Ibid., p. 6.

<sup>151</sup> Ibid.

<sup>152</sup> Borromeo Testimony, *Anchorage Briefing*, p. 86.

<sup>153</sup> Sarina Merlino Testimony, *Anchorage Briefing*, p. 120.

translation panels and part-time outreach workers whose reliability and efforts vary considerably from person to person.”<sup>154</sup>

Concern over the quality of election equipment distributed throughout Alaska was raised by an election worker. Katrina Merlino asked “why [do] offices in urban areas get nice election equipment and privacy stations and we only get one?”<sup>155</sup> In addition, the Bristol Bay Native Corporation (BBNC) submitted photos to demonstrate the difference between an urban polling location and a rural polling location.<sup>156</sup>

Finally, a panelist provided insight to improving voter registration among rural Alaska Native eligible voters. Rose Wassillie, Resource Specialist for BBNC for the villages of Togiak, Manokotak and Twin Hills, responded to a question posed by a Committee member about improving election administration, saying: “(T)he only thing that works in rural communities...is television and if we can get all the languages, like the Yup’ik language, the Tlingit language and Aleut... through the State of Alaska and make it like a commercial, like months before the election and get the vote out and start advertising it . . . there will be a better and a bigger turnout on Election Day.”<sup>157</sup>

#### IV. *Efforts of Alaska Native Organizations*

Alaska Native organizations, Corporations and individuals engaged in a significant amount of self-help in order to enfranchise the Alaska Native community before and after the implementation of the Toyukak Order. The following testimonies describe these efforts.

Nicole Borromeo, Executive Vice President and General Counsel of Alaska Federation of Natives, testified to the role of her organization in successfully establishing early voting locations in 128 Alaska Native villages, a task that should be performed by the Division of Elections.<sup>158</sup> Ms. Borromeo recounted the difficulty with working with the former Lieutenant Governor in encouraging the establishment of early voting sites and said, “the [S]tate...was unwilling... to recognize that voting disenfranchises...Alaska Natives throughout rural Alaska [and] was a legitimate problem”<sup>159</sup> and once the State allowed her to begin organizing, the State created a “multi-step cumbersome process.” AFN’s involvement was critical to establishment of these sites.

Sarah Obed, Vice President of External Affairs, Doyon Corporation, explained that her regional corporation, for 30 years, had been involved in a Get-Out-the-Native-Vote initiative, advocating for improved access (e.g., through early and extended voting opportunities) and working against

<sup>154</sup> Tucker Testimony, *Written Testimony*, p. 2.

<sup>155</sup> Mulipola Testimony, *Written Testimony*, p. 2.; See Appendix H.

<sup>156</sup> See Appendix H.

<sup>157</sup> Wassillie Testimony, *Anchorage Briefing*, p. 131.

<sup>158</sup> Borromeo Testimony, *Anchorage Briefing*, pp. 102-03; Bahnke Testimony, *Anchorage Briefing*, pp. 145-46.

<sup>159</sup> Borromeo Testimony, *Anchorage Briefing*, pp. 102-03.



limitations such as voter ID requirements.<sup>160</sup> Efforts of Doyon included partnerships with the non-profit organizations Tanana Chiefs Conference (TCC) and Fairbanks Native Association (FNA).

Finally, Bristol Bay Native Corporation (BBNC) election workers residing in the Dillingham census area shared examples of their corporation's proactive efforts to get out the vote. Ms. Merlino stated that she went out to pick up Koliganek voters in four-wheelers on Election Day and brought to the polls to vote and then returned back to their homes.<sup>161</sup> In another example, Ms. Wassillie shared that the BBNC even provided gasoline for transportation to and hired two people to work in the community to register voters, a cost that would have been absorbed by the Division of Elections.<sup>162</sup>

#### **A. Examining the Potential Impact of a Vote by Mail System**

The Committee sought to understand the potential impact of a vote by mail system on Alaska Native voters as the State considers alternative voting methods for state and federal elections. Josie Bahnke, director for the Division of Elections testified to the State's tentative strategy in addressing its impending fiscal challenges. Looming issues require input from the State's Election Policy Work Group, a diverse body of stakeholders to discuss "how to make Alaska's election system as effective, cost efficient and responsible to Alaska voter needs as humanly possible" and whose resounding principle is "if it does not work for rural Alaska, it will not work for Alaska."

<sup>163</sup> Based on discussions to date, the Election Policy Work Group is "drawn [to] more of a hybrid system in rural Alaska that would include a very strong early in-person, 15 days prior to the election, in-person voting option and also a vote by mail option."<sup>164</sup> This system would entail that every registered voter in the state would be sent a ballot in the mail and would have the following options to return their ballot: (i) return ballot by mail and (ii) go to their local city hall or tribal facility and return the ballot there. Ms. Bahnke explained the benefit of returning the ballot through this method is that voters can receive language assistance and voters with disabilities may also receive assistance in person. The Division of Elections must consider several procedural changes in order to fully execute a hybrid system that combines in-person voting and vote by mail such as: geographical challenges in mailing out ballots, training voting officials in rural areas on all aspects of election management, how to mail out ballots, how to track ballots, how to get replacement ballots to voters, how to send translated materials to communities who need them, and how to inform voters of the proposed changes should they go into effect and any changes regarding deadlines, how to ensure each voter receives just one ballot in a primary election instead of three ballots. Then, in terms of receiving ballots, how to review counting of all ballots, especially on a

<sup>160</sup> Hayton Testimony, *Anchorage Briefing*, p. 116.

<sup>161</sup> Sarina Merlino Testimony, *Anchorage Briefing*, pp. 131-32.

<sup>162</sup> Wassillie Testimony, *Anchorage Briefing*, p. 138.

<sup>163</sup> Bahnke Testimony, *Written Testimony*, p. 4.

<sup>164</sup> *Ibid.*, p. 151.

regional level, and how to deter and detect potential voter fraud.<sup>165</sup> “[A]ny change to Alaska’s election system is going to take a lot of discussion up front and will take a lot of time, so coordination with [stakeholders] to discuss solutions [and] to maximize accessibility to the ballot for Alaska is absolutely necessary.”<sup>166</sup>

Another effort on behalf of the Election Policy Work Group was to assess rural voters’ perceptions about different voting methods, especially those located in the Bethel, Dillingham, and Kusilvak census areas. Researchers, who conducted the survey entirely in English, found that 60 percent of rural voters preferred to receive their ballot in person on Election Day, 21 percent preferred to receive it by mail, and 17 percent prefer to receive their ballot online. When asked about potential changes to voting methods, 49 percent of rural voters prefer to keep the current voting method as it is, 36 percent prefer to receive their ballot in the mail and have different ways to return it, and 14 percent preferred to mail out and mail back.<sup>167</sup>

### *I. Challenges*

As a key stakeholder in the pursuit for implementing vote by mail statewide, Ron Haberman, Alaska district manager for the U.S. Postal Service (USPS) testified to specific challenges with mail delivery unique to Alaska. He demonstrated three examples where the USPS experienced issues with sending and receiving election mail to customers. First, he noted that with election mail delivery, his office had to return ballots due to poor mail piece design.<sup>168</sup> To address this issue, his office worked with election mail officials to ensure that the ballots are designed with an IMB barcode, which allows the USPS to track election mail. Second, in explaining how customers receive their mail, he noted that the USPS villages typically transfer mail from villages to the Anchorage central hub, where it is postmarked. He explained that customers can get their mail postmarked and/or receive any mail services by visiting a local post office, but disclosed there has been a challenge with employing and retaining postmasters residing in rural parts of the state.<sup>169</sup> Finally, he indicated that training roughly 600,000 post office workers in handling election-related material has been a difficult task, but assured the Committee that the USPS is working to address this issue before going into the next election cycle.<sup>170</sup>

From an academic perspective, Dr. Dietrich shared that vote by mail “creates the opportunity for logistical and administrative problems,” which may include local election officials not receiving the ballot, difficulties in verifying registration or identifying who the voter was, the voter not receiving the ballot, etc.<sup>171</sup> He also warned that “people can do terrible things when nobody’s looking over their shoulder,” suggesting that there is increased opportunity for malfeasance if

<sup>165</sup> Thompson Testimony, *Anchorage Briefing*, pp. 153-55.

<sup>166</sup> *Ibid.*, p. 155.

<sup>167</sup> See *Perceptions of Universal Ballot Delivery Systems*, pp. 18-21 (describing methodology).

<sup>168</sup> Haberman Testimony, *Anchorage Briefing*, p. 186.

<sup>169</sup> *Ibid.*, pp. 186-87.

<sup>170</sup> *Ibid.*, p. 186.

<sup>171</sup> Dietrich Testimony, *Web Hearing I*, p. 4.

states administer elections by mail.<sup>172</sup> These issues are “exacerbated when vote by mail schemes are in effect” and supported his statement by referencing two studies that discuss the “lost votes” dynamic that occurs when elections are conducted by mail.<sup>173</sup> In 2008, Cal Tech/MIT’s Voting Technology Project found that 7.5 million, or approximately one-in-five individuals who attempted to vote by mail are lost somewhere in the pipeline.<sup>174</sup> This finding is further supported by a smaller study where at least 13 percent of Minnesota’s mail-in ballots were rejected in error.<sup>175</sup> Raising concern with the number of votes lost, he explained “20 percent would absolutely turn in most elections” and “lost votes... often gets overlooked in vote by mail” system.<sup>176</sup>

Alaska Native voters plainly stated that moving to vote by mail elections “would not work in rural Alaska because the mail system is too slow” and can take up to 2-3 weeks to receive mail.<sup>177</sup> The majority of mail delivery to villages relies on air service, however delivery may be inaccessible by air for several weeks due to inclement weather and at times, flights may be cancelled even in good weather conditions.<sup>178</sup> Dr. Dietrich asserted vote by mail as a primary way of participating in the system is “questionable” and should not be seen as a “silver bullet to correct participation problems created by distance.” Furthermore, he testified that “it doesn’t increase turnout...creates logistical issues with collecting and registering votes, [i]t exacerbates trust issues, and only provides a somewhat limited portal to participation in democratic institution and process.”<sup>179</sup>

## II. Complying with Section 203 of the Voting Rights Act

Panelists presented potential solutions that would address providing language access in a vote by mail system. Tammy Patrick, senior advisor at the Democracy Fund testified to the plausibility of providing language assistance in a vote by mail environment, especially providing language assistance in an unwritten language based on her experience with administering elections to remote Native American voters. Ms. Patrick, who worked as a local election administrator in Arizona, explained that developing a robust language outreach program is a necessary step to engage remote voters. She asserted that a successful approach to engage older Native American voters from the Tohono O’odham tribe was to send their ballots early to ensure they had more time to read through its contents and receive language assistance if needed. In addition, she coordinated with tribal leadership to have translators on hand a week before Election Day to discuss with elders the content

<sup>172</sup> Ibid.

<sup>173</sup> Dietrich Testimony, *Web Hearing I*, p. 4.

<sup>174</sup> Charles Stewart III, *Losing Votes by Mail*, N.Y.U. J. LEGIS. & PUB. POL’Y Vol. 13, 573-602, 580 (2010).

<sup>175</sup> <https://pdfs.semanticscholar.org/399a/7714f8e65501363c93e508895bd4d4f9f13.pdf>.

<sup>176</sup> Alec Yasinsac, “Did your mailed ballot count: The unrecognized unreliability of voting by mail,” *U. of S. Ala. School of Computer and Information Sciences*,

[http://www.iis.org/CDs2011/CD2011SCI/PISTA\\_2011/PapersPdf/PA468KX.pdf](http://www.iis.org/CDs2011/CD2011SCI/PISTA_2011/PapersPdf/PA468KX.pdf).

<sup>177</sup> Dr. Joseph Dietrich, testimony, *Web Hearing before the Alaska Advisory Committee to the U.S. Commission on Civil Rights*, Web Hearing, June 19, 2018, transcript, p. 4, [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a:t00000005oOJ/PuL5b.gc8z\\_V9eM6Q\\_T4pLcY4.uF0EmHs3Q5a9Hl\\_uBs](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a:t00000005oOJ/PuL5b.gc8z_V9eM6Q_T4pLcY4.uF0EmHs3Q5a9Hl_uBs) (hereafter cited as *Web Hearing I*).

<sup>178</sup> Mulipola Testimony, *Written Testimony*, pp. 1-2.

<sup>179</sup> Tucker Testimony, *Written Testimony*, p. 7.

<sup>180</sup> Dietrich Testimony, *Web Hearing I*, p. 10.

of their election ballots and gave them the opportunity to either fill out their ballots on the spot and return them to a secure ballot box, take them home and mail them, or drop them off at the polls on Election Day.

In contrast, Jim Tucker, argued that while vote by mail worked in Maricopa County, Arizona with the Tohono O’odham is “inapposite and ill-suited for Alaska’s proposed vote by mail procedures.” He raised issue with her use of two precincts in Maricopa County because those areas are geographically different, in that they are fully accessible by road and can be driven from the nearest metropolitan city, Phoenix, whereas in Alaska, many Alaska Native villages subject to Section 203 requirements are not as accessible. He argued weather conditions do not preclude regular mail delivery to either of those communities and argued that “geographical and linguistic isolation and weather conditions in Alaska are unlike the conditions faced in Arizona.” Alaska is also unique in that there are “tens of thousands of speakers of Alaska Native languages, with nearly 7,000 limited-English proficient voting age-citizens residing in one of the fifteen covered regions in Alaska.” He asserted that the challenges with providing “complete, accurate and uniform translations are far greater than any language group in the Lower Forty-Eight” and those successes noted in Ms. Patrick’s example could not translate if applied in Alaska.

Furthermore, Mr. Tucker argued that should the State move forward with because elections administrators already face challenges with providing language assistance, this issue will be “magnified two-hundred-fold – the approximate number of isolated Alaska Native villages.” The solution to the proposed mandate would be to have voting centers in each Native village staffed by fully qualified and trained bilingual individuals willing to work for an extended pre-election and election period to comply with Section 203.<sup>180</sup>

### III. Best Practices

Panelists provided examples of important steps to implement a vote by mail system. Tammy Patrick shared several considerations, one of which includes, visibility of election mail in the mail stream. The use of distinctly designed envelopes and the official election mail logo aids in delivery and allows for better messaging to voters, and clear voting instructions.<sup>181</sup> Echoing a similar testimony to Paul Gronke regarding the need for a high functioning USPS,<sup>182</sup> she stated, “a transition to vote by mail... is really leveraging...existing infrastructure that’s already being utilized”<sup>183</sup> and called for strong collaboration with the USPS. How a voter receives a postmark on their ballot is also an important consideration to ensure votes get counted. She testified that ballots may not get postmarked because of the way it is processed through the mail stream and that ballots must be round stamped prior to being tabulated. For example, mail from villages is often

<sup>180</sup> Tucker Testimony, *Anchorage Briefing*, pp. 7-8.

<sup>181</sup> Patrick Testimony, *Anchorage Briefing*, p. 161.

<sup>182</sup> Gronke Testimony, *Anchorage Briefing*, p. 179.

<sup>183</sup> *Ibid.*, p. 162.

postmarked in Anchorage and can be postmarked days later<sup>184</sup> meaning that election ballots may not be counted even if mailed out on time.

Subsequently, she encouraged the development of a tracking mechanism to allow for USPS to track ballots and identify if they were turned in before the deadline. She recommended election officials to apply the intelligent mail barcode on their election mail design.<sup>185</sup> The use of “informed delivery” as it requires taking an image of the mail which then is automated and allows for voters to sign up to receive an email notifying them of the status of their mail.

Other best practices noted involve improving voter registration rolls. Mr. Gronke suggested for the State to integrate its list with a national change of address database using postal delivery to check the accuracy of the addresses.<sup>186</sup>

## VI. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>187</sup>

Below, the Committee offers to the Commission a summary of findings identified throughout the Committee’s inquiry. Following these findings, the Committee proposes for the Commission to consider several recommendations that apply to federal agencies and state actors.

### A. Findings

The Committee notes that Section 203 of the VRA, Title VI and Executive Order 13166 constitute federal law and, despite the potential expiration of the specific terms of the Toyukak Order in 2020 (should it not be extended as recommended below), these three laws remain fully enforceable.

#### Findings regarding the implementation of the Toyukak Order:

1. While the Toyukak Order requires language assistance and election materials in Yup’ik and Gwich’in in the Dillingham, Kusilvak, and Yukon-Koyukuk Census Areas, the State

<sup>184</sup> Haberman Testimony, *Anchorage Briefing*, p. 190.

<sup>185</sup> *Ibid.*, p. 163.

<sup>186</sup> Gronke Testimony, *Anchorage Briefing*, p. 178.

<sup>187</sup> 45 C.F.R. § 703.2.

is also obligated to comply with Section 203 covered languages<sup>188</sup> in other regions within the state.<sup>189</sup>

2. Federal observers present during the 2016 Primary and General Elections documented the following training deficiencies under Section 203 and the Toyukak Order:
  - a. Although training for poll workers is supposed to be mandatory, and is supposed to emphasize in-person training, it fell short of that goal. In 2016, 46 percent (55 poll workers) received training, 4 percent (5 poll workers) received training at least a year earlier, 10 percent (12 poll workers) received training two or more years earlier, and 39 percent (47 poll workers) had never been trained.<sup>190</sup>
  - b. Trainings were conducted exclusively in English by a non-Native instructor from the Division of Elections.
  - c. Bilingual poll workers were not trained on how to translate contents of the ballot or how to provide procedural instructions in Yup'ik and Gwich'in.<sup>191</sup>
3. The Division of Elections is required to conduct pre-election outreach through arranging informational meetings community wide, in small groups, or one-on-one meetings to register voters and provide election information such as what will be on the ballot.<sup>192</sup> While the Division of Elections claimed to have met these requirements, they were unable to adequately report/log the frequency and effectiveness of mandatory pre-election outreach.<sup>193</sup>
4. Inadequate staffing of bilingual poll workers in the three Census Areas suggests that some limited English proficient voters may have not received bilingual assistance and translations necessary to cast their ballot on Election Day. For example, federal observers found that some villages had no bilingual poll worker available,<sup>194</sup> bilingual poll workers were only available on call or available for a limited time,<sup>195</sup> poll workers left the polling

<sup>188</sup> See Appendix I for Section 203 covered languages in Alaska.

<sup>189</sup> Levitt Testimony, *Anchorage Briefing*, p. 29.

<sup>190</sup> Tucker Testimony, *Written Testimony*, p. 4.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*, p. 36.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*, p. 5 (noting that during the 2016 Primary Election, no bilingual poll worker was available at any time at 3 out of 19 villages and in November during the General Election, no bilingual poll worker was available at any time in one out of the 12 villages observed).

<sup>195</sup> *Ibid.* (noting that during the 2016 Primary Election, a bilingual poll worker was only available "on call" and was not present in the polling place in Koliganek. In the November 2016 General Election, there was no language assistance available for at least 80 minutes in Fort Yukon).

location with no assistance available during their absence,<sup>196</sup> or poll workers left early before the polls closed and did not return.<sup>197</sup>

5. The Division of Elections fell short of complying with translation requirements. They reported that they were able to complete all translation requirements for election materials in Gwich'in,<sup>198</sup> but not all materials in Yup'ik dialects.<sup>199</sup>
6. Translated written materials required under the Toyukak Order were unavailable in numerous locations. Federal observers monitoring the 2016 Primary and General Elections identified the following deficiencies:
  - a. During the 2016 Primary Election, no translated voting materials were available in 6 of the 19 villages; the "I voted" sticker was the only material in an Alaska Native language in Marshall and Mountain Village; in Emmonak, the Yup'ik glossary was the only translated material available; and only two villages, Koliganek and Manokotak, had written translations of the candidate lists.
  - b. During the 2016 General Election, half of polling places observed had a translated sample ballot available for voters. Five of those villages had no sample ballot at all<sup>200</sup> or if a translated ballot did exist, it was not made available for voter use.<sup>201</sup>
7. In comparison with New Mexico, a state with a high number of limited English proficient voters requiring American Indian language accommodations, it employs eight full-time language coordinators, whereas Alaska<sup>202</sup> has just two full-time bilingual workers to carry out the implementation of the Toyukak Order. Alaska also relies on Yup'ik and Gwich'in language panels and part-time outreach workers.<sup>203</sup> While the Toyukak Order requires hiring one permanent elections language compliance manager to implement it, there is concern that current language access efforts may be insufficient to accomplish meaningful implementation.

<sup>196</sup> Ibid. (noting that during the 2016 Primary Election, the bilingual poll worker left the polling place during a portion of the time the polls were open and there was no assistance available during their absence in Dillingham, Kotlik, and Marshall).

<sup>197</sup> Ibid. (noting that during the 2016 General Election, the only bilingual poll worker in Venetie left the polling place 3 ½ hours before the polls closed and did not return).

<sup>198</sup> 2016 *Division of Elections Compliance Report*, p. 4.

<sup>199</sup> Ibid., pp. 2, 7, 19.

<sup>200</sup> Ibid. (noting that no sample ballot was available at New Stuyakok, Alakanuk, Hooper Bay, Arctic Village, and Venetie).

<sup>201</sup> Ibid. (noting that Fort Yukon had a Gwich'in sample ballot that was kept at the poll worker's table and not made available for voter use).

<sup>202</sup> "How Big is Alaska," Alaska.org, <http://www.alaska.org/how-big-is-alaska/nebraska> (noting that Alaska is one-fifth the size of the contiguous U.S.) (last accessed July 25, 2019).

<sup>203</sup> Tucker Testimony, *Written Testimony*, p. 2.

8. The Division of Elections has no procedures in place to assess the effectiveness of poll worker training or outreach worker training.<sup>204</sup>
9. While the Division of Elections reported to the Committee that it had implemented most of the remedies in the Toyukak Order and even expanded the language panels to include the Inupiat panel,<sup>205</sup> testimony indicates that the Division of Elections still falls short on quality and usefulness of translations. For example, some voters indicated they had difficulty reading the Yup'ik ballot due to small font size.<sup>206</sup>
10. There is a statutory inconsistency regarding the rights of voters to receive the OEP in that one statute requires that it is sent to each household and another statute states that it should be sent to each voter. A Koliganek voter official reported that she never received an OEP in advance of the general election and state elections<sup>207</sup> but according to Alaska Statute 15.58.010, the Division of Elections must mail "at least one election pamphlet to each *household* identified from the official registration list."<sup>208</sup> However, Alaska Statute 15.58.080 requires that the Division of Elections must mail to every registered *voter* one copy of the pamphlet prepared for the region in which the voter resides at least 22 days before the general election.<sup>209</sup>
11. There is an unequal distribution of election equipment among urban and rural polling stations. Some panelists expressed concern that equipment lacked privacy and was inadequate to serve rural voters.<sup>210</sup>
12. Although the *Nick, et al. v. Bethel, et al* case alleged the State of Alaska had been out of compliance with the VRA since the language assistance provisions were passed in 1975, testimony by Alaska Federation of Natives<sup>211</sup> and individuals<sup>212</sup> indicated that Governor Walker's Administration was making efforts to comply.

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<sup>204</sup> Arriaga Testimony, *Anchorage Briefing*, p. 56.

<sup>205</sup> *Ibid.*, pp. 42-53.

<sup>206</sup> Merlino, Testimony, *Anchorage Briefing*, p. 119 (noting that requiring a specific font size in the translated ballots was not mandated by the Toyukak Order).

<sup>207</sup> Mulipola Testimony, *Written Testimony*, p. 2.

<sup>208</sup> Alaska Stat. § 15.58.010 (2014).

<sup>209</sup> Alaska Stat. § 15.58.080 (2000).

<sup>210</sup> Mulipola Testimony, *Written Testimony*, p. 2; *see also* Appendix H.

<sup>211</sup> Borromeo Testimony, *Anchorage Briefing*, p. 90.

<sup>212</sup> Hayton Testimony, *Anchorage Briefing*, p. 130.



**Findings concerning the potential impact of implementing a vote by mail system:**

1. Voters expressed grave concern over the State's interest in implementing a vote by mail system due to slow mail delivery that often takes up to 2-3 weeks.<sup>213</sup> Mail delivery relies on air service but, according to testimony, villages may be inaccessible by air for several weeks due to inclement weather, and at times flights may be cancelled even in good weather conditions. To compound the issue further, the Regional Educational Attendance Areas elections and statewide general elections are held in October and November, when weather conditions are usually the most challenging, and delays in mail service are likely to disenfranchise rural voters.<sup>214</sup>
2. There has been no study examining the impact of vote by mail on Alaska Natives, limited English proficient voters, geographically and linguistically isolated communities, and voters who receive mail exclusively by P.O. Box.<sup>215</sup>
3. However, there is a related study focused on the impact of vote by mail on Native American voters in Washington, a state that administers elections exclusively by mail and voter turnout. Research indicated there is no evidence that vote by mail had any significant effect on increasing voting turnout among Native Americans.<sup>216</sup> In a related study commissioned by the State's Election Policy Work Group, rural voters who were dissatisfied or very dissatisfied with their mail service preferred to keep voting the way it is now when asked about their assessment of their mail service and preferred method to vote.<sup>217</sup>
4. A recent study conducted on reservations in Arizona, New Mexico, Nevada and South Dakota indicated that native voters have a low level of trust in a vote by mail system.<sup>218</sup> For example, 39 percent of Nevada residents in Duck Valley, Yerington, Pyramid Lake, and Walker River reservations trusted that their vote would count as intended.<sup>219</sup>
5. At a recent hearing in North Dakota, a tribal member who is also a current member of the Montana House of Representatives testified that offering only a vote by mail system

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<sup>213</sup> Mulipola Testimony, *Written Testimony*, p. 1.

<sup>214</sup> Tucker Testimony, *Written Testimony*, p. 7.

<sup>215</sup> Rich Testimony, *Anchorage Briefing*, pp. 89, 170-74.

<sup>216</sup> Dietrich Testimony, *Web Hearing I*, p. 10.

<sup>217</sup> *Perceptions of Universal Ballot Delivery Systems*, pp. 15-16.

<sup>218</sup> Rich Testimony, *Anchorage Briefing*, pp. 83-84; see also Jean Schroedel, *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota*, Native American Voting Rights Coalition (2018), <https://www.narv.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>.

<sup>219</sup> Dietrich Testimony, *Web Hearing I*, p. 8.

disenfranchises voters in native communities because they have irregular mail and inconsistent or nontraditional addresses.<sup>220</sup>

6. Some rural Alaska Native villages have unreliable internet service or may even lack access to broadband internet<sup>221</sup> that may be necessary to meaningfully participate in the election process. Internet access would allow voters to access the Division of Election's website to download election forms and the OEP.<sup>222</sup> According to testimony, an Alaska Native elder walked two miles from her home to the nearest public library that had internet access to download the necessary election forms to participate in early voting.<sup>223</sup>
7. Testimony indicated the following concerns with implementing a vote by mail system:
  - a. There are challenges with employing and retaining postmasters residing in rural parts of the state.<sup>224</sup> This poses a concern as voters rely heavily on postmasters to keep post offices open to receive mail and obtain mail services.
  - b. Since rural residents often share P.O. boxes, sometimes multiple families sharing one P.O. box,<sup>225</sup> voters may not be receiving all election-related material. This is critical to ensuring privacy and enfranchisement.
  - c. Researchers argue that a vote by mail system causes five issues:
    - i. distance to post offices or mailboxes is an impediment to casting ballots;
    - ii. it does nothing to counter the lack of trust in the veracity of government institutions, especially among Native American communities;
    - iii. it fails to tangibly link citizens to the democratic process;
    - iv. it has little impact in broadly increasing participation among Native American voters;
    - v. and there are no systems in place to address lost ballots.<sup>226</sup>
8. Nearly half of rural voters from the Bethel, Dillingham, and Kusilvak Census Areas prefer to keep the current voting method the same and the second preference is to receive their ballot in the mail and have different ways to return it.<sup>227</sup>

<sup>220</sup> Tucker Testimony, *Written Testimony*, p. 7.

<sup>221</sup> Hayton Testimony, *Anchorage Briefing*, p. 88; Tucker, *Written Testimony*, pp. 1-2; Merlino Testimony, *Anchorage Briefing*, pp. 119-20.

<sup>222</sup> Merlino Testimony, *Anchorage Briefing*, pp. 120-21.

<sup>223</sup> Borromeo Testimony, *Anchorage Briefing*, p. 88.

<sup>224</sup> Haberman Testimony, *Anchorage Briefing*, p. 213.

<sup>225</sup> Medicine-Crow Testimony, *Anchorage Briefing*, p. 210.

<sup>226</sup> Dietrich Testimony, *Web Hearing I*, p. 10.

<sup>227</sup> Hanna Testimony, *Web Hearing II*, p. 3.

9. The settlement agreement mandates that language assistance be provided prior to and during the voting process. It was not clear, if language assistance could or would be provided prior to and during the possible implementation of a vote by mail system.
10. At the time of the August 24, 2017 public briefing in Anchorage, the Division of Elections testified that adopting a hybrid model that consists of a vote by mail and in person voting system was seen more favorably rather than implementing a vote by mail system exclusively.<sup>228</sup> However, they have since indicated that due to the challenges that geography would pose for mail service, implementing an all vote by mail system is not an option for Alaska.<sup>229</sup> Testimony indicated that the application of a hybrid model may only work if the Division of Elections established a voting center in each of the over 200 Alaska Native villages and required that each of them be open for the same period as other early voting locations.<sup>230</sup>
11. Panelists noted that when considering a vote by mail system, the State is still required to abide by the terms of the Toyukak Order. Those terms require significant in-person assistance and therefore vote by mail can only potentially work if there was a “voting center” in each village covered by Section 203 of the VRA.<sup>231</sup>
12. According to a vote by mail expert, developing a remedy process and signature verification system is a necessary component when considering a vote by mail system.<sup>232</sup>
13. Panelists suggested strong and ongoing collaboration among the Alaska Native communities, rural communities,<sup>233</sup> state election officials, and the U.S. Postal Service<sup>234</sup> to deter voter disenfranchisement especially among Alaska Native voters in need of language assistance.
14. According to the U.S. Postal Service, when inclement weather impacts delivery to rural areas, passengers and luggage are the priority, not mail. This means that election-related mail is considered secondary in importance.<sup>235</sup>

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<sup>228</sup> Bahnke Testimony, *Anchorage Briefing*, p. 151.

<sup>229</sup> Josie Bahnke, Recap of EPWG email, Thursday, July 26, 2018; See Appendix D.

<sup>230</sup> Tucker Testimony, *Written Testimony*, p. 1.

<sup>231</sup> Tucker Testimony, *Anchorage Briefing*, pp. 7-8.

<sup>232</sup> Gronke Testimony, *Anchorage Briefing*, p. 196.

<sup>233</sup> Patrick Testimony, *Anchorage Briefing*, pp. 159-60.

<sup>234</sup> Gronke Testimony, *Anchorage Briefing*, p. 179; Patrick Testimony, *Anchorage Briefing*, p. 162.

<sup>235</sup> Haberman Testimony, *Anchorage Briefing*, pp. 189-90.

15. Because the U.S. Postal Service transfers mail from villages to the Anchorage central hub, where it is postmarked,<sup>236</sup> rural residents who vote in a village may not have their ballots counted due to the possibility of late postmarking.
16. Testimony indicated that U.S. Postal Service training on handling election-related material is inadequate due to the high number of U.S. Postal Service employees who need to be trained.<sup>237</sup>
17. Presently, state election officials have not yet determined how to directly distribute ballots and the translated OEPs to Section 203-covered households<sup>238</sup> due to limited data sources that indicate languages spoken at home. Efforts to circulate the OEP were done through respective regional tribes, local governments, online, the Alaska Federation of Natives' conference, and other advocacy organizations prior to the 2016 presidential election and will continue to be circulated in this fashion.<sup>239</sup>
18. Testimony indicated the following potential impacts of implementing a vote by mail system:
  - a. It may have the potential for improving voter registration rolls.<sup>240</sup>
  - b. It has increased voter turnout in state and local elections among certain populations in other states.<sup>241</sup> However, factors such as socioeconomic status, demographics, educational attainment and the issues on the ballot are primary determinants of voter turnout.<sup>242</sup>
  - c. It creates the potential for logistical and administrative problems and even increased potential for malfeasance.<sup>243</sup>
19. A study conducted asking English-speaking rural voters, most of whom are Alaska Native, how they prefer to receive their ballots. Roughly 60 percent replied they prefer to

<sup>236</sup> Ibid., p. 190.

<sup>237</sup> Ibid., pp. 186-87.

<sup>238</sup> Bahnke Testimony, *Anchorage Briefing*, pp. 202-03.

<sup>239</sup> Arriaga Testimony, *Anchorage Briefing*, pp. 47-48.

<sup>240</sup> Gronke Testimony, *Anchorage Briefing*, p. 179.

<sup>241</sup> Paul Gronke, Thad Kousser & Megan Mullin, *Does Voting by Mail Increase Participation? Using Matching to Analyze a Natural Experiment*, 15(4) *POLIT. ANAL.* 428-45 (2007), <http://www.jstor.org/stable/25791905>; Justin Burchet & Priscilla Southwell, *The Effect of All-mail Elections on Voter Turnout*, 28(1) *AM. POLIT. RES.* 72-79 (2000), <https://doi.org/10.1177/1532673X00028001004>; Alan S. Gerber, Gregory A. Huber & Seth J. Hill, *Identifying the Effect of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, 1 *PRSM* 91-116 (2013).

<sup>242</sup> Dietrich Testimony, *Web Hearing I*, p. 3.

<sup>243</sup> Ibid., p. 4.

receive it in person on Election Day, 21 percent prefer to receive it by mail, and 17 percent prefer to receive it online.<sup>244</sup>

## **B. Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>245</sup> In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Alaska Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this report and issue a formal request to the U.S. Department of Justice to:
  - a. Vigorously enforce Section 203 of the Voting Rights Act in Alaska.
  - b. Continue to send federal observers to monitor state elections even after the Toyukak Order expires, to ensure its implementation remains in place.
2. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the U.S. Postal Service to:
  - a. Require specific training of all Alaska postal service employees to handle election material to ensure prompt delivery.
  - b. Ensure prompt postmarking of election mail, especially in rural areas of the state. This may include proactive recruitment of postmasters in rural post offices to ensure adequate support to rural residents.
  - c. Prioritize handling election mail as among other mail.
3. The U.S. Commission on Civil Rights should send this report and issue a recommendation to the Alaska Congressional Delegation to:
  - a. Provide appropriations from the Help America Vote Act to support language assistance efforts in Alaska.
4. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the State of Alaska Legislature urging the State to:
  - a. Provide appropriations to ensure the Division of Elections has the funding to continue complying with Section 203 of the Voting Rights Act, the Toyukak Order, and Title VI of the Civil Rights Act.

<sup>244</sup> *Perceptions of Universal Ballot Delivery Systems*, p. 5; see also *supra* methodology pp. 18-21.

<sup>245</sup> 45 C.F.R. § 703.2 (a).

- b. Improve broadband service in rural areas of the state, to ensure that voters have access to all online election material, including translated official election pamphlets provided by the Division of Elections.
  - c. Enact legislation resembling Title VI of the Civil Rights Act to help ensure statewide access to voting materials for voters with limited English proficiency.
5. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Alaska Governor, Lieutenant Governor, and the State of Alaska Division of Elections:
- a. Conduct and consider analyses on the vote by mail system and its potential impact on the following communities: (i) Alaska Natives, (ii) rural residents, (iii) linguistically isolated and limited English proficient residents, and (vi) the illiterate voting age population.
  - b. Pause plans to move forward with a vote by mail system in any census area covered by the *Toyukak v. Mallott* settlement agreement, unless the Division of Elections can ensure that all terms of the Toyukak Order will be fully complied with.
  - c. Comply with all terms and conditions in the Toyukak court order.
  - d. Continue providing language assistance in Gwich'in and Yup'ik because these languages continue to be covered by Section 203 despite the 2020 expiration of the Toyukak Order.
  - e. Implement a hybrid voting system that includes: a strong early voting option; in-person voting both in early/absentee voting and on Election Day; and a vote by mail system to avoid voter disenfranchisement.
  - f. Continue to convene community speaker-based language panels to strengthen language access efforts and consider identifying additional panel members from the University of Alaska Fairbanks, Alaska Native Language Center, if available.
  - g. Consider implementing recommendations and best practices from the President's Commission on Election Administration regarding access to the polls and polling place management.<sup>246</sup>
  - h. Review Title VI language access requirements to ensure compliance.

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<sup>246</sup> Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* (Jan. 2014), <https://www.eac.gov/assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

- i. Evaluate the effectiveness of poll worker and outreach worker training to identify areas for improvement and implement those improvements.
- j. Specifically, given its limited efficacy, refrain from using telephone training except in exigent circumstances.
- k. Based upon testimony heard regarding the substantial undertaking to implement a state-wide language assistance program and the testimony indicating that problems and challenges remain, the State should extend the Toyukak Order past 2020.
- l. Given the lack of broadband access in most parts of rural Alaska,<sup>247</sup> require alternative methods for receiving election materials such as sending election material directly to voting centers and inform voters by broadcasting informational commercials on radio and television.
- m. Continue convening the Election Policy Work Group to analyze the impact of mail in voting.

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<sup>247</sup> Hayton Testimony, *Anchorage Briefing*, p. 88; Tucker Testimony, *Written Testimony*, pp. 1-2; Merlino Testimony, *Anchorage Briefing*, pp. 119-20.

## VII. APPENDIX

- A. Timeline of Events Related to Study
- B. *Toyukak v. Mallott* Stipulated Judgement and Court Order
- C. Division of Elections Reports
  - I. *Perceptions of Ballot Delivery Systems: Findings from A Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska*
  - II. *Bethel Focus Groups*
  - III. *Voting Methods Survey*
- D. Verification of the Mailed Official Election Pamphlets Submitted by the Division of Elections
- E. Distribution List for Regional Educational Attendance Area Sample Ballots Submitted by the Division of Elections
- F. Email to Election Policy Work Group from Josie Bahnke
- G. Written Testimony:
  - I. *Grace Mulipola, Bristol Bay Native Corporation*
  - II. *Elizabeth Steele, Colorado Common Cause*
  - III. *Dr. James Tucker, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*
  - IV. *Josie Bahnke, State of Alaska Division of Elections*
- H. Photos of Rural Voting and Urban Voting Experiences
- I. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203
- J. August 24, 2017 Briefing Agenda & Minutes
- K. August 24, 2017 Briefing Transcript
- L. June 19, 2018 Web Hearing Transcript, Testimony by Dr. Joseph Dietrich from Claremont Graduate University
- M. August 1, 2018 Web Hearing Transcript, Testimony by Virgene Hanna from the University of Alaska Anchorage, Institute of Social and Economic Research



**Appendix A****Timeline of Events Related to Study**

Nov. 2010 – 2014	Lieutenant Governor Mead Treadwell in office
Jul. 2013	Mike Toyukak, Fred Augustine and four Alaska Native tribal governments sue the Lieutenant Governor of the State of Alaska, and the Division of Elections, for failing to provide effective language assistance to limited English proficient Alaska Native voters
Nov. 2014 – Dec. 2018	Lieutenant Governor Byron Mallott in office
Sept. 2014	Court decision on <i>Toyukak v. Mallot</i>
2015	Division of Elections convenes Election Policy Work Group
Sep. 2015 <sup>248</sup>	In <i>Toyukak v. Mallot</i> , both parties reached settlement agreement to remedies set forth by court
Sep. 2015 <sup>249</sup>	Implementation of remedies detailed in <i>Toyukak v. Mallott</i> settlement agreement effective
May 2017	Division of Elections releases report <i>Division of Elections 2017 Fiscal &amp; Policy Challenges</i>
Aug. 2017	Alaska Advisory Committee conducts briefing on Alaska Native Voting Rights in Anchorage
Nov. 2017	Division of Elections releases results from <i>Voting Methods Survey</i>
May 2018	Division of Elections releases results from <i>Bethel Focus Groups</i>
Jun. 2018	Division of Elections releases study on <i>Perceptions of Ballot Delivery Systems: Findings from a Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska</i>
Jun. 2018	Alaska Advisory Committee receives testimony from Dr. Joseph Dietrich at Claremont Graduate University on <i>An Evaluation of Academic Research on Vote by Mail and the Impact for Native American Communities</i>

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<sup>248</sup> September 8, 2015.

<sup>249</sup> September 30, 2015.

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Oct. 2018 – Dec. 2018	Lieutenant Governor Valerie Davidson in office
Dec. 2018 – Present	Lieutenant Governor Kevin Meyer in office
Aug. 2018	Alaska Advisory Committee receives testimony from Virgene Hanna at the University of Alaska Anchorage on <i>Perceptions of Ballot Delivery Systems: Findings from a Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska</i>
Dec. 2020 <sup>250</sup>	Remedies detailed in <i>Toyukak v. Mallott</i> settlement agreement expire, however the expiration date may be modified by court or parties.

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<sup>250</sup> December 31, 2020.

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**Appendix B**

***Toyukak v. Mallott Stipulated Judgement and Court Order***

<http://bit.ly/AK-voting>

**Appendix C**

**Division of Elections Reports**

Reports are attached to a letter written by the Division of Elections to the Election Policy Work Group here: <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113377>

- I. Perceptions of Ballot Delivery Systems: Findings from A Survey with Registered Voters in Three Areas in Rural (Region IV) Alaska
- II. Bethel Focus Groups
- III. Voting Methods Survey

**Appendix D**

**Verification of the Mailed Official Election Pamphlets Submitted by the Division of Elections**

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000rGwuAAE>

**Appendix E**

**Distribution List for Regional Educational Attendance Area Sample Ballots Submitted by the Division of Elections**

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000rGwuAAE>

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**Appendix F****Email to Election Policy Work Group from Josie Bahnke, Director of the Division of Elections on July 28, 2018**

**From:** Bahnke, Josephine H (GOV) <josie.bahnke@alaska.gov>  
**Sent:** Thursday, July 26, 2018 11:33 AM  
**Subject:** Recap of EPWG Meeting

Dear Election Policy Work Group Members,

Thank you for your participation in yesterday's teleconference! For those that couldn't attend, we missed you. At the meeting, we presented **research** information (ISER, Bethel Focus Groups, AML Survey) that reflects the voice of Alaskan voters, provided an update on the status of new **voting technology** and **funding** since your May meeting in Anchorage. Nineteen EPWG members were present, including Former Lt. Governor Fran Ulmer. We also had media and legislative staff call-in for the meeting. Overall, I think it was well attended, organized, informative and as a result, the meeting is receiving positive coverage in the news cycle:

<http://juneauempire.com/news/state/2018-07-26/prepping-2018-election-state-looks-2020>  
<http://www.ktuu.com/content/news/Alaska-voting-will-change-in-2020-officials-trying-to-determine-how-different-it-will-be-489183051.html>  
<https://www.ktoo.org/2018/07/25/state-officials-weigh-shift-to-more-voting-by-mail/>  
<http://midnightsunak.com/2018/07/25/paper-ballots-are-here-to-stay-as-election-officials-plan-upgrade-and-expansion-of-alaskas-voting-system/>

In a nutshell, the **research** informed the group that an exclusive all vote by mail (VBM) system is **not** an option for Alaska. This is primarily due to unique challenges of rural mail service, NVRA requirements to provide language assistance, and a desire for communities to retain the social aspect of going to the polls on Election Day. However, Alaskans support expanding voter options for ballot access to increase voter participation and the concept of a universal (hybrid) ballot delivery system.

Based on the **Technology Fair** with election hardware/software vendors held in May, we learned how much technology has improved and solutions exist to create efficiencies, expand language assistance, progress with disabled voters, and the options to purchase/lease can be adaptable to any future system changes adopted by the State of Alaska.

In recognition of the FY 2019 Capital Budget which includes **\$4.8M in funding** to modernize and replace the existing election voting equipment, we discussed progress moving forward with the purchase/lease of a new system to be in place for the 2020 election. In light of the need to keep momentum going and allow the Division to shift focus to the

2018 election cycle, we brought on Dennis Wheeler as Project Manager (effective July 1) to help us navigate next steps with AK's voting system replacement and expanding voter choice for access to the ballot.

We are viewing the high-level project in two categories:

1. Voting equipment replacement: Help DOE vet, acquire, and implement the required IT systems & guide the overall project with our internal management team of four. Assist with RFP and vendor selection process. Since this is an election management task, we are moving forward with a project timeline. I'll keep you apprised as we progress.
2. Expanding voter choice: Create base documentation for state law changes, assist with EPWG Planning Committee (Bruce, Randy, Joelle, Johni, Marna volunteered at May meeting) legislative strategy, and stakeholder outreach. A more formal recommendation on the issue of expanding voter choice and access to the ballot will be presented to the EPWG for consideration in late 2018, after we've been able to conduct a full organizational and cost analysis of a Universal (Hybrid) Ballot Delivery system for future state elections. The idea is to have legislation pre-filed or introduced this next legislative session. An extensive stakeholder/community outreach led by the EPWG on the issue will follow.

Aside from some internal planning meetings with EPWG members, this will be the last foreseeable formal meeting until after the general election. However, we will continue to keep you in the loop on progress and to share information. Big thanks to Liz MC for doing an outstanding job chairing the meeting!!

Yours truly,  
JHB

**Josie Bahnke | DIRECTOR**

DIVISION OF ELECTIONS  
240 Main Street Suite 400  
Juneau, AK 99811-0017  
[josie.bahnke@alaska.gov](mailto:josie.bahnke@alaska.gov) | [elections.alaska.gov](http://elections.alaska.gov)

907.500.4556 MOBILE

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**Appendix G**

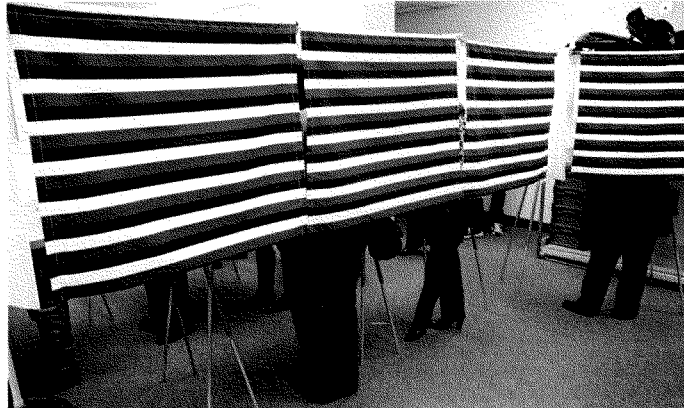
**Written Testimony**

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DT4TAAW>

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Appendix H

**Urban Voting vs. Rural Voting**



Voting in the City



Voting in rural Alaska

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**Appendix I**

Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203

**Appendix J**

**Briefing Agenda and Minutes**

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DT4TAAW>

**Appendix K**

**Briefing Transcript**

[https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t00000005oAp/JeEJVBDfrc2eeWt\\_drdzORPLr4XxzNw777boxfIHZQ](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t00000005oAp/JeEJVBDfrc2eeWt_drdzORPLr4XxzNw777boxfIHZQ)

**Appendix L**

**June 19, 2018 Web Hearing Transcript, Testimony by Dr. Joseph Dietrich from Claremont Graduate University**

[https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t00000005oOJ/PuL5b.gc8z\\_V9eM6Q\\_T4pLeY4.uF0EmHs3O5a9HluBs](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t00000005oOJ/PuL5b.gc8z_V9eM6Q_T4pLeY4.uF0EmHs3O5a9HluBs)

**Appendix M**

**August 1, 2018 Web Hearing Transcript, Testimony by Virgene Hanna from the University of Alaska Anchorage, Institute of Social and Economic Research**

<https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t00000005vUm/QqB1TYFMxBx92u9Ep9g8fmmFWwRIMsxQdwtQOqArAgo>



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**Alaska Advisory Committee to the  
United States Commission on Civil Rights**



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# Barriers to Voting in Louisiana



A Briefing Paper by the  
Louisiana Advisory Committee for the  
United States Commission on Civil Rights

June 2018

**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Louisiana Advisory Committee to the  
U.S. Commission on Civil Rights**

The Louisiana Advisory Committee to the U.S. Commission on Civil Rights submits this briefing paper detailing civil rights concerns associated with barriers to voting in Louisiana. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Louisiana. The contents of this report are primarily based on testimony the Committee heard during hearings on November 15, 2017 in Grambling, Louisiana and December 6, 2017 in Baton Rouge, Louisiana.

This report documents civil rights concerns raised by panelists with respect to barriers to voting throughout the state of Louisiana and discusses possible strategies for improving voter access in Louisiana. Based on the findings of this report, the Committee offers to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about voting and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

**Louisiana State Advisory Committee to the  
U.S. Commission on Civil Rights**

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## Background

For its FY2018 statutory report<sup>1</sup>, the United States Commission on Civil Rights chose to assess voting rights obstacles in the United States and examined the U.S. Department of Justice's voting rights enforcement efforts following the 2006 reauthorization of the Voting Rights Act<sup>2</sup>, including the impact of the *Shelby County*<sup>3</sup> decision, as well as the proliferation of restrictions on voter access.<sup>4</sup>

The authorizing statute of the Commission mandates the creation of an advisory committee in each of the 50 states and the District of Columbia, including the Louisiana Advisory Committee (Committee).<sup>5</sup> The Committee is tasked to advise the Commission in writing of any knowledge of any alleged deprivation of voting rights.<sup>6</sup> The Committee is also tasked to advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>7</sup>

The Louisiana Advisory Committee, through majority vote at a meeting held on September 5, 2017, found the topic of the Commission's FY2018 Statutory Report to be of mutual interest, and sought to examine barriers to voting in the state of Louisiana which may have a discriminatory impact on voters based on race, color, disability status, national origin, and/or the administration of justice.

The Committee sought to discover what obstacles to voting, if any, exist in Louisiana. Additionally, the Committee questioned the impact, if any, of the *Shelby County* decision, which held Section 4(a) of the Voting Rights Act as unconstitutional, eliminating the preclearance requirement for changing voting laws in the state of Louisiana. The Committee also sought to discover the proliferation, if any, of restrictions on voter access in the state of Louisiana.

This brief and the recommendations included within were adopted by a majority of the Committee on June 1, 2018.

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<sup>1</sup> 42 U.S.C. § 1975 (c)(1); The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

<sup>2</sup> Pub.L. 88-352, 78 Stat. U.S.

<sup>3</sup> 570 U.S. 2 (2013)

<sup>4</sup> U.S. Comm. on Civil Rights, News Release, June 19, 2017.

<sup>5</sup> 42 U.S.C. § 1975 (a)

<sup>6</sup> Charter for the U.S. Comm. on Civil Rights Louisiana Advisory Committee, Sec.4

<sup>7</sup> *Id.*

## EXECUTIVE SUMMARY

Congress adopted the Voting Rights Act of 1965<sup>8</sup> (VRA) to end the “blight of discrimination in voting... [which had] infected the electoral process in parts of our country for nearly a century.”<sup>9</sup> Section 5 of the VRA required certain states and localities to obtain federal approval before implementing any change in a voting practice or procedure.<sup>10</sup> To obtain approval, known as *preclearance*, covered jurisdictions had to demonstrate that a voting change neither had the purpose nor the effect of discrimination based on race, color, and/or membership in a language minority group.<sup>11</sup> Covered jurisdictions had the burden of proof in demonstrating the absence of discrimination.<sup>12</sup> Section 5 applied to nine states, including the state of Louisiana, in their entirety. Section 4(b)<sup>13</sup> of the VRA contained a coverage formula that identified which jurisdictions were subject to Section 5 preclearance.

In 2013 the United States Supreme Court in *Shelby County v. Holder*<sup>14</sup> invalidated Section 4(b) of the VRA using the rationale that the formula was outdated, therefore, an impermissible standard by which to subject any jurisdiction to the preclearance requirements of Section 5. The *Shelby County* ruling paralyzed Section 5 of the VRA until Congress revises the formula of Section 4.

Without the protections of Section 5, Louisiana voters must wait until they are aggrieved before seeking judicial intervention. Lawsuits prompted by voting restrictions, once handled administratively by the Justice Department, must now be addressed through more expensive and less efficient litigation. Once such case in Terrebonne Parish, Louisiana, alleged the use of at-large voting as a means to maintain a racially segregated 32<sup>nd</sup> Judicial District Court.<sup>15</sup> Despite comprising 20 percent of the parish electorate, no Black candidate had ever been elected in the face of opposition in the district under the at-large system.<sup>16</sup> The District Court held the at-large voting system had discriminatory or dilutive effect, in violation of the VRA.<sup>17</sup>

This briefing paper results from the testimony provided during the November 15, 2017 hearing held on the campus of Grambling University and the December 6, 2017 meeting held in Baton Rouge, Louisiana, and related testimony submitted to the Committee during the open period of public comment.

<sup>8</sup> Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)).

<sup>9</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).

<sup>10</sup> 42 U.S.C. § 1973c (2000).

<sup>11</sup> 42 U.S.C. § 1973c(a) (2012).

<sup>12</sup> *Georgia v. United States*, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.52(a) (2005) (hereafter cited as “Section 5 Procedures”).

<sup>13</sup> 42 U.S.C. § 1973b(b) (2000). Transferred to 52 U.S.C. 10303.

<sup>14</sup> *Shelby County v. Holder*, 570 U.S. 529, 133 S. Ct. 2612 (2013).

<sup>15</sup> *Terrebonne Parish Branch NAACP, et al. v. Edwards, et al.* 274 F.Supp. 3d 395 (2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

## Introduction

The Fourteenth and Fifteenth Amendments to the Constitution guaranteed citizens the right to vote free of discrimination. There has, however, been a history of efforts to render the guarantee meaningless. An understanding of this history is relevant to an understanding of the progress of minorities in Louisiana under Federal voting laws, and the obstacles which they face in achieving full and free participation in the electoral and political process.

The Reconstruction program of 1867 took power away from the white Southern governments and gave it to the military rulers of the five military districts established.<sup>18</sup> Under the Reconstruction legislation these military rulers, within a year, registered more than 700,000 African-Americans to vote, slightly more than the number of whites then registered in the South.<sup>19</sup> The temporary suffrage arrangements in the reconstruction legislation, coupled with the lack of clarity as to the application of the 14<sup>th</sup> Amendment to the franchise, Congress proposed the 15<sup>th</sup> Amendment, which was ratified on March 30, 1870.<sup>20</sup> This Amendment contains the declaration that the right to vote "shall not be denied on account of race, color, or previous condition of servitude."<sup>21</sup>

Despite these protections, African-American voting and political participation was hindered by harassment and intimidation and subject to exploitation. Testimony collected by a subcommittee of the U.S. House of Representatives Committee on Elections in the Louisiana contested election cases of 1868 showed that

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*over 2,000 persons were killed, wounded and otherwise injured in Louisiana within a few weeks prior to the presidential election; that half the state was overrun by violence; midnight raids, secret murders, and open riot kept the people in constant terror until the Republicans surrendered all claims, and the election was carried by the (white) democracy.*<sup>22</sup>

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The African-American's tenuous foothold in politics in the South essentially ended with the Compromise of 1877, in which Southern Democrats helped resolve a contested presidential election by supporting Republican Rutherford B. Hayes, with the understanding that demands of white southerners would be looked upon with more favor than they had been in the past.<sup>23</sup> Democratic white supremacists quickly moved to consolidate power. The 1890 Mississippi Constitutional Convention adopted the scheme of requiring, as a requisite for registration, a "reasonable" interpretation of the Constitution to eliminate the African-American voter without

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<sup>18</sup> Act of March 2, 1867, Pub. L. 68, 14 Stat. 428; William Dunning, *Reconstruction, Political and Economic 1865-1877* (Harper Torchbook, 1962), pp. 54-59.

<sup>19</sup> John Franklin, *Reconstruction: After the Civil War* (Chicago, University of Chicago Press, 1961), p. 80.

<sup>20</sup> Franklin, *Reconstruction: After the Civil War*, pp. 83-84.

<sup>21</sup> U.S. Const. Amend. XV.

<sup>22</sup> Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States, Rep. No. 41, 42<sup>nd</sup> Congress, 2<sup>nd</sup> Session, pt. 1, at 21-22 (1872).

<sup>23</sup> Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (1951).



overtly violating the 15<sup>th</sup> Amendment.<sup>24</sup> This scheme, known as the Mississippi Plan, was quickly adopted in other Southern States. To avoid disenfranchising whites, many states passed a so-called grandfather clause. The effect of which was to permit certain classes of individuals, defined so as to exclude African Americans, to register permanently within a specified period without the necessity of meeting literacy or other tests.<sup>25</sup>

Between 1895 and 1910 other Southern States set up similar qualifications for voting, and new ones such as the “good character” tests, they enacted disenfranchising constitutions which required the payment of a poll tax, they set up property qualifications for registration, and they required applicants to pass literacy and “civic understanding” tests.<sup>26</sup> By 1900, the African-American vote in the South virtually had disappeared. Figures from Louisiana attest to the efficacy of the methods used to disenfranchise the minority vote. In Louisiana in 1896, there were 130,334 African-Americans registered to vote; in 1900, after adopting a new constitution with aspects of the Mississippi Plan, there were only 5,320.<sup>27</sup> In an effort to circumvent the 15<sup>th</sup> Amendment and eradicate minority participation in the political process, many states adopted the most formidable barrier of all – the white primary.<sup>28</sup>

By 1944, after more than half a century of African-American disenfranchisement, the Supreme Court voided as unconstitutional the white primary,<sup>29</sup> however when one form of voting discrimination was identified and prohibited another sprang up in its place.<sup>30</sup> Discriminatory measures such as voucher requirements, at-large voting, redistricting, poll taxes, literacy tests, and citizen tests persisted.

Eventually through legislation and Congressional action, reforms were made:

- 1957 The Civil Rights Act of 1957<sup>31</sup> authorized the U.S. Attorney General to file lawsuits on behalf of Americans denied the right to vote.
- 1960 The Civil Rights Act of 1960<sup>32</sup> made collection of state voter records mandatory and authorized the U.S. Justice Department to investigate and access the voter data and history of all states in order to carry out Civil Rights legislation.
- 1962 In *Baker v. Carr*<sup>33</sup>, the Supreme Court ruled that Constitutional protection extended beyond absolute deprivation of the franchise (re-districting falls under the equal protection clause.)
- 1964 The ratification of the 24<sup>th</sup> Amendment<sup>34</sup> outlaws poll taxes nationwide.

<sup>24</sup> V. Wharton, *The Negro in Mississippi* (Harper Torchbook, 1965), pp. 214-215.

<sup>25</sup> U.S. Commission on Civil Rights, *Freedom to the Free*, pp. 57-58 (1963).

<sup>26</sup> V.O. Key, *Southern Politics*, pp.578-618 (1949).

<sup>27</sup> Woodward, at 85. By 1904, African American voter registration in Louisiana was a mere 1,342.

<sup>28</sup> *Id.* at 84.

<sup>29</sup> *Smith v. Allwright*, 321 U.S. 649 (1944).

<sup>30</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 311 (1966).

<sup>31</sup> Pub. L. 85-31, 71 Stat. 634, (enacted Sep. 9, 1957).

<sup>32</sup> Pub. L. 86-449, 74 Stat.89, (enacted May 6, 1960).

<sup>33</sup> 369 U.S. 186 (1962).

<sup>34</sup> U.S. Const. Amend. XXIV.

- 1964 The Civil Rights Act of 1964<sup>35</sup> made discrimination on the basis of race, national origin, gender, or religion in voting illegal.
- 1965 The Voting Rights Act of 1965<sup>36</sup> prohibited any election practice that denied the right to vote to citizens on the basis of race and forced jurisdictions with histories of voter discrimination to submit any changes to its election laws to the government for Federal approval prior to taking effect.

Despite the passage of the Voting Rights Act it became apparent that guaranteeing equal access to the polls would not eliminate other racially discriminatory voting practices such as voting dilution. These types of practices are known as second-generation barriers and they create obstacles to minority voting through racial gerrymandering and redrawing of legislative districts in an “effort to segregate the races for purposes of voting.”<sup>37</sup> Another barrier is the system of at-large voting instead of district-by-district voting in a voting district containing a large number of minority voters. At-large voting effectively eliminates the votes of the minority population and cuts down the right to vote just as effectively as denial of access to the ballot.<sup>38</sup>

In *Shelby County v. Holder*<sup>39</sup> Chief Justice Roberts, writing the opinion for the majority said “[V]oting discrimination still exists; no one doubts that.”<sup>40</sup> Despite that observation, the Supreme Court in *Shelby* declared unconstitutional the coverage formula set out in Section 4(b) of the Voting Rights Act of 1965. Without that formula, Section 5 cannot be enforced and the preclearance protections against changes to voting laws are immobilized. According to the Court, the tests and devices that blocked ballot access have been forbidden nationwide for over 40 years...yet the Act has not eased §5’s restrictions or narrowed the scope of §4’s coverage formula...”<sup>41</sup> This observation belies the fact that between 1982 and 2006, the Department of Justice blocked over 700 voting changes based on a determination that the changes were discriminatory and that the changes blocked by preclearance were “calculated decisions to keep minority voters from fully participating in the political process.”<sup>42</sup>

The effects of the *Shelby* decision were swift, just three years after the Courts decision, 14 States had new voting restrictions in place for the first time in a presidential election.<sup>43</sup> Numerous states have enacted strict Voter ID laws, and felons (who are disproportionately racial and ethnic minorities) struggle to regain the franchise.

<sup>35</sup> Pub. L. 88-352, 78 Stat. 241, (enacted July 2, 1964).

<sup>36</sup> Pub. L. 89-110, 79 Stat. 437, (enacted Aug. 6, 1965).

<sup>37</sup> *Shaw v. Reno*, 509 U.S. 630, 640 (1993).

<sup>38</sup> *Shaw*, 509 U.S. at 640-641.

<sup>39</sup> *Shelby County v. Holder*, 570 U.S. 2 (2013).

<sup>40</sup> *Id.* at 2 (2013)

<sup>41</sup> *Id.* at 3.

<sup>42</sup> H.R. Rep. 109-478, at 21 (1965).

<sup>43</sup> Brennan Center for Justice, New Voting Restrictions, <https://www.brennancenter.org/new-voting-restrictions-america>. Last accessed September 15, 2017

On August 17, 2017, a federal court ruled that Louisiana's use of at-large voting for electing five members to the 32<sup>nd</sup> Judicial District Court violated the Voting Rights Act of 1965 and the U.S. Constitution.

## Issues and Findings

### Polling Locations and Location Selection

In Louisiana, the Parish Board of Election Supervisors is the authority in each parish (county) that has the power to create election precincts. The same body selects the polling locations and submits the suggested locations to the Secretary of State's office for approval.

As stated by Angie Rogers, the Commissioner of Elections for the state of Louisiana, during her testimony on December 6, 2017, "[Louisiana] law requires that every precinct is assigned a polling place." Currently, however, there are 3,904 precincts and 2,068 polling locations in Louisiana, indicating that on average two precincts are served by one polling location.<sup>44</sup>

That there are about only half as many polling locations than there are election precincts is because the Parish Board of Election Supervisors has the authority (with the approval of the Secretary of State) to consolidate polling locations. Merging polling locations implies that a particular polling location serves more than one precinct. According to testimony of Dr. Joshua Stockley, Professor of Political Science at the University of Louisiana - Monroe, on November 15, 2017, Louisiana Parish Boards of Supervisors had eliminated 103 polling places since 2012.<sup>45</sup> This means that these 103 polling places are merged with other existing polling places, and that most voters who used to vote at these 103 now-closed polling places need to travel longer distances to the new polling places assigned to them.<sup>46</sup>

Cost considerations are a justification provided for consolidating polling locations. Kyle Ardoin, then-First Assistant to Secretary of State Tom Schedler, stated "We have budget concerns," and "[the cost of operation is] approximately \$1,300 per polling location."<sup>47</sup> While closing of a polling location seems to generate of \$1,300 of savings to the state<sup>48</sup>, the reduction in the number of polling locations handicaps voter participation.

This concern was highlighted by the testimony of Senator Karen Peterson, who gave the example of the Pontchartrain Park area of New Orleans, and indicated that "Today, the only polling place for the area's precincts are (sic) located at Chef Mentour Highway at the Union Baptist Theological

<sup>44</sup> Kyle Ardoin, testimony, *Hearing before the Louisiana Advisory Committee*, Baton Rouge, LA, Dec. 6, 2017, transcript, pp.177 (hereafter cited as BR Hearing Transcript).

<sup>45</sup> Joshua Stockley, testimony before the Louisiana Advisory Committee, hearing, Grambling, LA, November 15, 2017, transcript, p. 1 (hereafter cited as GR Hearing Transcript).

<sup>46</sup> *Id.*

<sup>47</sup> Ardoin Testimony, *BR Hearing Transcript*, pp. 192-93.

<sup>48</sup> *Id.*

Seminary. This location is not easy for many residents to get to and represents a reduction in polling places in the area.”<sup>49</sup>

This point was also emphasized by Carl Galmon, a board member of the National Voting Rights Museum and Institute, who stated that the residents in the election precinct of the Pontchartrain Park area, who have no access to transportation, now need to walk over 1.5 miles to vote because of the reduction in the number of polling locations.<sup>50</sup>

Kyle Ardoin, in his rebuttal testimony, observed that “[Secretary of State’s office] quickly did the search with the local governing authority and no one could find what she was talking about.”<sup>51</sup> He added that “But we did find another instance similar there... The precinct was moved two miles because the entity either didn’t want the polling location there anymore or the local governing authority felt like it was serving people best in that new location. And I find it hard to believe that in Orleans, the Clerk of Court, the City Council, the Mayor, would try to disenfranchise people.”<sup>52</sup>

This statement of Mr. Ardoin underlines the lack of clarity related to the decision-making process regarding the polling locations. The statement implies that the City Council and the Mayor have the authority to determine the number of, and the location of polling locations. Elsewhere during the same testimony, Mr. Ardoin explained that

*“Polling locations are selected by each Parish’s local governing authority, then submitted to the Secretary of State’s office for review to ensure compliance with state and federal laws. [The local governing authority] comprises of the Registrar of Voters, the Clerk of Court, a Republican Member, a Democratic Member, both assigned by their own Parish parties; and then the Governor gets an appointee. So there are five members. Everything happens within that unit.”*<sup>53</sup>

These conflicting statements regarding who has the authority in determining the polling locations reflect the arguably less-than fully-transparent nature of the decision-making process and may contribute to the confusion and frustration of voters.

Another important aspect of consolidating polling locations is that the added burden of traveling to a now-farther-away polling location falls disproportionately on low-income voters who have less time and fewer resources that can be devoted to traveling in order to exercise their right to vote.

Louisiana Secretary of State Tom Schedler wrote that “During the December 6<sup>th</sup> hearing, information was provided to the Commission that Louisiana’s polling locations were distributed disproportionately using race and/or income as the determining factor. Louisiana law, not demographics, mandates the number and location of Louisiana’s polling locations.”<sup>54</sup> The Secretary of State refers to the testimony of Ms. Jhacova Williams, however her testimony did not

<sup>49</sup> Sen. Karen Peterson, Testimony, *Hearing before the Louisiana Advisory Committee*, Transcript, p. 26.

<sup>50</sup> Carl Galmon, Testimony, *Hearing before the Louisiana Advisory Committee*, telephonic hearing, April 23, 2018, p.11 (hereafter cited as *Tel Hearing Transcript*).

<sup>51</sup> Ardoin Testimony, *BR Hearing Transcript*, pp. 193.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 179.

<sup>54</sup> Louisiana Secretary of State Tom Schedler to Louisiana Advisory Committee, January 16, 2018 (hereafter cited as Schedler letter).

conclude that race and/or income were used as factors that determine polling locations.<sup>55</sup> Rather, it concluded that the number of polling locations in a geographical area is correlated with the socio-economic attributes of those geographical areas, such as racial composition and income.<sup>56</sup>

Put differently, although the law dictates that only the number of registered voters should be related to the number of polling locations in a geographical area such as a precinct, a census tract, or a Parish, a statistical analysis of the data from Louisiana shows that the racial make-up of an area is a predictor of the number of polling locations in that area.

The testimony of Ms. Williams as well as her subsequent analysis show shows that the number of polling locations per 1,000 registered voters in a census tract is negatively related to the number of black residents in that census tract.<sup>57</sup> This indicates that there are fewer polling locations per voter in a geographical area if that area has more black residents. This in turn implies that black residents face longer travel distances to reach a polling location.

As indicated above, the Parish Board of Election Supervisors has the authority to determine the polling locations and as well as to make the decision to close and merge existing polling locations (with the approval of the Secretary of State). Parish Board of Election Supervisors is composed of the Registrar of Voters, the Clerk of Court, a Representative of the Republican Party, a Representative of the Democratic Party and the Governor's Appointee.

The Clerk of the Court is an elected member. The Registrar of Voters, on the other hand, is appointed by the governing authority of each parish for a life-time appointment. That is, the Registrar of Voters cannot be removed from office once appointed; thus he/she has no accountability to voters. Therefore, the structure of the Board of Election Supervisors implies that three of the five of its members (The Registrar of Voters, Governor's Appointee, and the Representative of one of the major parties) may capture the decision-making process related to polling locations. This means that it is particularly important to create mechanism that would allow significantly more transparency and accountability.

## Early Voting

Louisiana statutory law provides for early voting periods prior to each election.<sup>58</sup> The early voting period is anywhere from 14 days to 7 days before each election, from 8:30a.m. to 6:00p.m., except on Sundays and legal holidays.<sup>59</sup> Any registered voter may choose to cast their vote during the

<sup>55</sup> Jhacova Williams Testimony, *BR Hearing Transcript*, p. 9.

<sup>56</sup> *Id.* at 16.

<sup>57</sup> The analysis employs 1,124 census tracts in 64 parishes in Louisiana, adjusting for differences in per capita income, population density, and the proportion of senior citizens between census tracts, as well as accounting for unobserved between-parish differences (parish fixed-effects). A census tract is a small geographical unit determined by the U.S. Census Bureau. Thus, socio-economic information on the residents in each census tract is available from official government sources. Census tracts are designed to fall within the boundaries of a single county, and in Louisiana the average census tract includes about three election precincts.

<sup>58</sup> La. Rev. Stat. Ann. §18:1309.

<sup>59</sup> Secretary of State, Attachment 7: Early Voting, Louisiana Voters' Bill of Rights and Voting Information p.1

early voting period.<sup>60</sup> Early voting is held at each parish's Registrar of Voters and additional specifically designated polling locations in each parish.<sup>61</sup> Information on early voting locations and dates are available via the Secretary of State's [www.GeauxVote.com](http://www.GeauxVote.com) website and mobile app.

Early voting periods are integral to protecting the right to vote, by enabling flexibility, accessibility, and convenience for registered voters to exercise their franchise.<sup>62</sup> Early voting can also be helpful to registrars in preparing for an election day, by providing early indicators of likely election day turnout.<sup>63</sup> Last, early voting is helpful for clarifying eligibility issues before election day. For example, a representative from the Advocacy Center testified that a disabled early voter was not allowed to cast a ballot during the early election period, but after an opportunity to clarify her eligibility, that same person was allowed to vote on election day.<sup>64</sup>

Louisiana voters, consistent with voters nationwide, appear to be increasingly utilizing early voting options.<sup>65</sup> In 2008, early voters constituted 15% of the total votes cast.<sup>66</sup> In 2012, early voters constituted 18% of the total votes cast, increasing to 26% of total votes cast in 2016.<sup>67</sup>

The Louisiana State Advisory Committee received testimony indicating barriers to early voting across the state. These barriers included the locations available for early voting, the periods of time allocated to early voting, and the accessibility of early voting.

### Early Voting Locations

There are 92 early voting locations in Louisiana, covering 3,904 precincts within 64 parishes (counties).<sup>68</sup> The Secretary of State noted that two additional early voting locations in Bossier and LaFourche parishes will be available in Spring 2018, for a total of 94 early voting locations.<sup>69</sup> According to Senator Karen Peterson (D-New Orleans), there are four early voting locations each in the three most populated parishes of East Baton Rouge, Jefferson, and Orleans.<sup>70</sup> Caddo parish, which is the fourth most populated parish, has only one location for 260,000 residents.<sup>71</sup> The

<sup>60</sup> *Id.*

<sup>61</sup> Secretary of State, "Early Voting,"

<https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteEarly/Pages/default.aspx> (last accessed May 26, 2018).

<sup>62</sup> Diana Kasdan, *Early Voting: What Works*, Brennan Center for Justice at New York University School of Law, Oct. 31, 2013 available at: [https://www.brennancenter.org/sites/default/files/publications/VotingReport\\_Web.pdf](https://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf)

<sup>63</sup> Dr. Kareem Crayton, Testimony, *Hearing before the Alabama State Advisory Committee*, Transcript, Alabama SAC Hearing p. 60

<sup>64</sup> Susan Meyers Testimony, *BR Hearing Transcript*, p. 100

<sup>65</sup> Philip Bump, "America Keeps Voting Earlier – And It Keeps Not Affecting Turnout Very Much", The Washington Post, Dec. 29, 2016, at: [https://www.washingtonpost.com/news/the-fix/wp/2016/12/29/america-keeps-voting-earlier-and-it-keeps-not-affecting-turnout-that-much/?utm\\_term=.5bab91914610](https://www.washingtonpost.com/news/the-fix/wp/2016/12/29/america-keeps-voting-earlier-and-it-keeps-not-affecting-turnout-that-much/?utm_term=.5bab91914610)

<sup>66</sup> Ardoin Testimony, *BR Hearing Transcript*, p.100.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 177.

<sup>69</sup> *Id.* at 178.

<sup>70</sup> Sen. Peterson Testimony, *BR Hearing Transcript*, pp. 25-26.

<sup>71</sup> *Id.*

remaining parishes have anywhere from one to three early voting locations, serving “as many as 200,000 residents” each.<sup>72</sup>

Most of the panelists agreed that Louisiana does not have sufficient locations for early voting and that the state’s failure to secure additional early voting locations frustrates exercise of the right to vote.<sup>73</sup> Testimony indicated that the lack of early voting locations undermines the convenience of offering early voting in the first place. The distance to an early polling location can impact the elderly, the disabled, and the poor.<sup>74</sup> Even if a person can travel to an early voting location, the lack of sufficient locations can lead to long lines and wait times.<sup>75</sup> Carol Deville from the League of Women Voters testified that although the city of Lafayette is the fourth largest city in the state, Lafayette only has one early voting location.<sup>76</sup> She said “Eleven other parishes smaller in population in Lafayette, including St. Martin and St. Mary Parishes have more than one early voting station.”<sup>77</sup> The lack of sufficient early voting locations may also be correlated with minority populations in those areas.<sup>78</sup> Nationwide, studies indicate that areas with higher minority populations have fewer early polling locations.<sup>79</sup>

Kyle Ardoin testified budgetary issues prevent opening additional early voting locations.<sup>80</sup> Early voting locations, unlike election day voting locations, must have a hardwire connection to the internet to check a person’s eligibility to vote in the state’s database.<sup>81</sup> According to Ardoin, to open a new early voting site would cost approximately \$30,000-\$60,000 and approximately \$10,000 annually thereafter to maintain the site.<sup>82</sup> However, the Secretary of State is interested in pursuing technology that would enable early voting anywhere in the state, instead of requiring a person to cast their early ballot in their parish of residence.<sup>83</sup>

### Early Voting Periods

Early voting in Louisiana ends seven days before election day and does not include Sundays or legal holidays. Where a legal holiday falls within the early voting period, an additional day is added to the beginning of the early voting period under new legislation supported by the Secretary of State.<sup>84</sup>

<sup>72</sup> *Id.*

<sup>73</sup> This appears to be consistent with, but also distinct from, testimony indicating that the closure or “merging” of election day voting locations is a barrier to voting for certain populations.

<sup>74</sup> Sen. Peterson Testimony, *BR Hearing Transcript*, pp. 25-26.

<sup>75</sup> *Id.*

<sup>76</sup> Carol Deville Testimony, *BR Hearing Transcript*, pp. 73-75

<sup>77</sup> *Id.*

<sup>78</sup> Williams Testimony, *BR Hearing Transcript*, pp. 13 and 36.

<sup>79</sup> *Id.*

<sup>80</sup> Ardoin Testimony, *BR Hearing Transcript*, pp. 186-187.

<sup>81</sup> *Id.* at 184-185

<sup>82</sup> *Id.* at 212

<sup>83</sup> *Id.* at 177

<sup>84</sup> Ardoin Testimony, *BR Hearing Transcript*, p. 207.

There appears to be broad community support for allowing early voting on Sundays.<sup>85</sup> Senator Karen Peterson testified that many other states allow early voting on Sundays, which has provided a “successful opportunity for participation.”<sup>86</sup> The representative of Secretary of State’s office, testifying in his personal capacity, argued that allowing early voting on Sundays would deprive staff of “their day of worship,”<sup>87</sup> though he also acknowledged that different faiths may worship on different days, such as Fridays and Saturdays.<sup>88</sup>

There also appears to be support for longer early voting periods in general.<sup>89</sup> Several states provide for a continuous early voting period up until election day.<sup>90</sup> Testimony indicated that people generally don’t know when the early voting period is. If “early voting . . . just went straight up to election day, people might actually know if it’s a couple of days before voting, they could go.”<sup>91</sup> Nonprofits, like the Power Coalition, can provide support in the form of transportation or childcare with more predictable and extended early voting periods.<sup>92</sup>

The Secretary of State’s office testified that staffing and budgets prevent extending the early voting period. The office lacks sufficient staff to extend the early voting period up to election day. “[W]e’re, basically, performing two elections every election, the early voting and election day. And to mix the two would create havoc in the system,” and would require double to triple the number of employees.<sup>93</sup> Any extension of the time period for early voting would also impinge on staff time required to prepare military and overseas ballots.<sup>94</sup> The Secretary of State’s office also cited the cost of early voting. The Secretary of State is required to pay for any overtime costs incurred by the local Registrars of Voting related to early voting, as well as the daily cost of \$150/day for poll commissioners who assist the registrars.<sup>95</sup> Early voting for the 2016 Presidential election cost the state approximately \$600,000.

## Accessibility

Testimony indicated several barriers in early voting for those with disabilities.<sup>96</sup> Louisiana law provides that a physically disabled person can have the assistant of their choice in voting.<sup>97</sup>

<sup>85</sup> Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60.

<sup>86</sup> *Id.* at 25.

<sup>87</sup> Ardoin Testimony, *BR Hearing Transcript*, pp. 207-208..

<sup>88</sup> *Id.* at 207.

<sup>89</sup> Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60; and Ashley Shelton Testimony, *BR Hearing Testimony*, p. 89.

<sup>90</sup> Sen. Peterson Testimony, *BR Hearing Transcript*, p. 60.

<sup>91</sup> Deville Testimony, *BR Hearing Transcript*, p. 79.

<sup>92</sup> Shelton Testimony, *BR Hearing Transcript*, p.89

<sup>93</sup> Ardoin Testimony, *BR Hearing Transcript*, p. 186

<sup>94</sup> *Id.* p. 207

<sup>95</sup> *Id.* pp. 205-206

<sup>96</sup> Peterson Testimony, *BR Hearing Transcript*, p. 23; Deville Testimony, *BR Hearing Transcript*, p.72; Meyers Testimony, *BR Hearing Transcript*, p. 94.

<sup>97</sup> Meyers Testimony, *BR Hearing Transcript*, p.68.



Early voting locations can also present difficulties for the physically disabled. Carol Deville from the League of Women Voters testified that the one available location for early voting in Lafayette, due to a large turnout and building design, required voters to use the interior evacuation stairwell to access the voting machines on the third floor.<sup>98</sup> People who were not visibly disabled or lacked disability ID were required to stand in long lines in the stairwell to vote.<sup>99</sup> The two small elevators could not handle the volume and the lobby was crowded with people in wheelchairs and with canes.<sup>100</sup> There were also “insufficient handicapped accessible parking spaces.”<sup>101</sup> Though the League of Women Voters of Lafayette is working with the city-parish authorities to address these concerns before the next gubernatorial election in 2019, all early voting locations should be assessed for their compliance with the Americans with Disabilities Act and HAVA.

### Additional Early Voting Issues

Testimony also indicated several issues, which do not appear to be limited to early voting in particular. First, Carol Deville testified that at least 31 irregularities were noted due to improperly recording of early votes in one precinct’s registry.<sup>102</sup> In addition, testimony indicated that similar to election day voting staff, early voting staff from the Registrars of Voters need additional training.<sup>103</sup>

### Same Day Voter Registration

Federal law requires that in federal elections the registrant must be registered “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.”<sup>104</sup> In other words, states may allow anything from same day registration up to a thirty-registration requirement prior to federal elections. Louisiana’s current deadline for all elections is thirty days for mail-in or in-person registration, and twenty days for online registration.<sup>105</sup>

<sup>98</sup> Deville Testimony, *BR Hearing Transcript*, p.75.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 77.

<sup>103</sup> Meyers Testimony, *BR Hearing Transcript*, p.99.

<sup>104</sup> 52 U.S.C.A. § 20507(a)(1)(A)-(D).

<sup>105</sup> La. R.S. 18:135(A)(1) (30 days for mail or in-person registration); La. R.S. 18:135(A)(3) (20 days for online registration). See also <https://www.sos.la.gov/ElectionsAndVoting/RegisterToVote/Pages/default.aspx>. Louisiana implemented online registration in 2009 and, at the time, was one of only three states to allow online registration. Testimony of Kyle Ardoin, Dec. 6, 2017 Hearing Transcript p167. See La. R.S. §18:115.1 for electronic registration details.

As of December 2017, Louisiana has 2,976,092 registered voters.<sup>106</sup> The most recent demographic breakdown (utilizing 2010 census data and 2014 registration data) shows the following percentages of eligible citizens were registered: 96.4% of eligible African American females; 97.7% of eligible white females; 81.2% of eligible white males; and 78.1% of eligible African American males.<sup>107</sup>

Testimony before the Committee identified several barriers that the registration process in Louisiana creates for voting. Senator Karen Carter Peterson noted that many states have same day registration and that the thirty-day close period is too long.<sup>108</sup> She recognized that Louisiana was at the forefront of online registration and has fraud protections for that, but in terms of the “close” of registering voters, the State is not leading as it could.<sup>109</sup>

Mr. Ron Wilson of the NAACP Legal Defense and Education Fund and Civil Liberties Union of Louisiana echoed these sentiments. He testified that the 30-day registration requirement was “one of the biggest barriers” to voting.<sup>110</sup> He noted that this practice did not “encourage the franchise . . . and is discouraging the right to vote instead of encouraging it. The access to the poll isn’t made easy [in Louisiana], isn’t made uncomplicated here.”<sup>111</sup> Finally, Mr. Galmon, a board member of the National Voting Rights Museum and Institute, noted that the waiting period for registration prevented voting.<sup>112</sup>

Senator Peterson and Messrs. Galmon and Wilson all recommended permitting same day registration in Louisiana to encourage more voter participation.<sup>113</sup> Same day registration is the ability to register to vote and vote at the same location on the same day. Currently, there are seventeen states, plus the District of Columbia, that have some form of same-day registration.<sup>114</sup> Louisiana’s Election Code recognizes that shortening the time between the close of registration and the election “may be more convenient to voters and increase citizen participation in the electoral process” but that current technology cannot adequately protect “the integrity of the electoral process.”<sup>115</sup>

The Code provides that in the event of new technologies or advancements in practices, the Secretary of State may present a request to the Legislature and they can move the date

<sup>106</sup> Ardoin Testimony, *BR Hearing Transcript*, p. 173.

<sup>107</sup> Ardoin Testimony, *BR Hearing Transcript*, p. 173.

<sup>108</sup> Peterson Testimony, *BR Hearing Transcript*, p. 60.; See also Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13 (noting that many states permit same day voter registration).

<sup>109</sup> Senator Peterson also commented how the State looks to other states for areas such as gambling, smoking, and other areas but in terms of voter registration it has not. (Page 60-61)

<sup>110</sup> Ron Wilson Testimony, *Tel Hearing Transcript*, p. 20.

<sup>111</sup> Id.

<sup>112</sup> Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13.

<sup>113</sup> Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13, 24; and Peterson Testimony, *BR Hearing Transcript*, p. 60.

<sup>114</sup> National Conference of State Legislatures, *Same Day Voter Registration* (Mar. 27, 2018), available at <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>. See also Brennan Center, *Automatic Voter Registration and Modernization in the States* (April 11, 2018), available at <https://www.brennancenter.org/analysis/voter-registration-modernization-states> (explaining the different types of same day registration).

<sup>115</sup> La. R.S. § 18:135.1(a)

accordingly.<sup>116</sup> Mr. Galmon testified that the registration technology is currently sufficient to prevent fraud,<sup>117</sup> and state officials have repeatedly recognized that voter fraud in Louisiana is not a significant concern.<sup>118</sup>

The primary concerns with permitting same day registration are ensuring the person is properly eligible to vote and the possibility of voter fraud. To safeguard against these concerns, many states use the provisional ballot for same-day registrants, which provides a mechanism to “hold” the ballot until the verification process can be completed.<sup>119</sup> Louisiana could require provisional ballots for same-day registrants and could improve its registration fraud detection technology.<sup>120</sup>

### Other Voter Registration Issues

While the 30-day waiting period between registration and voting is the largest registration-related barrier to voting in Louisiana, other registration practices also prevent exercise of the franchise. Mr. Wilson testified that Louisiana was often not complying with the National Voter Registration Act because citizens were not given information about registration when applying for public benefits. “[T]housands and thousands of African American voters were not being provided with access to this information [which is] a barrier to access to voting.”<sup>121</sup>

<sup>116</sup> La. R.S. § 18:135.1(a)

<sup>117</sup> Galmon Testimony, *Tel Hearing Transcript*, pp. 12-13.

<sup>118</sup> Sue Lincoln, *Voter suppression or voter depression?*, WRKF 89.3 (Aug 21, 2017) (Secretary of State Tom Schedler stated: “Do I think voter fraud occurs? Yeah. To a large degree? No. Matter of fact, the only fraud that we usually see is in small jurisdictional elections, and you know what it involves? A paper ballot.”), available at <http://wrkf.org/post/voter-suppression-or-voter-depression>; Dede Willis, *Elections Chief says no evidence of voter fraud in Louisiana*, KNOE News (Jan. 26, 2017) (Tom Schedler, announced that “Louisiana did not have any widespread irregularities or allegations of fraud” during the 2016 presidential election), available at <http://www.knoe.com/content/news/Elections-chief-says-no-evidence-of-voter-fraud-in-Louisiana-411805135.html> (Amber Phillips, *Trump’s Voting Commission was doomed from the start*, The Washington Post (Jan. 4, 2018) (Secretary of State Schedler denying that significant voter fraud exists in Louisiana), available at [https://www.washingtonpost.com/news/the-fix/wp/2018/01/04/trumps-voter-fraud-commission-was-doomed-from-the-start/?hpid=hp\\_hp-top-table-main-voter-fraud%3Ahomepage%2Ft&utm\\_term=.b9bacaef02d](https://www.washingtonpost.com/news/the-fix/wp/2018/01/04/trumps-voter-fraud-commission-was-doomed-from-the-start/?hpid=hp_hp-top-table-main-voter-fraud%3Ahomepage%2Ft&utm_term=.b9bacaef02d); Amber Phillips, *Why Louisiana is refusing to hand over voter registration data to Trump’s election probe*, The Washington Post (July 7, 2017) (Secretary of State Schedler denying that significant voter fraud exists in Louisiana), available at [https://www.washingtonpost.com/news/the-fix/wp/2017/07/06/why-louisiana-is-refusing-to-hand-over-voter-registration-data-to-trumps-election-probe/?utm\\_term=.7769e76d8d41](https://www.washingtonpost.com/news/the-fix/wp/2017/07/06/why-louisiana-is-refusing-to-hand-over-voter-registration-data-to-trumps-election-probe/?utm_term=.7769e76d8d41); Mark Ballard, *Louisiana refuses to provide personal information to President Trump’s voter fraud task force*, The Advocate (July 3, 2017) (“State elections officials acknowledge that occasional voter cheating slips through the protections, but point to numerous studies and audits that show fraud is not widespread.”), available at [http://www.theadvocate.com/baton\\_rouge/news/politics/elections/article\\_453c7736-601e-11e7-b7ec-9391c8cf59cd.html](http://www.theadvocate.com/baton_rouge/news/politics/elections/article_453c7736-601e-11e7-b7ec-9391c8cf59cd.html);

<sup>119</sup> <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> A chart is provided showing what each state does to ensure no fraud occurs, whether it’s “conditional voting” like California, or provisional ballots like Illinois. Additionally, some of the states that allow same-day registration only permit it at their main offices, or a permanent polling location so information can be verified.

<sup>120</sup> Peterson Testimony, *BR Hearing Transcript*, pp. 60-61.

<sup>121</sup> Wilson Testimony, *Tel Hearing Transcript*, p24. See also Marsha Shuler, *5<sup>th</sup> Circuit Rules in Motor Voter Lawsuit*, The Advocate (Dec. 2, 2014) (discussing court ruling that the Secretary of State had failed to provide appropriate registration information to people seeking public assistance), available at [http://www.theadvocate.com/baton\\_rouge/news/politics/elections/article\\_e880d5f6-fb00-5aea-9828-2fc25354959f.html](http://www.theadvocate.com/baton_rouge/news/politics/elections/article_e880d5f6-fb00-5aea-9828-2fc25354959f.html);

Furthermore, registration is also difficult for people recently released from incarceration. Ms. Weeks testified that the registration process for people recently released from prison is arduous and that many don't even know how to access the ability to register (or re-register) to vote.<sup>122</sup> She noted that many private organizations, such as campaign and non-profit voting groups, simply focus on "Get Out The Vote" campaigns rather than voter registration, especially when not in a presidential election year.<sup>123</sup>

Finally, Ms. DeVille stressed that for seniors the problems with registration as a mail-in or online system revolved around one key area - ability. Many seniors find the forms unreadable because of the size of the print, and they do not know how to access the online voting registration system.<sup>124</sup> For them, the problem of registration, or re-registration, lies in the access to methods.

Purging Voter rolls also requires re-registration. "Essentially, Louisiana routinely compares voter rolls with various databases, such as death and incarceration records. Several cards are mailed to voters suspected of having moved. If the cards bounce back, state elections officials start looking closer. That's when the voter's name is checked against the list of those who haven't voted in the past two federal elections, Schedler said. The voter who still hasn't answered state queries goes on an inactive list but can still vote. Showing up for an election removes the voter from the inactive list. For those who continue not to vote, further correspondence is sent. If the voter is officially purged, he or she would have to re-register, though not on an election day, to regain the ability to cast a ballot, Schedler said. "But by that point, you've received a lot of mail and communications," he added.<sup>125</sup>

### Voter Identification Requirements

Louisiana is one of thirty-four states to require voters to show some form of identification at the polls.<sup>126</sup> In order to vote in Louisiana a person must present the following identification at his or her polling location:

- (1) Louisiana driver's license
- (2) Louisiana special identification card (available for free)
- (3) or other "generally recognized picture identification card that contains the name and signature of the applicant."<sup>127</sup>

<sup>122</sup> Reilly Testimony, *BR Hearing Transcript*, pp.103-104.

<sup>123</sup> Deville Testimony, *BR Hearing Transcript*, p. 104.

<sup>124</sup> *Id.* at 105.

<sup>125</sup> Underhill, *Voter Information*, [http://www.theadvocate.com/baton\\_rouge/news/courts/article\\_5425cb4a-ed99-11e7-ad6e-038b5a7880ec.html](http://www.theadvocate.com/baton_rouge/news/courts/article_5425cb4a-ed99-11e7-ad6e-038b5a7880ec.html)

<sup>126</sup> National Conference of State Legislatures, *Voter Identification Requirements: Voter ID Laws*, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

<sup>127</sup> La. R.S. § 18:562(A)(2); Testimony of Kyle Ardoin, First Assistant to the Secretary of State, Attachment #1 to Dec. 6, 2017 Hearing p3; Information Pamphlet For Election Day Voting, pp30-31; Ardoin Testimony, *BR Hearing Transcript*, pp 173-174.

The Louisiana Legislature recently required that beginning in January of 2019 all public postsecondary education institutions issue student's identification cards that meet the voter identification requirements.<sup>128</sup> Commissioners retain sole discretion to determine whether a photo identification qualifies under the law.<sup>129</sup>

If a voter does not have proper identification, he or she "shall complete and sign an affidavit, which is supplied by the secretary of state . . . which affidavit shall include the applicant's date of birth and mother's maiden name. If the applicant is unable to read or write or is otherwise unable to complete the affidavit due to disability, the applicant may receive assistance in completing the affidavit and the commissioner shall make a notation on the affidavit. The applicant may receive the assistance of any person of his choice, including a commissioner . . ." <sup>130</sup> This affidavit alternative to a photo identification was pre-cleared by the Department of Justice in 1997.<sup>131</sup> For the 2016 Presidential election cycle, roughly 3,000 affidavits were submitted, and this number has remained constant over time.<sup>132</sup>

The office of the Secretary of State trains poll workers on voter identification requirements, and the affidavit alternative, through a uniform curriculum that includes the seventy-seven page Informational Pamphlet on Election Day Voting<sup>133</sup> as well as an Election Day commissioner training video.<sup>134</sup> The affidavit alternative is mentioned in Section VI.B. on page 2 of the "Early Voting Louisiana Voter's Bill of Rights and Voting Information," which is a seven page poster placed at every polling location.<sup>135</sup>

Testimony before the Committee identified several ways in which Louisiana's voter identification requirements create barriers to voting. First, Carol DeVille, from the League of Women Voters of Lafayette, noted that her organization received a number of complaints that voters were being turned away when they did not present a photo identification and were never offered the affidavit as an alternative method of identification.<sup>136</sup> She believed this was occurring because of overcrowding, lack of poll worker training, or because the poll workers had personal beliefs that may be influencing their decisions.<sup>137</sup>

Election officials and poll workers often believe they have discretion to deny the vote to people without an identification, contrary to state law.<sup>138</sup> Ms. DeVille stressed that there needed to be additional poll worker training regarding the affidavit option and additional methods of oversight

<sup>128</sup> La. R.S. § 17:3351(J).

<sup>129</sup> Op. Atty. Gen., No. 02-0372, October 25, 2002.

<sup>130</sup> La. R.S. § 18:562 (A)(2);

<sup>131</sup> Schedler Letter, p. 3.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* The Informational Pamphlet is Attachment #3 to the letter and Identification of Voters is covered in Section 5:03 at pp30-31. The Instructional Video is Attachment #4 to the letter.

<sup>134</sup> Schedler Letter, p3.

<sup>135</sup> *Id.* at p. 4; and Attachment #7.

<sup>136</sup> DeVille Testimony, *BR Hearing Transcript*, p.78; See also Katy ReckDahl, *Few take advantage of a Louisiana law allowing them to vote without an ID*, The New Orleans Advocate (Nov. 21, 2015) (interviewing individuals that were not told about the affidavit alternative or provided and affidavit even when requested).

<sup>137</sup> DeVille Testimony, *BR Hearing Transcript*, p. 97.

<sup>138</sup> ReckDahl, "Few take advantage."

to ensure voters were not turned away due to lack of photo identification.<sup>139</sup> First Assistant to the Secretary of State, Kyle Ardoin, testified that the state had not received any verifiable complaints of voters being turned away for lack of identification.<sup>140</sup> Because there have been no formal complaints, the Secretary's office does not know of the specific problems to remedy, either in administrative or training capacities.

Second, voter identification requirements present unique barriers to certain groups of people that may have issues with their identification. For example, victims of domestic violence that may be at a shelter or moving may not have a photo identification with their permanent residence.<sup>141</sup> Another group are those that the gender/name on the ID does not match how they present at the polls or if a name has changed due to marriage or otherwise.<sup>142</sup>

Finally, the voter identification requirement dissuades many people, particularly the poor and African Americans, from even attempting to vote. Mr. Wilson of the NAACP Legal Defense and Education Fund and Civil Liberties Union of Louisiana testified that the low participation rate of voters in poor and African American communities was tied to the voter identification requirement.<sup>143</sup> He believed that the cost of the voter identification created a barrier but did not address that Louisiana provides a free identification option.

### Provisional Ballots

A provisional ballot is typically used to record a vote when there are questions about a voter's eligibility, e.g., the voter does not appear on the registration rolls or is voting in the incorrect parish or polling location. The general and guiding principle for provisional ballots is that no person seeking to vote is ever "turned away." The Help America Vote Act requires that provisional ballots be available in federal elections.<sup>144</sup> A provisional ballot is to be used whenever a voter arrives at a polling location and states they seek to vote in that election and are eligible to vote in that election.<sup>145</sup>

Louisiana allows the use of provision ballots for four categories of voters:

- 1) A voter whose name does not appear in the Precinct Register or Supplemental Precinct Register and who is not authorized to vote by an election official.
- 2) A voter who is challenged and a majority of the commissioners determine that the challenge is valid;
- 3) 3) a voter who votes in a federal election during court ordered extended poll hours;

<sup>139</sup> Deville Testimony, BR Hearing Transcript, p. 97.

<sup>140</sup> Ardoin Testimony, BR Hearing Transcript, pp. 174, 194.

<sup>141</sup> DeVille Testimony, BR Hearing Transcript, p.91.

<sup>142</sup> DeVille Testimony, BR Hearing Transcript, p. 97.

<sup>143</sup> Wilson Testimony, *Teleconference*, p. 22-23.

<sup>144</sup> 42 U.S.C. § 15482.

<sup>145</sup> 42 U.S.C. §15482(a).

- 4) Any inactive voter who cannot affirm that they moved outside the parish less than three (3) months before the election and is not eligible to vote in the election.<sup>146</sup>

But Louisiana allows for provisional voting only in federal elections.<sup>147</sup> It is one of the few states that categorically does not permit provisional voting in non-federal elections.<sup>148</sup>

There was no testimony regarding the training poll workers received regarding provisional balloting, but provisional balloting is discussed in the Informational Pamphlet on Election Day Voting given to poll workers.<sup>149</sup> The use of provisional ballots is also mentioned in Section IV.B.2 of the “Early Voting Louisiana Voter’s Bill of Rights and Voting Information,” which is a seven-page poster placed at every polling location.<sup>150</sup>

There was testimony from several witnesses that lack of provisional voting in non-federal elections presents a barrier to voting. Senator Peterson noted that the lack of provisional voting in state elections is an obstacle to voting rights.<sup>151</sup> Ms. DeVille from the League of Women Voters and Ms. Meyers from the Advocacy Center also noted the lack of provisional voting as an obstacle to voting rights.<sup>152</sup> Ms. DeVille mentioned the “verification call” that poll workers are supposed to make to verify when a voter is not listed, is not always an option in rural areas because of lack of cell service, etc.<sup>153</sup> They also testified that because provisional ballots are permitted in federal elections but not in non-federal elections, there was significant confusion among poll workers and provisional ballots may be denied even in federal elections. They recommended better voter education and better training for poll workers.<sup>154</sup>

## Incarceration and the Vote

### The Legal Structure: Felon Disenfranchisement

The Louisiana Constitution of 1973 expressly denies the right to vote to those “under an order of imprisonment for conviction of a felony.”<sup>155</sup> Until 2018, statutory law further stated that “Under an order of imprisonment’ means a sentence of confinement, whether or not suspended, whether

<sup>146</sup> Schedler Letter, Attachment #3; See also La. R.S. § 18:566(A).

<sup>147</sup> La. R.S. § 18:566(A).

<sup>148</sup> National Conference of State Legislatures, *Provisional Ballots*, available at <http://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx>.

<sup>149</sup> Schedler Letter, Attachment #3, Provisional voting is covered in Part 8, pp. 67-72.

<sup>150</sup> Schedler Letter Attachment #7.

<sup>151</sup> Sen. Peterson Testimony, BR Hearing Transcript, pp. 20-21.

<sup>152</sup> DeVille Testimony, BR Hearing Transcript, pp. 96-97, 102.

<sup>153</sup> *Id.* at pp. 101-02.

<sup>154</sup> *Id.* at pp. 96-97.

<sup>155</sup> La. Const. Article I, §10(A), which reads, in full: “Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.”

or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled.”<sup>156</sup>

In 2018, the Louisiana Legislature amended the law restricting voting rights to allow those who have not been incarcerated for the previous five years to regain the right to vote regardless of their probation or parole status.<sup>157</sup> Taking effect on March 1, 2019, this new law will allow anyone who has not been incarcerated at any time during the previous five years to submit a form from the Department of Corrections confirming that status to the registrar of voters<sup>158</sup>. Specifically, it restores the vote after the “person submits documentation to the registrar of voters from the appropriate correction official showing that the person has not been incarcerated pursuant to the order within the last five years.”

Prior to implementation, the new law contemplates coordination between the Department of Public Safety and Corrections and the Secretary of State to develop forms to allow those affected to meet the requirements, specifically to allow them to certify to voter registration officials that they meet the eligibility requirements.

Under the prior law still in effect until March 1, 2019, the Department of Public Safety and Corrections is obligated to provide notice of the conditions surrounding the restoration of the right to vote. Testimony before the Commission indicates that this system may not have worked as well as it could have because the individual has been required to submit proof that supervision has ended along with the voter’s registration forms.<sup>159</sup> Restoring the vote to those eligible after five years will require better coordination between the Department of Public Safety and Corrections and the Secretary of State, as well as with Registrars of Voters.

When R.S. 18:2 was enacted in 1975, only about 2000 people were denied the right to vote by virtue of supervision,<sup>160</sup> but as of December 31, 2017, 71,117 Louisianans were unable to vote despite having served all the terms of their prison confinement.<sup>161</sup> This is in addition to the 33,739 people serving prison terms on December 31, 2017.<sup>162</sup> In total, on December 31, 2017, over 100,000 Louisiana residents were unable to vote due to a felony conviction. Norris Henderson, Executive Director of VOTE, testified that 30-35% of those denied the right to vote never went to prison at all, but instead are serving sentences consisting entirely of probation.<sup>163</sup> Because the new law has yet to go into effect, there is no way to anticipate how many people will benefit from these legislative changes.

<sup>156</sup> La. Rev. Stat. Ann. 18:2(8); La. Rev. Stat. Ann. 18:102 (A)(1).

<sup>157</sup> HB 265, xxxth Leg, xth Sess. (La. 2018), enrolled May 18, 2018.

<sup>158</sup> The new law provides limited exceptions, for those convicted of “a felony offense of election fraud or any other election offense,” as well as for those under interdiction for mental incompetence. Those individuals do not regain their right to vote after the conclusion of five years.

<sup>159</sup> Norris Henderson Testimony, BR Hearing Transcript, pp. 147-148.

<sup>160</sup> *Id.* at p. 160.

<sup>161</sup> Louisiana Department of Corrections Briefing Book, <http://doc.louisiana.gov/briefing-book>, accessed April 20, 2018.

<sup>162</sup> *Id.*

<sup>163</sup> Henderson Testimony, BR Hearing Transcript, p. 140.



### The Consequences of Felon Disenfranchisement

Testimony before the Committee addressed some of the adverse consequences upon Louisiana residents. Dr. Joshua Stockley of the University of Louisiana at Monroe estimated that approximately 80% of the parolees/probationers currently ineligible to vote are African American, compared with about 32% of the population of the state. This disproportionate racial impact can affect communities and the very concept of proportional representation. If many members of a community are unable to vote, they are denied the opportunity to be governed by people who might best serve their interests.

Other evidence indicates that the ability to vote makes for better citizens and stronger communities. Norris Henderson testified as much when he said, after helping a returning citizen register to vote, that the “guy was, like man, I’m a citizen now.”<sup>164</sup> Hamilton-Smith and Vogel declare that “Research strongly supports the notion that ex-felons who are able to re-enters society with stable work and familial relationships are less likely to engage in criminal activity.”<sup>165</sup>

Allowing more formerly incarcerated individuals to vote at an earlier time should facilitate their re-entry into their communities. The success of this initiative will depend on the ease with which they can complete the registration process.

### Pre-trial Detention Disenfranchisement

Pre-trial detainees are those who have been arrested, are awaiting trial (usually in parish jails), and have therefore not been found guilty. While statewide numbers are not readily available, as of March 2, 2016, 90% of the population of Orleans Parish Prison (1591 people) were awaiting trial.<sup>166</sup> Pretrial detainees are entitled to the presumption of innocence, including the right to vote if they are otherwise eligible.

Because the jail is not a permanent address for those awaiting trial, meaningful access to the ballot would have to allow voting in the voter’s home precinct and not at the address of the jail – whether by absentee ballot, early voting, or other technology. In addition, because many are not registered to vote, registration would have to be available.<sup>167</sup>

Testimony of Sen. Karen Carter Peterson suggests that polling places and voting machines are not fully available in jails.<sup>168</sup> Nor is the opportunity for absentee voting. Norris Henderson testified that absentee voting can be a challenge for people in jail because the ballots must be certified by the sheriff, mailed to the Registrar of Voters on a timely basis, and many people in jail are not

<sup>164</sup>Henderson Testimony, BR Hearing Transcript, p. 148.

<sup>165</sup> Hamilton-Smith and Vogel, *supra*, p. 414.

<sup>166</sup> Vera, “Most People in OPP Have Not Been Tried or Convicted”, <https://www.vera.org/publications/new-orleans-jail-population-quarterly-report/new-orleans-whos-in-jail-and-why/new-orleans-who-039-s-in-jail-and-why-new-orleans-whos-in-jail-and-why-most-people-in-opp-have-not-been-tried-or-convicted>, accessed April 23, 2018.

<sup>167</sup> Henderson Testimony, BR Hearing Transcript, p. 139.

<sup>168</sup> Peterson Testimony, BR Hearing Transcript, pp. 36-38.

aware of their right to vote.<sup>169</sup> In addition, the delays surrounding absentee voting may mean that by the time the ballot arrives after it was ordered, the voter may have been released from jail and not able to receive it.<sup>170</sup>

## Recommendations

### Polling Locations

1. The Office of the Secretary of State should list on its Voter Portal web site (<https://voterportal.sos.la.gov>) the names of the five members of Parish Board of Election Supervisors for each Parish. The web site should include easily-accessible information on (i) the election precincts in each parish, including a map showing the exact boundaries of the precincts, (ii) the number of residents by race in each precinct (iii) the number of registered voters by race in each precinct, (iv) the location of each polling place pertaining to each precinct (regardless of whether the polling place is inside or outside of the precinct.)
2. The information listed in (1) should be made available to the public in machine-readable form. This should include not only the current information but also past information so that an analysis of the evolution of the patterns can be made by the public.
3. Any potential decision by the Parish Board of Election Supervisors related to any alterations of precinct boundaries, including adding or merging precincts, as well as any potential decision regarding polling locations should be announced to the public through the office of the Secretary of State. The Secretary of State should also ensure that all voters who can potentially be impacted by the contemplated change are notified by mail and by electronic media.
4. A public hearing with at least a month of advanced notice about the proposed changes listed in (3) should be held to obtain public's comments on the proposed changes regarding precincts or polling locations.
5. Any decision made by the Parish Board of Election Supervisors about precincts or polling locations, following the steps listed in (3) and (4) should include a document that explains the justification of the decision, along with a statement on how each member voted on the proposed change. This information should be posted on the Secretary of State's Voter Portal site mentioned in (1) above.
6. Secretary of State who has the authority to approve or disapprove the recommendation made by the Parish Board of Election Supervisors should provide an opinion (justification) for his/her approval/rejection decision, which should be included in the same web site along with the recommendation made by the Parish Board of Election Supervisors on the matter.

<sup>169</sup> See also Lanie Lee Cook, "Inmates awaiting trial have right to vote, but few do in Lafayette, other Louisiana parishes, officials say," *Acadiana Advocate*, November 13, 2015, [http://www.theadvocate.com/acadiana/news/politics/elections/article\\_c90053b5-1804-5110-afa7-d76c4a18f702.html](http://www.theadvocate.com/acadiana/news/politics/elections/article_c90053b5-1804-5110-afa7-d76c4a18f702.html), accessed April 23, 2018.

<sup>170</sup> Henderson Testimony, BR Hearing Transcript, p. 138.

**Early Voting Locations**

1. The state of Louisiana should continue its efforts to make early voting accessible through new technologies and where possible, prioritize new locations for early voting in underserved areas.

**Early Voting Periods**

1. The state of Louisiana should make early voting more predictable for voters through allowing voting on Sundays and establishing more consistent and extended early voting periods.

**Early Voting Accessibility**

1. The state of Louisiana should affirmatively ensure that all early voting locations are ADA and HAVA compliant.

**Additional Early Voting Recommendation**

1. The state of Louisiana should make early voting more predictable for voters through allowing voting on Sundays and establishing more consistent and extended early voting periods.

**Same Day Voter Registration**

1. The Committee recommends that the Louisiana legislature remove the registration waiting periods in La. Rev Statute § 18:135(A) and permit same-day registration. The Committee suggests that same day registrants be required to vote with provisional ballots.

**Voter ID Requirements**

1. The Committee recommends improved poll worker training regarding identification requirements and the affidavit alternative.
2. The Committee recommends that the poll books/election rolls include two boxes next to the registrants' name: "ID provided" or "affidavit offered/signed."
3. The Committee recommends that the Secretary of State increase its community outreach and education regarding voter identification requirements and the affidavit alternative. This could be done through increased public service announcements, clear signage at the polls, heightened prominence on the Geaux Vote app, and partnerships with community organizations to increase community awareness.

**Implications**

There are several implications from the Committee's recommendations that merit further consideration. The first is the capacity and number of poll workers in Louisiana. Increased training of poll workers presumes that there are a sufficient number of poll workers at each location and that each actually undertakes to watch the training video and read the training manual. The second, broader implication, is the problematic nature of a photo identification-based voting system. Any such system may dissuade eligible voters from even attempting to vote. Without extensive outreach regarding the affidavit alternative, and extensive training of poll workers, this barrier is heightened.

### **Provisional Ballots**

1. The Committee recommends that the legislature amend La. Revised Statute §18:566 to permit provisional ballots in all elections and not merely federal elections.
2. The Committee recommends that the Secretary of State increase poll worker training regarding the use of provisional ballots.
3. The Committee recommends that the Secretary of State increase community outreach and education regarding the availability of provisional ballots. This could be done through increased public service announcements, clear signage at the polls, heightened prominence on the Geaux Vote app, and partnerships with community organizations to increase community awareness.

### **Implications**

The Committee's recommendations implicate concerns over the number and capacity of poll workers that merit further consideration. Increased training of poll workers presumes that there are a sufficient number of poll workers at each location and that each actually undertakes to watch the training video and read the training manual.

### **Felon Disenfranchisement**

1. The vote should be restored immediately upon release from incarceration. This will require legislative action.
2. Officials should ensure that the documentation necessary to allow voter registration of those eligible is readily available, easy to complete and process, and does not provide further obstacles to registration.
3. To facilitate voting registration, Department of Public Safety and Corrections officials should provide notification and assistance with voter registration as soon as that right becomes available.
4. A sentence that does not include incarceration should not result in the loss of voting rights. This will require legislative action.

5. Voting should be made available in all parish jails to those eligible to vote. The voters should be eligible to vote in their home precinct and not at the address of the jail.
6. Voter registration should be simplified and offered in all jail and prison facilities.

## Appendix

### Summary of Public Briefing Testimony<sup>171</sup>

The Louisiana SAC held a public forum at Grambling State University, Grambling, Louisiana, on November 15, 2017, and conducted a public hearing at the Louisiana State Capitol in Baton Rouge on December 6, 2017. The SAC heard further testimony in a public meeting on April 23, 2018.

The first panel at Grambling State University on November 15, 2017 included Lemmy Akoma, Professor of Political Science and Public Administration at Grambling State University; Devissi Muhammad, History Professor at Grambling; Cheryl Mango-Ambrose, History Professor at Grambling; and Joshua Stockley, Political Science Professor at the University of Louisiana at Monroe.

Dr. Akoma testified as to historical barriers to African-American's exercising the franchise in Louisiana. Dr. Akoma spoke about how the enactment of the 1898 Louisiana Constitution established literacy tests, requirements of property ownership, and residency requirements disenfranchised people of color and the poor. These barriers continued to exist for decades until the Voting Rights Act of 1965. Dr. Akoma spoke about continuing barriers today including residence and ID requirements and the disenfranchisement of people on probation and parole. Dr. Akoma testified that these barriers create a sense among those impacted that their vote does not count and those individuals become discouraged and cease to participate. Dr. Akoma testified to the need for programs to teach high school students the importance of voting as well as programs that make it easier for students in secondary schools to vote. Dr. Akoma acknowledged progress in changes to the law that allow university students to use their university issued ID at the polls.

Dr. Muhammad testified about the systematic disenfranchisement of African-Americans in Louisiana following the Reconstruction period. Dr. Ambrose testified to the phenomenon of young, African-American men and women not being in engaged in the franchise nor understanding the importance of exercising their vote.

Dr. Stockley provided an overview of redistricting and important considerations necessary in future redistricting decisions. He also spoke about barriers that exist in early voting procedures created by the limited hours early voting locations are open. He also pointed out the barriers created by voter registration deadlines that cut off either 20 or 30 days prior to election day depending if a person is registering online or by mail. Dr. Stockley pointed out that Louisiana does not offer same-day registration although 15 states and the District of Columbia have done so successfully and, by doing so, have increased voter turnout on election day.

Dr. Stockley also testified to the issue of felony disenfranchisement noting that about 72,000 residents are denied access to the polls because they are on probation or parole and that about 80%

<sup>171</sup> The Summary is meant to condense the testimony received by the Committee. Please see *BR Hearing Transcript*, *GR Hearing Transcript*, and *Tel Hearing Transcript* for full text.

of those residents are black. Dr. Stockley also testified to inconsistencies in the implementation of voter ID requirements where some poll workers require certain photo identification beyond what Louisiana law requires, thus, discouraging or prohibiting eligible voters from casting their ballot.

The second, and final panel, at Grambling included Representative Patrick Jefferson from District 11 of the Louisiana House of Representatives; Dr. Richard Gallot, President of Grambling State University; and Jennifer Hill from the Women's Democratic Club of Northwest Louisiana.

Representative Jefferson spoke about the need to be vigilant to any changes to voting processes that may be introduced after the Shelby County decision. Jennifer Hill testified to the efforts of the Women's Democratic Club of Northwest Louisiana to register people to vote and engage people living in poverty to participate in voting. President Gallot testified regarding current litigation in Terrebonne Parish challenging the at-large district for electing district court judges. President Gallot also testified to other barriers to voting including voter ID laws, public perspectives on the value of voting, and racial bias.

The first panel at the December 6, 2017, hearing at the Louisiana State Capitol included Jhacova Williams, a Ph.D. candidate in Economics at Louisiana State University and Karen Carter Peterson, Louisiana State Senator and Vice Chair of the Democratic National Committee for Civic Engagement and Voter Participation.

Jhacova Williams testified regarding her research into the current and historical cultural attitudes and historic events affect the political behavior and economic outcomes of blacks in the South as well as the determinants of polling locations within Louisiana communities. Ms. Williams stated that data shows there is lower voter turnout among blacks than whites in Louisiana and her research focuses on the factors that impact voter turnout of those who are already registered to vote. Ms. Williams concludes that in census tracks that have a higher percentage of black residents have fewer polling places – for every 10% increase in black resident population there is a 1.2% fewer polling places within a census track. Comparing income disparities, Ms. Williams concludes that for every 10% increase in per capita income, there is nearly a 1% increase in the number of polling places within a census track. Therefore, census tracks with a higher percentage of blacks have fewer polling locations and census tracks with a higher percentage of poor people have fewer polling locations.

Ms. Williams also analyzed the number of polling locations on a parish level and concluded that for every 10% increase in black residents on the parish level, there was a 7% decrease in the number of polling locations. Examining income disparity, Ms. Williams concluded that for every additional \$1,000 in income per capita, there is a 7% increase in the number of polling places. Ms. Williams also examined voting machine allocation per parish and concluded that for every 10% increase in black residents there were 9 fewer voting machines. She concluded income disparities as well in that for every \$1,000 increase in per capita income, there were about 10 more voting machines in that parish. Ms. Williams suggested that in order to ensure fair access to voting, policymakers should examine voting resource allocation in Louisiana to ensure that everyone, regardless of race or income, have sufficient number of polling locations and voting machines.

Senator Peterson focused on voting rights obstacles, impact of the decision in Shelby, and restrictions on voter access. Senator Peterson stated that Louisiana does not allow provisional ballots in state elections, restrictions on reimbursement to volunteers who give elderly and disabled voters rides to polling places, restrictions on felons, and limitations places on providing assistance in voting. Senator Peterson stated that the State's current reliance on the ABC Advantage voting machine puts the security and accuracy of elections in Louisiana in question due to proven security failures with these machines.

Senator Peterson also testified regarding the statistics of felony disenfranchisement in Louisiana in that more than 71,000 Louisiana citizens are denied the right to vote because they are on probation or parole. That number is 1 out of every 33 adults. Louisiana's rate of felony disenfranchisement is almost three times the national average and disproportionately impact African-Americans.

Senator Peterson also stated that only those who are physically disabled or illiterate can get assistance in voting. Individuals with invisible physical or mental disabilities cannot, and the paperwork and certification required for those who do qualify as disabled is intimidating and confusing.

As for early voting procedures in Louisiana, Senator Peterson testified that there are too few early voting locations in Louisiana and the window for casting an early vote is too narrow. No early voting locations are open on Sunday and all close seven to fourteen days prior to election day. As for early voting locations, Senator Peterson testified that while there are 3,904 precincts open around the state on election day, there are only 97 early voting sites serving all 64 parishes. Louisiana's three largest parishes with populations around 500,000 (Orleans, Jefferson, and East Baton Rouge) have only four early voting locations per parish. Caddo Parish, the fourth largest in population at 260,000 residents only has one early voting location. Thus, most early voters have to drive a considerable distance to cast their vote which is a deterrent for those without cars, elderly, disabled, or for those who cannot take the time off work. Those who make it to early voting locations are often faced with long lines and wait times due to insufficient number of alternative locations. This is another deterrent for those who are able to make it to the early voting location.

Senator Peterson also commented there is a lack of polling locations, particularly noting the lack of a location in Pontchartrain Park in New Orleans – the first major black subdivision in the city.

The second panel at the December 6, 2017, hearing in Baton Rouge included Susan Meyers, Director of Policy and Community Engagement at the Advocacy Center of Louisiana; Carol Deville, President of the Louisiana League of Women Voters; Nia Weeks, Director of Policy and Advocacy for Women with a Vision; and ...

Susan Meyers outlined some recent positive legislation concerning access to voting for people with disabilities including less burden on individuals needing assistance in voting. As of January 2018, voters needing assistance due to disability will now only have to sign a statement provided by a poll worker and no longer need third-party verification of disability. There has also been legislative changes so disabled individuals can serve as poll workers and e-mail voting procedures for voters with disabilities.



Ms. Meyers described reports by clients of the Advocacy Center where disabled voters not allowed voting assistants of their choice and poll workers making competency determinations on a disabled person's ability to vote at the polling location. The denial of an assistant of choice is a barrier. Ms. Meyers gave an example of someone with extreme anxiety may be unwilling to vote with a stranger assistant or someone with a communication problem being forced to use an assistant who they cannot communicate with. Furthermore, there is a prohibition in the Louisiana administrative code that bars workers at developmental centers from assisting residents of those centers in voting. Frequently, it is those employees who the residents are most comfortable with as assistants.

Another issue Ms. Meyers addressed is lack of accessibility at some polling locations. Also, Louisiana has a high rate of institutionalization of people with disabilities and those residents rely on the institution to gain access to the polls which, often, is not being facilitated.

Carol Deville reported recorded observations of members of the League of Women Voters. Ms. Deville stated there is lack of accessibility for early voting in Lafayette Parish as there is only one early voting location that has insufficient space to accommodate voters. The Lafayette early voting polling location also had inadequate elevators for the disabled as well as inadequate handicapped parking spaces.

Ms. Deville also spoke about voting irregularities that were reported by a poll worker in a New Orleans run-off election as well as problems with voting machines. Ms. Deville recommended more training for poll workers, more poll watchers available to observe the voting process, extending early voting to election day, more public information about the availability of early voting and mail-in ballots. Ms. Deville also recommended replacing all of the aging voting machines throughout the state.

Nia Weeks spoke about the work her organization does on mobilizing the vote. Ms. Weeks stated that Louisiana has almost a million African-American voters of which 56% are women. However, only about 32% of the 56% are frequent voters. Ms. Weeks stated that transportation is a barrier to voter participation and that polling locations frequently change in New Orleans from election to election. Potential voters often do not know where to go vote. Taking the time required to vote is also a barrier for many people who are employed – especially when taking the time results in losing income in a low paying job. Ms. Weeks also stated that limited early voting locations, only four in New Orleans, is a barrier to voting. Those locations are only open from 8:00am to 5:00pm.

Ms. Weeks testified about the issue some voters face when they present differently than their gender or picture on their ID. Homeless and migrant populations face barriers in registration because they lack a stable address.

The testimony in the third panel came from Bruce Really and Norris Henderson of VOTE (Voice of the Experienced) and Ashley Shelton of the Power Coalition.

Ms. Shelton (Power Coalition) testified that due to the state's failure to train and inform poll workers and registrars, Latino and Vietnamese voters face serious barriers to voting. In addition, polling places are often relocated without providing adequate notice and information to the communities they serve.

In the Latino and Vietnamese community there have been persistent problems with access to the vote and voter registration. Ms. Shelton discussed voting barriers for naturalized citizens in Louisiana. According to Ms. Shelton, a lack of training for state actors like registers exacerbate voting access for naturalized citizens. These challenges result from an 1874 law that is still on the books requiring naturalized citizens to provide citizenship documents when registering to vote. Other potential voters are not required to go to such lengths. Instead, they need only swear that they are U.S. citizens. Naturalized citizens faced a second class status for 142 years. While this law was changed in 2016, non-profits representing Asian American and Latino voters (like VAYLA) have documented how naturalized citizens are still facing discrimination at the polls. These citizens are denied the right to register to vote. Many officials do not realize the law has changed and Registrars still turn away citizens on the basis of this outdated law.

For the Vietnamese and Latino community, this is part of a larger problem related to a lack of transparency and understanding in immigrant communities when it comes to voting laws. In many ethnic communities where English is a second language, the laws related to voting rights are often poorly understood. In some circumstances, poll workers either do not know the law or lack bilingual language skills. Further, although as a matter of federal law, voters have the right to bring someone of their choice into the booth with them if they need help voting, for example in order to translate, often election officials do not know this. We provide individuals with fliers from Section 208 of the Voting Rights Act to clarify this.

These existing problems are exacerbated by the regions continued vulnerability when it comes to extreme weather. Natural disasters and climate change have impacted many communities in Louisiana. Due to flooding, polling locations are often changed or moved without providing adequate notice to the communities they are in. What complicates this challenge is that many voters are also displaced and the information they need to vote is not available to them. Many voters in areas where flooding occurred (parishes like Livingston, East Baton Rouge, and Ascension) needed support and information in order to find their polling place. Another example of this occurred in Pontchartrain Park where the polling place was changed on election day, seriously compromising the ability of voters in this community to exercise their rights to vote. Moving the polling location out of a community commons space where it has existed for generations erected barriers for those seeking the right to vote.

She also discussed streamlining elections and expanding training for poll workers.

Bruce Reilly of VOTE testified that due to a complex history of racist voting regulations and a contemporary lack of training and transparency in government, people who have criminal convictions face barriers to voting access.

In Louisiana, people who have criminal convictions, even those only on parole or probation, face major systematic barriers in their right to vote. People who have been incarcerated and even those who have only been on probation have a difficult time obtaining the right to vote after being convicted. Mr. Reilly discussed in detailed the fact that people on probation (not parole) were guaranteed a right to vote in the Constitution. The right can be suspended while under an order of imprisonment. Mr. Reilly spent some time discussing the history of what it means to be “under an

order of imprisonment” by examining the radicalized history of constitutionally protected voting rights in the state of Louisiana. Mr. Reilly highlighted how after a campaign to restore voting rights to people on parole and probation in the state of Rhode Island, he ultimately lost his right to vote by coming to Louisiana and matriculating to Tulane Law School. He discussed how he is currently the plaintiff in a voting rights case (VOTE v. Louisiana). Some of the direct barriers that individuals face in terms of voting rights related to the inefficient of bureaucracy. Those individuals who cycle off of probation and parole are not automatically reported to the Secretary of State and the registrar. Individuals may bring their documents proving that they are no longer on probation from one government office to another. Government actors in the bureaucracy are also misinformed about the law as it related to those on probation and parole. And they often provide wrong information to those seeking confirmation of the right to vote.

Norris Henderson of VOTE provided testimony indicating that those who have been incarcerated face intractable difficulties in reinstating their voting rights. He recommends increased transparency and broad based educational initiatives to alert formerly incarcerated persons that they have a right to vote.

For 42 years the Constitution of Louisiana prohibited formerly incarcerated persons from voting. In 1976, this was defined in an expansive way to include individuals who were not on probation and parole. Since 1975, over 630,000 people have been released from corrections in the state of Louisiana and these individuals have all been disenfranchised by the current law.

Part of the problem is that there is no governmental agency that educates formerly incarcerated persons about how to restore their right to vote. There is no information on the secretary of state’s website about how to restore the right to vote. In addition, inquiries to the parish Registrar’s office yielded contradictory and incorrect information. And because the information is uncertain, formerly incarcerated persons do not want to take the risk of illegally registering to vote and being sent back to prison for it.

Another aspect of the problem lies in the failure of government bureaucracy to update its records. When a formerly incarcerated person attempts to register to vote, often their application is flagged. If they cannot produce documentation to the contrary, then they are disenfranchised.

Mr. Henderson cited some positive changes in the community including posting notice on the Registrar’s office in Orleans Parish indicating that formerly incarcerated persons have the right to vote. And VOTE has also done outreach in the community to educate formerly incarcerated persons about their potential right to vote. Another initiative involves doing voter registration in jails with the certification of the Sheriff and getting absentee ballots to people in jail who have not been convicted.

Restoring voting rights may also have other positive impacts on the community and on formerly incarcerated persons and individuals. In a Florida study on restoring the right to vote, researchers learned that of the 30,000 people whose voting rights were restored, only 10% of them engaged in recidivism and the majority of that recidivism was related to administrative sanctions.

Mr. Henderson also discussed having election day in the middle of the week on a workday. In other jurisdictions, election day is a holiday. Mr. Henderson speculated that there might be more turnout in terms of voting if election day as a holiday. He also spoke about extending early voting periods.

Kyle Ardoin, First Assistant to the Secretary of State, Tom Schedler testified in the fourth panel. Mr. Ardoin cited the passion and commitment of the state poll workers and agency staff in Louisiana, particularly in terms of providing access to the vote after Hurricane Katrina.

Louisiana has a top down system. This means that the state government works collaboratively with the Clerks of Court and appointed Registrars in the 64 parishes in the state. In his testimony, Mr. Ardoin intends to highlight the legislative and technological changes that the Secretary of State's office has made in terms of removing barriers to voting access. The Secretary of State has undertaken the following initiatives:

- In April of 2009, the State of Louisiana implemented voter registration online. The online application is a new endeavor and Louisiana is one of only three states in the nation that has adopted it.
- In July of 2010, the Secretary of State's Office launched its online clearing house for all election related information: the voter portal. Voters can input their name, last name, zip code, and date of birth then receive personalized information about registration and polling locations. There is also a mobile platform version of this tool.
- In April of 2011, the Secretary of State's Office created a social media presence to reach new demographics.
- In September of 2011, Louisiana became the first state to provide election information through an online smart phone app, GeauxVote. It permits users to check registration status, find polling places, review what is on the ballot, and view election results. It also provides information related to early voting.
- The Secretary of State's office is in the process of requesting new voting machines and equipment. The office is particularly interested in equipment that provides an audit trail. This is of course subject to finances.
- The outreach division of the Secretary of State has undertaken a campaign to reach voters. In fiscal year 2016-17, this division conducted 179 voting events with 59 of the 64 Parishes. The events hosted included educational information, private elections, voting machine demonstrations, and voter registration drives. It also conducted social media and email outreach to voters as well.

To register to vote in Louisiana, an individual must be at least 16 years old, reside in the Parish in which he or she is seeking to vote, not be under an order of imprisonment for conviction of a felony, and not be under a judgment for full interdiction for mental incompetence or partial interdictions with suspension of voting rights. Voters can register online at the Secretary of State's

website, in person at the Registrar of Voter's office or Office of Motor Vehicles, and in public assistance agencies or armed forces recruiting offices, or by mail. Applicants must have a Louisiana driver's license, a Louisiana special ID card, or Social Security number. Applicants can also be verified with a copy of current valid photo identification or a current utility bill, bank statement, government paycheck or other document. Louisiana has 2, 976, 092 registered voters. At polling places, voters are asked for a photo identification card. If a voter lacks such identification, he or she may vote by completing and signing the voter affidavit. Disabled voters and senior citizens have the opportunity to vote by mail for elections.

Louisiana's voting hours on Tuesday election days are from 6:00 a.m. to 8:00 p.m. Voting hours on Saturdays are from 7:00 a.m. until 8:00 p.m. Early voting is seen days long from 8:30 a.m. to 6:00 p.m. Louisiana's polls are open for 14 hours. Only New York State's polls are open longer.

The Committee received additional testimony on April 23, 2018 from Carl Galmon, a resident of New Orleans who is on the Board of Directors of the National Voting Rights Museum and Institute in Selma, Alabama and Ron Wilson,

Mr. Galmon testified to problems of access to polling locations of African-Americans in New Orleans. He gave the example of Pontchartrain Park in New Orleans. Pontchartrain Park is the oldest black subdivision in New Orleans and it had three voting locations prior to Hurricane Katrina – one at the golf clubhouse, one at Bethany Church, and one at the Lutheran Church. After Katrina those three locations were merged into one that is a mile and a half away at the corner of Press Drive and Chef Menteur Highway. Mr. Galmon also testified to activities of the Secretary of State's Office after Hurricane Katrina that discouraged people from voting – such as publication of notices that they had registered in another state and publication in the Times-Picayune newspaper challenging thousands of voters.

## Transcripts, Statements, and Documents

1. [Transcript of Testimony gathered at Grambling University of November 15, 2017](#)
2. [Testimony of Joshua Stokley, Grambling University, November 15, 2017](#)
3. [Transcript of Testimony gathered at Baton Rouge Hearing, December 6, 2017](#)
4. [Transcript of Testimony provided by Ron Wilson and Carl Galmon, April 23, 2018](#)
5. [Louisiana Secretary of State Submissions and Final Statement](#)

To access the files, control + click to follow the link. All files can also be found on the Federal Advisory Committee Database, found at [www.facadatabase.gov](http://www.facadatabase.gov). Follow the link for United States Commission on Civil Rights - Louisiana Advisory Committee – Meetings - Documents.

**Louisiana Advisory Committee to the  
United States Commission on Civil Rights**



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# **Civil Rights *and* Voting in Illinois**



A Briefing Report of the  
Illinois Advisory Committee to the  
U.S. Commission on Civil Rights

February 2018

**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory Committee in each of the 50 states and the District of Columbia. These Committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to Committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

**Acknowledgements**

The Illinois Advisory Committee would like to thank each of the panelists who presented to the Committee during the March 9, 2017 meeting of the Illinois Advisory Committee, and the members of the public who either submitted written testimony or who spoke during the period of public comment. The Committee would also like to thank the Ralph H. Metcalfe Federal Building for hosting the public event.

The Committee is also grateful to Juan Carlos Linares, Chair of the Illinois Advisory Committee, who presided over the 2017 hearing; and all of the Committee members who assisted in the project planning and hearing preparations.

*Letter of Transmittal*

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**Illinois Advisory Committee to the  
U.S. Commission on Civil Rights**

The Illinois Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding civil rights and voting in Illinois, and the potential disparate impact in access to voting on the basis of race, color, age, religion, or disability. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Illinois. The contents of this report are primarily based on testimony the Committee heard during a public hearing on March 9, 2017 in Chicago, IL.

This report details civil rights concerns relating to potential disparities regarding access to voting and discrimination based upon the race, national origin, religion, sex, disability, and age of the electorate. It also addresses challenges to voting facing the incarcerated and formerly incarcerated, Limited English Proficient individuals, individuals with disabilities, and those experiencing homelessness. Primary concerns included inconsistent training of election judges and implementation of instruments to assist access to voting, the debate on pieces of legislation that could either enhance or limit access to voting across the state, such as automatic voter registration and election day registration, the practices of prison gerrymandering and the need to expand access to voting for inmates awaiting trial, and the ongoing need to educate youth on the importance of voting. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

**Illinois Advisory Committee to the  
U.S. Commission on Civil Rights**

Juan Carlos Linares, *Chair, Illinois Advisory Committee*, Chicago

Jonathan Bean, Herrin

Joanna Bohdziewicz-Borowiec, Chicago

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## I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory Committees in each of the 50 states and the District of Columbia. These advisory Committees advise the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction.

Among the responsibilities of each Advisory Committee is to inform the Commission "of any knowledge of information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination."<sup>1</sup> Through this study, the Illinois Advisory Committee examines voting rights and voter participation in Illinois. Specifically, the Committee examines the extent to which voters in the state have free, equal access to exercise their right to vote without regard to race, color, disability status, national origin, age, religion, and/or sex.

On July 8, 2016, the Illinois Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of the civil rights issues surrounding voting throughout the state. Specifically, the Committee sought to examine potential disparities regarding access to voting and discrimination based upon the protected categories of the electorate as designated by the Constitution. The Committee also sought to explore challenges to voting facing the incarcerated and formerly incarcerated, Limited English Proficient individuals, individuals with disabilities, and those experiencing homelessness.

On March 9, 2017, the Committee convened a public meeting in Chicago, Illinois to hear testimony regarding challenges and recommendations to improve access to voting across Illinois. The following report results from the testimony provided during this meeting, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The focus of this report is specifically on concerns of disparate access to voting in Illinois on the basis of race, color, age, religion, national origin, or other federally protected category. While other important topics may have surfaced throughout the Committee's inquiry, those matters that

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<sup>1</sup> 45 C.F.R. § 703.2.

are outside the scope of this specific civil rights mandate are left for another discussion. The Committee adopted this report and the recommendations included within it on October 24, 2017.

## II. BACKGROUND

### A. The United States Voting Rights Act

The right to vote is one of the most fundamental components of democracy—so important in fact that the United States Constitution includes four amendments protecting it.

- Amendment XV guarantees that the right to vote will not be denied on the basis of “race, color, or previous condition of servitude”;<sup>2</sup>
- Amendment XIX guarantees that the right to vote will not be denied “on account of sex”;<sup>3</sup>
- Amendment XXIV guarantees that the right to vote will not be denied “by any reason of failure to pay poll tax or other tax”;<sup>4</sup>
- Amendment XXVI guarantees that the right to vote will not be denied on account of age for all citizens aged 18 years or older.<sup>5</sup>

Though it does not explicitly address enfranchisement, the 14<sup>th</sup> Amendment to the U.S. Constitution granting citizenship to “all persons born or naturalized in the United States” and guaranteeing “equal protection of the laws”<sup>6</sup> to all within its jurisdiction has also been used to protect voting rights.

However, throughout much of American history, jurisdictions instituted discretionary, inconsistently applied, requirements such as poll taxes, literacy tests, and vouchers of “good character” to suppress the African American vote.<sup>7</sup> Many of these jurisdictions also

<sup>2</sup> U.S. Const. amend. XV, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>3</sup> U.S. Const. amend. XIX, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>4</sup> U.S. Const. amend. XXIV, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>5</sup> U.S. Const. amend. XXVI, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>6</sup> U.S. Const. amend. XIV, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>7</sup> The U.S. Dep’t. of Justice, *Before the Voting Rights Act*, Introduction to Federal voting Rights Laws (June 29, 2017), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws>.

disenfranchised individuals who committed "crimes of moral turpitude" for the same purpose.<sup>8</sup> In addition, terrorist organizations such as the Ku Klux Klan and the Knights of the White Camellia used harassment and violence to keep African American voters away from the polls.

In response to such continued voter intimidation and suppression, the 1965 United States Congress passed the Voting Rights Act (VRA) in an attempt to eliminate discriminatory voting practices.<sup>9</sup> Among its key provisions, the VRA included a section that prohibited "drawing election districts in ways that improperly dilute minorities' voting power."<sup>10</sup> It also required that states and counties with a "history of discriminatory voting practices or poor minority voting registration rates" secure preclearance approval from the United States Attorney General or a three-judge panel of the District of Columbia District Court prior to making any changes to their local legislation.<sup>11</sup>

When Congress renewed the VRA in 1975, they added protections designed to bring an end to discrimination against "language minority citizens."<sup>12</sup> In 1982, the Act was again renewed and amended to include a clause stating that a violation of the Act's nondiscrimination section could be established "without having to prove discriminatory purpose."<sup>13</sup> In other words, the clause declared that if the voting requirements in a particular jurisdiction are found to have a discriminatory impact, those requirements are illegal, regardless of intent.

According to the U.S. Department of Justice Civil Rights Division, soon after the VRA was passed, "black voter registration began a sharp increase," and as a result, the "Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress."<sup>14</sup>

On June 25, 2013, the U.S. Supreme Court released their *Shelby County v. Holder* ruling, stating that the formula used to determine which states should be subjected to VRA preclearance requirements was outdated and, thus, unconstitutional.<sup>15</sup> So, the preclearance requirement of the

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<sup>8</sup> *Id.*

<sup>9</sup> 42 U.S.C. § 1973.

<sup>10</sup> Voting Rights Act, 42 U.S.C. § 1973, available at [https://www.law.cornell.edu/wex/voting\\_rights\\_act](https://www.law.cornell.edu/wex/voting_rights_act).

<sup>11</sup> *Id.*

<sup>12</sup> The U.S. Dep't of Justice, *The History of Federal Voting Rights Laws*, Justice.gov (June 16, 2017), <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

<sup>13</sup> *Id.*

<sup>14</sup> The U.S. Dep't. Of Justice, *The Effect of the Voting Rights Act*, Introduction to Federal Voting Rights Laws (July 14, 2016), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>.

<sup>15</sup> *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, (2013), available at [https://www.supremecourt.gov/opinions/12pdf/12-96\\_6k47.pdf](https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf); see also John Schwartz, *Between the Lines of the Voting Rights Act Opinion*, The New York Times, June 25, 2013, available at



VRA cannot be used to regulate jurisdictions until Congress can agree upon a new formula, which they have yet to do.

Many states have enacted legislation to limit ballot access since the *Shelby County* decision. At least 77 bills aiming to restrict voter registration have been introduced or passed during the prior congressional session.<sup>16</sup> In November of 2016, state efforts to expand voter access had outpaced the enactment of restrictive measures overall,<sup>17</sup> but, nevertheless, 14 states had new restrictive voting laws in effect for the first time in a presidential election.<sup>18</sup>

At the same time, concerns about voter fraud have been expressed at the national level. On May 11, 2017, President Trump's administration issued an executive order establishing the Presidential Advisory Commission on Election Integrity.<sup>19</sup> This newly established Commission aims to study voting practices and identify "vulnerabilities in voting systems and practices used for Federal elections that can lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting."<sup>20</sup> On June 28<sup>th</sup>, 2017, the Presidential Advisory Commission on Election Integrity's co-chair Kris Kobach sent each state a letter requesting all publicly available voter data including: names, birth dates, political party, voting history (from 2006 onward), felony convictions and the last four digits of voter's Social Security numbers.<sup>21</sup> In the letter, co-Chair Kobach asked that the data be shared by July 14, 2017.<sup>22</sup> The Illinois State Board of Elections has yet to turn over the requested data, citing concerns that doing so may violate

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[http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?\\_r=2&\\_](http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&_)

<sup>16</sup> Brennan Center for Justice at the N.Y. Univ. Sch. of Law, *Voting Laws Roundup 2016* (July 21, 2016), <https://www.brennancenter.org/analysis/voting-laws-roundup-2016>.

<sup>17</sup> See *Id.* (noting that the Brennan Center for Justice reported that as of March 25, 2016, 422 bills to enhance voting access were introduced or carried over from the previous session in 41 states plus the District of Columbia, while at least 77 bills to restrict access to registration and voting were introduced or carried over from the previous session in 28 states).

<sup>18</sup> *Id.*

<sup>19</sup> The White House Office of the Press Secretary, *Presidential Executive Order on the Establishment of Presidential Advisory Commission on Election Integrity* (May 22, 2017), <https://www.whitehouse.gov/the-press-office/2017/05/11/presidential-executive-order-establishment-presidential-advisory>.

<sup>20</sup> *Id.*

<sup>21</sup> Lynn Sweet & Sam Charles, *Illinois to delay Trump Commission Voter Data Request Until August*, Chicago Sun Times, July 5, 2016, available at <http://chicago.suntimes.com/news/illinois-to-decide-on-trump-commission-voter-data-request-in-august/>.

<sup>22</sup> *Id.*

state law.<sup>23</sup> In September 2017, the IL State Board of Elections sent a letter to the Commission seeking additional information regarding how the voter data would be used.<sup>24</sup> At this point in time, it appears unlikely that Illinois will provide all of the requested information, as Ken Menzel, general counsel to the Illinois State Board of Elections, stated that the Presidential Advisory Commission on Election Integrity is “certainly not going to get the last four numbers of (each registrant’s) Social Security number...we don’t give that out to anybody.”<sup>25</sup> As of July 6, 2017, 11 states and the District of Columbia have announced that they will not comply with the request, 16 states (including Illinois) are undecided and 22 states indicated that they have (or will) hand over partial information as allowed by state law.<sup>26</sup>

In this context, the Illinois Advisory Committee addresses the voting climate in Illinois, and the extent to which all qualified voters in the state have equal access to voter registration and ballots at the polling place.

## B. Current Voting Regulations

Across the United States, current policies designed to restrict voting access include: eliminating early voting, requiring documentary proof of citizenship during voter registration, prohibiting people with prior felony convictions from voting, purging the identification data associated with those accused of being registered in more than one state, moving and consolidating polling places, and prohibiting third parties from collecting and turning in early ballots on behalf of voters.<sup>27</sup> The extent to which jurisdictions have adopted such measures varies widely.

<sup>23</sup> Associated Press, *More than a dozen states still refuse to release voter data* Los Angeles Times (October 30, 2017), <http://www.latimes.com/nation/sns-bc-us--voting-commission-state-responses-20171022-story.html>.

<sup>24</sup> *Id.*

<sup>25</sup> See Greg Hinz, *Illinois Balks at Vote Fraud Panel’s Data Request*, Crain’s Chicago Business (July 6, 2016), <http://www.chicagobusiness.com/article/20170705/BLOGS02/170709989/illinois-balks-at-vote-fraud-panels-data-request> (noting that under Illinois Law, Social Security numbers are not available to the public).

<sup>26</sup> *Id.*

<sup>27</sup> The Advancement Project, *Barriers to the Ballot: Restrictive Voting Procedures in 2016* (Sept. 22, 2016), [http://b3cdn.net/advancement/8579f669557471b98c\\_vfm6bxkd8.pdf](http://b3cdn.net/advancement/8579f669557471b98c_vfm6bxkd8.pdf).

### 1. *The National Voter Registration Act*

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed facilitate voter registration and make it easier for voters to maintain their registered status.<sup>28</sup> Under the NVRA, states must allow citizens to register to vote at the same time they apply for their driver's license or seek to renew their license.<sup>29</sup> The NVRA also requires states to forward completed voter registration applications to the appropriate election officials.<sup>30</sup> In addition, the Act also requires states to provide voter registration support for individuals with disabilities and allows any eligible person to register by mail if they so choose.<sup>31</sup>

### 2. *Voting in Illinois*

Illinois requires two forms of identification for any individual who wishes to register to vote (in person, by mail or online), change their name on voter registration, or change their registration address (after October 11 in a given election year).<sup>32</sup> At least one identifier must include the registrant's residential address.<sup>33</sup> Acceptable forms of identification are limited to the following documents:<sup>34</sup>

- Passport or Military ID;
- Vehicle registration card;
- Social Security, Medicare, or Medicaid card;
- Illinois FOID card;
- Driver's License or State ID card;
- Lease, mortgage, or deed to home;

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<sup>28</sup> The U.S. Dep't of Justice, *About the National Voter Registration Act*, (Sept. 26, 2016), <https://www.justice.gov/crt/about-national-voter-registration-act>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *When Voters Do (And Don't) Need Identification (ID)* (June 29, 2017), <http://app.chicagoelections.com/pages/en/when-you-need-id-to-vote.aspx>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

- Civic, union or professional membership card;
- College/University/School/Work ID;
- Credit or debit card;
- LINK/Public Aid/Department of Human Services card.

Additionally, mail addressed to the registrant may also be accepted in some cases.<sup>35</sup> Examples of acceptable mail include: bills, transcripts/report cards from school, bank statements, pay stubs, pension statements, utility/medical/insurance bills and official mail from any government agency.<sup>36</sup>

While Illinois does not require all voters to present government issued photo identification at the polls, a voter may be asked to show identification if they registered to vote by mail and did not submit the required identification in time.<sup>37</sup> Illinois voters may also be subject to an ID request if an election official challenges their right to vote for any other reason.<sup>38</sup>

#### *Automatic Voter Registration*

Voting-eligible individuals in Illinois are not automatically registered to vote, but, because of the NVRA, they are given opportunity to indicate that they would like to register when they fill out certain government forms, such as an application for a driver's license.<sup>39</sup> Outside of Illinois, seven states have implemented automatic voter registration.<sup>40</sup> In automatic voter registration jurisdictions eligible citizens are registered to vote when they provide identifying information to state government agencies, unless they explicitly indicate that they would not like to register.<sup>41</sup> For instance, if an individual applied to obtain or renew a driver's license through their state Department of Motor Vehicles, they would automatically be registered to vote unless they stated that they would not like to be registered. Voter information is then securely transferred to election

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Motor Voter: Driver Services* (June 7, 2017), <http://www.cyberdriveillinois.com/departments/drivers/motorvoter.html>.

<sup>40</sup> Brennan Center for Justice at the N.Y. Univ. Sch. Of Law, *Automatic Voter Registration* (June 27, 2016), <https://www.brennancenter.org/analysis/automatic-voter-registration>.

<sup>41</sup> *Id.*

officials, which is why proponents of automatic voter registration argue that such a process would both save money and lessen the potential for voter fraud.<sup>42</sup>

In May 2016, both chambers of the Illinois General Assembly passed legislation that would have instituted automatic voter registration throughout the state. Illinois Governor Bruce Rauner however, vetoed the bill two months later, citing concerns regarding potential fraud and conflicts with federal law.<sup>43</sup> The Illinois House sought to override the veto in November of 2016, but failed to do so when they fell four votes short of the seventy-one person majority needed to turn the bill into law.<sup>44</sup> In May 2017, the Illinois Senate voted 115-0 to approve SB1933, a bipartisan automatic voter registration bill that included revisions that addressed the Governor's concerns.<sup>45</sup> On June 29, 2017, the bill was sent to Governor Rauner's desk.<sup>46</sup> Governor Rauner signed the bill into law on August 28, 2017.<sup>47</sup>

### *Election Day Registration*

Election Day registration allows individuals to complete voter registration and cast a ballot on the day of an election. In 2014, the Illinois General Assembly instituted a pilot program that permitted Election Day voter registration during the general election held that year.<sup>48</sup> Subsequently, the Illinois General Assembly passed additional legislation (SB 0172) making same day voter registration permanent throughout the state.<sup>49</sup> Under SB 0172, counties with fewer than 100,000 eligible voters and no electronic registration records are permitted to opt out of same day registration at some of their polling locations, provided that same day registration remains

<sup>42</sup> *Id.*

<sup>43</sup> Rick Pearson, *Rauner Vetoes Automatic Voter Registration Bill*, Chicago Tribune (Sept. 23, 2016), <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-veto-automatic-voter-registration-met-0813-20160812-story.html>.

<sup>44</sup> Jessie Hellmann, *Illinois Passes Automatic Voter Registration The Hill* (June 7, 2017), May 29, 2017, <http://thehill.com/homenews/state-watch/335555-illinois-legislature-passes-automatic-voter-registration>.

<sup>45</sup> *Id.*

<sup>46</sup> S. 1933, 100<sup>th</sup> Gen. Assemb. (Ill. 2017) available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1933&GAID=14&DocTypeID=SB&SessionID=91&GA=100>.

<sup>47</sup> *Id.*

<sup>48</sup> Sophia Tareen, *Same-day Voter Registration at Issue in Illinois Lawsuit*, Associated Press (Oct. 13, 2016), <http://bigstory.ap.org/article/55cf8dad5b944a06822b5214393d68ef/same-day-voter-registration-issue-illinois-lawsuit>.

<sup>49</sup> Illinois Public Act, Pub L. No. 98-1171.

available at the county election authority's main office and at "a polling place in each municipality where 20% or more of the county's residents reside."<sup>50</sup>

In August 2016, U.S. House of Representatives candidate Patrick Harlan and the Crawford County Republican Central Committee filed a lawsuit in federal court alleging that Illinois SB 0172's small county exception put voters from rural counties at an unfair disadvantage.<sup>51</sup> In September of 2016, U.S. District Court Judge Samuel Der-Yeghiayan granted the plaintiff's motion for a preliminary injunction to block same day voter registration in the state prior to the 2016 presidential election.<sup>52</sup> In October of 2016, the 7<sup>th</sup> U.S. Circuit Court of Appeals stayed this injunction, re-opening same day voter registration for the November 8, 2016, presidential election.<sup>53</sup> In August of 2017, the Seventh Circuit Court of Appeals issued a stay reinstating same-day voter registration for the November election.<sup>54</sup>

### 3. *Felony Disenfranchisement*

In a vast majority of U.S. states, individuals who have been convicted of a felony lose their right to vote some duration of time. A person convicted of a felony automatically becomes permanently ineligible to vote in 9 U.S. states.<sup>55</sup> Twenty-nine states automatically restore voting rights after the completion of an offender's entire sentence, including parole and probation.<sup>56</sup> Illinois is one of 14 states that automatically restore voting rights to people with felony convictions upon their release

<sup>50</sup> Illinois Public Act, Pub L. No. 97-766.

<sup>51</sup> *Harlan v. Scholz*, 210 F. Supp. 3d 972 (N.D. Ill. 2016), vacated, 866 F.3d 754 (7th Cir. 2017), available at <https://d2dv7hze646xr.cloudfront.net/wp-content/uploads/2016/08/Harlan-v.-Scholz-complaint-with-expert-report.pdf>.

<sup>52</sup> *Id.*

<sup>53</sup> Kim Geiger, *Same-Day Voter Registration Will be an Option November 8 in Illinois*, Chicago Tribune (Oct. 13, 2016), <http://www.chicagotribune.com/news/local/politics/ct-illinois-same-day-voter-registration-1009-20161007-story.html>.

<sup>54</sup> Bailey Lorraine, *Seventh Circuit Upholds Same-Day Illinois Voter Registration*, Courthouse News (Aug. 4, 2017), <https://www.courthousenews.com/seventh-circuit-upholds-day-illinois-voter-registration/>.

<sup>55</sup> *Felon Voting Rights*, National Conference of State Legislatures, available at <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>56</sup> *Id.*

from prison.<sup>57</sup> In Maine and Vermont, persons with felony convictions never lose the right to vote, even while they are incarcerated.<sup>58</sup>

The National Conference of State Legislatures reported that, even in states like Illinois where voting rights are automatically restored after an individual completes their prison sentence, a lack of information and/or timely communication between courts, corrections officers, and elections officials can “result in uneven application of the law, even when the laws are clear.”<sup>59</sup> Specifically, “ex-offenders sometimes are not aware that they regain their voting rights automatically upon completion of their sentence” causing them to “go through life believing they cannot vote when, in fact, they can.”<sup>60</sup>

### III. SUMMARY OF PANEL TESTIMONY

The panel discussion on March 9, 2017, at the Ralph H. Metcalfe Federal Building in Chicago, Illinois included testimony from diverse panels of academic experts; legal professionals; community advocates; and elected officials who discussed challenges in access to voting along with recommendations for potential improvements.<sup>61</sup> At the direction of the Committee’s bipartisan members, panelists were selected to provide a balanced overview of the civil rights issues impacting voters in Illinois. Testimony included the perspective of both proponents and opponents of election-day registration, recommendations of best practices for election judges, expert testimony on disenfranchisement of the incarcerated and formerly incarcerated, the challenges faced by Limited English Proficient voters, homeless voters, young voters and voters with disabilities. The Illinois Secretary of State or clerks from jurisdictions outside of Cook County did not respond to outreach attempts.

The Committee notes that where appropriate, all invited parties who were unable to attend personally were offered the opportunity to send a delegate; or, at a minimum, to submit a written statement offering their perspective on the civil rights concerns in question. The Committee did receive a number of written statements from the public offering supplemental information, which are included in Appendix B. It is in this context that the Committee submits the findings and recommendations following in this report.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> The complete agenda from this meeting can be found in Appendix A.

## A. Voting Rights in Illinois

### 1. Election Day Registration

Through the hearing, panelists provided testimony on the laws, procedures, and policies that impact voting rights in the state of Illinois. For instance, the Committee heard arguments both for and against Illinois' Election Day registration policies. Mr. Jacob Huebert, Senior Attorney at the Liberty Justice Center and council to the plaintiff in the aforementioned lawsuit contesting the constitutionality of Illinois' Election Day registration policy, shared his perspective on why the Illinois' Election Day registration procedures violate the 14<sup>th</sup> amendment's equal protection clause.<sup>62</sup> Mr. Huebert contends that the expanded opportunity for voter registration on Election Day is unconstitutional because individuals are only guaranteed the right to register last minute at every polling place in 20 of the 102 total counties in the state of Illinois.<sup>63</sup> He also stated that in the 2016 general election, only 4 of Illinois' 82 low population counties voluntarily offered Election Day registration at every polling place, making registration accessible to some and inaccessible to others.<sup>64</sup>

Mr. Huebert explained that "when a citizen challenges a law that restricts voting rights or favors some voters over others, the law can only be upheld if the Court concludes that the burden the restriction imposes on voting rights is outweighed by the government interest."<sup>65</sup> He testified that that, under this legal standard, Illinois has defended its Election Day registration scheme by arguing that it improves voting access for Illinoisans in general.<sup>66</sup> However, Mr. Hubert argues that residents of small counties without Election Day registration are unfairly disadvantaged because, in some cases, they would have to travel over twenty miles for the opportunity to register on Election Day while people in highly populated jurisdictions could register at their own local polling place.<sup>67</sup> Mr. Huebert also noted that there may be a partisan interest in limiting mandatory

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<sup>62</sup> Huebert Testimony, Hearing before the Illinois Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 34 (2017), available at <http://facadatabase.gov/committee/meetingdocuments.aspx?flr=147706&cid=246> (hereinafter cited as *Transcript*).

<sup>63</sup> Huebert, *Transcript* at 36.

<sup>64</sup> *Id.*

*Id.* at 38.

<sup>66</sup> *Id.* at 38.

<sup>67</sup> *Id.* at 40.



Election Day registration to high-population counties, which have consistently favored the Democratic Party in statewide elections throughout the past decade.<sup>68</sup>

Mr. Huebert proposed altering the Illinois' Election Day registration legislation so that a system that is fair to voters all throughout the state may be implemented.<sup>69</sup> To do this, he suggested that Illinois should either revoke all Election Day registration or guarantee last minute registration at every polling place, just as every other state allowing Election Day registration does.<sup>70</sup> Rebecca Glenberg, a Senior Attorney at the ACLU of Illinois, stated that, in fact, the initial draft of the Election Day registration bill called for a uniform state of access to polling place Election Day registration, "but low population counties advocated for an ability to opt out of that requirement especially if they had a cost concern."<sup>71</sup> Ami Gandhi, Director of Voting Rights and Civic Empowerment of the Chicago Lawyers' Committee for Civil Rights Under Law argued that Election Day registration should not be removed from places where it has already proven to be useful and necessary, arguing that Election Day registration should simply be required in more polling places.<sup>72</sup>

According to Ms. Gandhi, revoking Election Day registration would be a step backwards for Illinois voters because the ability to register at the last-minute expands ballot access.<sup>73</sup> Ms. Gandhi reported that over 100,000 voters across the state registered on the day of the November 2016 general election.<sup>74</sup> She also explained that Voting Rights Project of the Chicago Lawyer's Committee received numerous public comments indicating that voters rely on Election Day registration.<sup>75</sup> Specifically, she noted that the Voting Rights Project heard "stories of voters of color in urban areas using Election Day registration, as well as veterans, rural voters who work on farms, and a diversity of others who use Election Day registration."<sup>76</sup> This increased rate of registration among people of color is especially noteworthy for, as Juan Thomas, chair of the National Association for the Advancement of Colored People's Legal Redress Committee reported, 35% of Illinois' voting eligible African Americans were not registered to vote in the year

<sup>68</sup> *Id.* at 41.

<sup>69</sup> *Id.* at 42-43.

<sup>70</sup> *Id.* at 43.

<sup>71</sup> Glenberg, *Transcript* at 57- 58.

<sup>72</sup> Gandhi, *Transcript* at 3.

<sup>73</sup> Gandhi, *Transcript* at 32.

<sup>74</sup> Gandhi, *Transcript* at 3.

<sup>75</sup> Gandhi, *Transcript* at 28.

<sup>76</sup> Gandhi, *Transcript* at 3.

2014.<sup>77</sup> Additionally, Mr. Andy Kang, the Legal Director of Asian Americans Advancing Justice Chicago, highlighted the importance of Election Day registration when he described the municipal primary races in Chicago's 11<sup>th</sup> and 25<sup>th</sup> Wards in which 12,000 voters registered on Election Day, resulting in races that were decided by approximately 515 votes each.<sup>78</sup>

## 2. *Fraud Allegations and Voter ID Requirements*

Several panelists provided testimony on recent allegations of voter fraud and their impact on the electoral process. Ms. Glenberg discussed the recent increase in allegations of voter fraud in national level political rhetoric and its effect on voting within the state of Illinois. She stated that between the years 2000 and 2014, there were over a billion votes cast but only 31 credible allegations of voter impersonation throughout the country, which nearly all turned out to be caused by accidental election judge or voter error, not a malicious attempt to influence an election.<sup>79</sup> None of these incidents occurred in Illinois.<sup>80</sup>

Other panelists specifically addressed the recent voter fraud allegations that claim noncitizens have been registering to vote in American elections. Ruth Greenwood, Deputy Director of Redistricting at The Campaign Legal Center stated that there is no evidence of illegal non-citizen voter registration.<sup>81</sup> Ms. Gandhi explained that, among noncitizens, there is a widespread understanding that voter registration is a deportable offense.<sup>82</sup> She also noted that the tension within the current political climate has even caused eligible immigrant citizens to be hesitant about registering to vote.<sup>83</sup> Furthermore, Ms. Gandhi added that inadvertent registration of non-citizens through the Illinois NVRA system is not typically a problem but that reforms like automatic voter registration in Illinois have been constructed to even further strengthen safeguards against registration of non-citizens.<sup>84</sup>

<sup>77</sup> Thomas, *Transcript* at 200.

<sup>78</sup> Kang, *Transcript* at 170.

<sup>79</sup> Glenberg, *Transcript* at 45.

<sup>80</sup> Justin Levitt, *A Comprehensive Investigation of Voter Finds 31 Credible Incidents out of One Billion Ballots Cast*, Washington Post, Aug. 6, 2014, available at [https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm\\_term=.badaf18f08d2](https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.badaf18f08d2).

<sup>81</sup> Greenwood, *Transcript* at 61-62.

<sup>82</sup> Gandhi, *Transcript* at 62.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 64.

Ms. Glenberg asserted that Illinois should consider the potential impacts of laws requiring identification at the polls because in 2016 alone, “14 states had new restrictions on voting that had not existed before.”<sup>85</sup> Furthermore, she noted that the Illinois General Assembly has seen proposals for voter identification bills during the past 8 years, which, if passed, would be some of the strictest laws voter ID laws in the nation.<sup>86</sup> She explained that, for instance, there is currently a bill the Illinois General Assembly requiring unexpired and valid photo identification at polling places, which poses the question of whether someone is still eligible to vote if, say, their driver’s license had been suspended because of a traffic violation.<sup>87</sup>

When describing the recently enacted laws requiring voter identification at the polls, Ms. Glenberg posited that voter identification laws “reduce voter participation in direct opposition to our country’s overall trend of including more Americans in the Democratic process.”<sup>88</sup> Ms. Glenberg further clarified that state voter identification laws vary from state to state and generally do not justify or explain for why particular forms of identification are required.<sup>89</sup> According to Ms. Greenwood, federal law requires that government issued identifiers (such as the last four digits of a person’s social security or driver’s license number) must be presented in order to register to vote, so “adding a photo identification requirement on top [of the current requirements] is just restricting who can access the polls.”<sup>90</sup>

Additionally, the Committee heard testimony on the disparate impact of voter ID law. Ms. Glenberg testified that many Americans do not possess one of the acceptable forms of identification required by strict voter ID laws.<sup>91</sup> She noted that, in the year 2006, 11% of American citizens did not have government-issued photo identification and added that the elderly, members of racial/ethnic minority groups, and people earning less than \$35,000 annually were less likely to possess a government ID than individuals who did not belong to any of those groups.<sup>92</sup> On a similar note, Jeff Raines, Director of Communications and Engagement at CHANGE Illinois, reported that individuals living in black and Latino neighborhoods are much less likely to have drivers’

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<sup>85</sup> Glenberg, *Transcript* at 49.

<sup>86</sup> Glenberg, *Transcript* at 50.

<sup>87</sup> Glenberg, *Transcript* at 73.

<sup>88</sup> Glenberg, *Transcript* at 46.

<sup>89</sup> Glenberg, *Transcript* at 72.

<sup>90</sup> Greenwood, *Transcript* at 70.

<sup>91</sup> Glenberg, *Transcript* at 46.

<sup>92</sup> Glenberg, *Transcript* at 47.

licenses or state IDs than white people.<sup>93</sup> Ms. Glenberg explained that after strict voter ID laws were enacted in Kansas and Tennessee, both states saw lower overall rates of voter turnout, with a larger decrease in electoral participation among African Americans than among whites.<sup>94</sup> Additionally, she noted that voter ID requirements are particularly burdensome for low income people who need to show utility bills or other documents to identify themselves, but do not have the proper documentation in their name because their bills are issued to the family members or friends with whom they live.<sup>95</sup> Also, Ms. Glenberg stated that voter ID laws also burden individuals who do not have access to the reliable forms of transportation that are often necessary to access the government offices that issue official identification.<sup>96</sup>

### 3. *Issues with Redistricting*

In addition, a number of panelists provided testimony on current redistricting practices, which can function as a barrier to equitable representation throughout the state. Redistricting is the process in which partisan actors draw district lines, which is often done in a way that maximizes the probability that members of their political party will be elected. According to Ruth Greenwood, current incumbents have an advantage due to the manner in which partisan interests have dominated redistricting processes since 1980.<sup>97</sup> Ms. Greenwood further emphasized that incumbents remain in power without consideration for the preferences of their constituents because partisan redistricting reduces the number new candidates running for office, since there little incentive to fundraise and campaign in an election that seems impossible to win because of the way districts are drawn.<sup>98</sup> To illustrate this point, Ms. Greenwood reported that, within Illinois, “in 2016, 64 percent of state house races were uncontested and 75 percent of State Senate races were uncontested.”<sup>99</sup> She also explained that as the greater Chicagoland region continues to become residentially integrated, it becomes even more difficult to ascertain minority representation because it must be shown that a community is segregated to a certain degree in order to draw a

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<sup>93</sup> Raines, *Transcript* at 1 – 2.

<sup>94</sup> Glenberg, *Transcript* at 49.

<sup>95</sup> Glenberg, *Transcript* at 74.

<sup>96</sup> Glenberg, *Transcript* at 47.

<sup>97</sup> Greenwood, *Transcript* at 19.

<sup>98</sup> *Id.* at 22.

<sup>99</sup> *Id.*

district around it using special provisions.<sup>100</sup> Drawing a district around a minority community would increase the likelihood that the minority group's preferred candidates would win the district.

The U.S. Supreme Court has declared redistricting on the basis of racial demographics in a manner that disadvantages minority voters unconstitutional, but it has never determined that political gerrymandering violates the U.S. Constitution.<sup>101</sup> On June 19, 2017, the Supreme Court of the United States agreed to hear a Wisconsin case on partisan redistricting/gerrymandering.<sup>102</sup> It is suspected that this case will set a standard that lower courts will be able to use to determine whether an instance of partisan redistricting is unconstitutional.<sup>103</sup>

#### 4. Challenges to Equal Representation

##### *Electing Members of Minority Communities*

Many panelists agree that minority groups currently lack sufficient political representation. Several of these panelists referenced the 2015 Joyce Foundation report titled "The Color of Representation: Local Government in Illinois"<sup>104</sup>, which found that "people of color are underrepresented in hundreds of local governments across Illinois."<sup>105</sup> The report specifically identifies 38 Illinois jurisdictions that have "severe underrepresentation of one or more racial or ethnic minority groups."<sup>106</sup> Also, Ms. Greenwood testified that the report "showed that there are numerous cities, towns, villages and school boards have growing minority populations but all or majority white councils or boards to govern them."<sup>107</sup> In reference to the same report, Mr. Thomas noted that, in some districts, "...African-American and Latino votes are not only suppressed, but also

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<sup>100</sup> *Id.* at 16.

<sup>101</sup> Adam Liptak, *Justices to Hear Major Challenge to Partisan Gerrymandering*, The New York Times, June 19, 2017, [https://www.nytimes.com/2017/06/19/us/politics/justices-to-hear-major-challenge-to-partisan-gerrymandering.html?\\_r=0](https://www.nytimes.com/2017/06/19/us/politics/justices-to-hear-major-challenge-to-partisan-gerrymandering.html?_r=0).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> The Joyce Foundation, *The Color of Representation: Local Government in Illinois* (May 24, 2017), [https://static1.squarespace.com/static/53e11e1be4b0d63b5fc97ee3/t/55de53dde4b0e78736571d1b/1440633821328/CLC\\_TheColorOfRep\\_FINAL\\_41315-2.pdf](https://static1.squarespace.com/static/53e11e1be4b0d63b5fc97ee3/t/55de53dde4b0e78736571d1b/1440633821328/CLC_TheColorOfRep_FINAL_41315-2.pdf).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Greenwood, *Transcript* at 14.

marginalized in a way that does not create fair and equal representation based upon peoples of colors population numbers.”<sup>108</sup>

According to Ms. Greenwood, civic participation and trust in government within communities of color would be enhanced if minority representation were improved.<sup>109</sup> Ms. Greenwood stated that it is difficult to increase minority representation because of factors including a lack of resources allocated to local organization efforts, the reality that ballot initiatives are controlled and manipulated by central authorities, and the fact that litigation efforts can be very time-consuming and costly.<sup>110</sup>

Ms. Greenwood suggested implementing a ranked choice voting system with multi-member districts in order to increase the number of minority board members elected within integrated communities.<sup>111</sup> She explained that, on a ranked choice ballot, each person writes out their electoral preferences in order by marking their favorite candidate as “1”, their second favorite candidate as “2”, and so forth.<sup>112</sup> If a voter’s favorite candidate does not get many votes, their vote will be counted towards their second favorite candidate, so each person’s vote is allocated to their most preferred candidate remaining in a run-off between the most popular candidates.<sup>113</sup> According to Ms. Greenwood, this ballot format would likely improve minority representation in jurisdictions with more than one racial group.<sup>114</sup> She explained that if “a black community and a Latino community [may] have different number one preferences, but as long as they preference each other for number two”<sup>115</sup> they will end up with an elected official that was preferred by the minority community as a whole.<sup>116</sup> Ms. Greenwood reported that San Francisco, CA; Cambridge, MA; Minneapolis, MN; the entire country of Australia and numerous other localities have all successfully implemented rank a choice voting system.<sup>117</sup> She also testified that, on a more local

<sup>108</sup> Thomas, *Transcript* at 201.

<sup>109</sup> Greenwood, *Transcript* at 15.

<sup>110</sup> *Id.* at 15.

<sup>111</sup> *Id.* at 16.

<sup>112</sup> *Id.* at 16.

<sup>113</sup> *Id.* at 16 -17.

<sup>114</sup> *Id.* 17.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

level, the New York City School Board saw a dramatic increase in the number of elected officials of color when they switched to a ranked choice ballot.<sup>118</sup>

### ***Voter Intimidation***

The Committee also heard testimony on voter intimidation in Illinois. Instances of intimidation at the polls have been reported by Illinoisans, many of whom were non-white.<sup>119</sup> Cook County Clerk David Orr reported that in Cicero, Illinois, police officers have harassed voters and asked people for voting “permits.”<sup>120</sup> Mr. Orr explained that between 60 and 70 off-duty Chicago police officers were armed and present at the polls, intimidating Cicero residents.<sup>121</sup> It took the County Clerk’s office between 4 and 5 hours to clear the police officers from the polling place.<sup>122</sup>

Ms. Gandhi also described instances of voter intimidation. She testified that police improperly told voters they needed identification to vote during the 2015 municipal elections in Illinois, and she also stated that voters reported police harassment because of political views at the November 2016 general election polls.<sup>123</sup> Ms. Gandhi emphasized that “the lasting sting of such an experience is not trivial to voters who are made to feel like they do not belong at the polls.”<sup>124</sup>

## **B. Voting Access among Jail Inmates and the Formerly Incarcerated**

### ***1. Background***

According to DePaul University Political Science Professor Christina R. Rivers, the history of felony disenfranchisement is linked to the concept of “civil death,” which can be traced back to Ancient Greece.<sup>125</sup> She explained that the Ancient Greeks used the term in reference to the deprivation of one’s political personhood through punishment after having committed an offense against an individual or society.<sup>126</sup> She then noted that, centuries later, the concept was reflected

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<sup>118</sup> *Id.* at 56.

<sup>119</sup> *Voting Matters*, Illinois Voting 2016 (June 29, 2017), <http://2016.electionprotectionillinois.org/>.

<sup>120</sup> Orr, *Transcript* at 256.

<sup>121</sup> *Id.* at 257.

<sup>122</sup> *Id.*

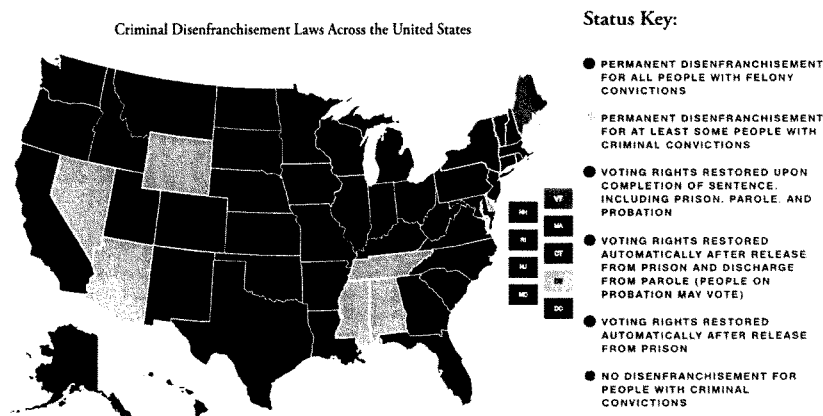
<sup>123</sup> Gandhi Written, *Transcript* at 3.

<sup>124</sup> *Id.*

<sup>125</sup> Rivers, *Transcript* at 78.

<sup>126</sup> *Id.*

in Section 2 of the 14<sup>th</sup> Amendment to the United States Constitution, which exempts those who have participated in a crime from representation.<sup>127</sup> Ms. Rivers explained that there is controversy surrounding this issue; for, despite remaining U.S. citizens, the fundamental right to vote can still be taken away from people who are or have been incarcerated.<sup>128</sup> The following map from the Brennan Center for Justice illustrates the current felony disenfranchisement laws across the United States:



Brennan Center for Justice, "Criminal Disenfranchisement Laws Across the United States" <http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>

The issue of felony disenfranchisement is particularly pertinent in the United States, because, as Ms. Rivers testified, it incarcerates more people than any other nation, with prison inmates making up 2.5 percent of the total population.<sup>129</sup> She stated State laws restricting the right to vote after a felony conviction vary between jurisdictions,<sup>130</sup> with most states disenfranchising those who are in prison, on parole or on probation. Michelle Mbekeani-Wiley, the Community Justice Staff

<sup>127</sup> *Id.*; see also U.S. Const. amend. XIV, § 1, available at <http://www.law.cornell.edu/constitution/overview>.

<sup>128</sup> Rivers, *Transcript* at 93.

<sup>129</sup> *Id.* at 80; see also Christina R. Rivers, *Mass Incarceration and the Execution of Black Political Power*, in *Minority Voting in the United States* 35, 35-36 (Kyle L. Kreider & Thomas J. Baldino eds., 2015).

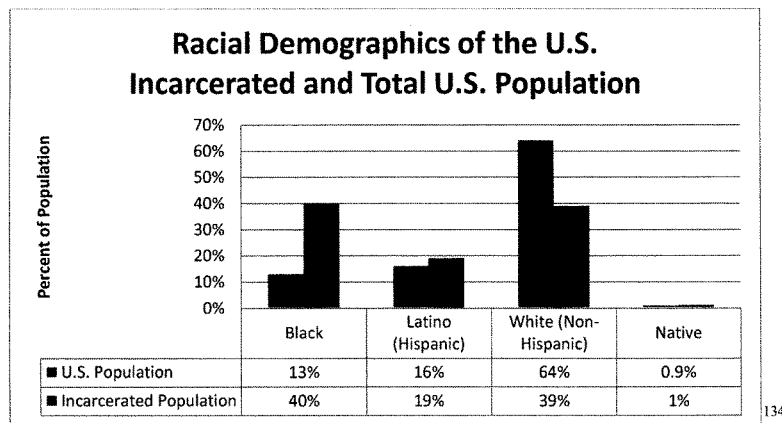
<sup>130</sup> Rivers, *Transcript* at 8.



Attorney at the Sargent Shriver National Center on Poverty Law explained that in Illinois, only those who are currently serving a felony sentence in prison are ineligible to cast a vote.<sup>131</sup>

### *Race/Ethnicity*

The Committee heard testimony regarding voting barriers affecting jail inmates and individuals who have been released from prison; two populations which are disproportionately composed of people of color (see graphs below).<sup>132</sup> Currently, 60% of prisoners come from racial/ethnic minority groups.<sup>133</sup> The over-representation of racial/ethnic minorities among the incarcerated population in the U.S. results in racial disparities in voting rights.



As the graph above indicates, black people are over-represented in prisons and jails throughout the United States while white people are underrepresented.<sup>135</sup> The graph also indicates that at the national level, Latino (Hispanic) people are slightly over-represented within the incarcerated population.<sup>136</sup>

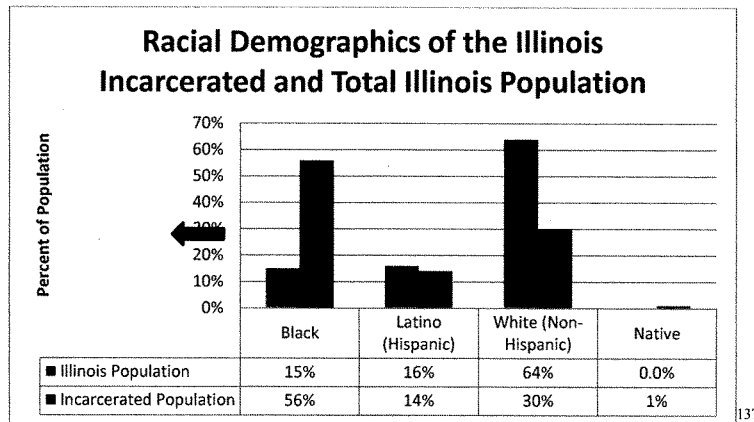
<sup>131</sup> Mbekeani-Wiley, *Transcript* at 102.

<sup>132</sup> Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative (June 7, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

<sup>133</sup> *Supra* note 130, at 36.

<sup>135</sup> *Supra* note 132.

<sup>136</sup> *Id.*



In the state of Illinois, black people are over-represented within the incarcerated population while white people are under-represented.<sup>138</sup> The Latino (Hispanic) population is slightly under-represented within the prisons and jails at the state level.<sup>139</sup> These demographic trends indicate that the voting rights issues discussed throughout this section have a disparate impact on the basis of race. To that point, Ms. Mbekeani-Wiley asserted that “barriers for voting while behind bars will always have a disproportionate impact on black and brown people so long as contact with the justice system disproportionality impacts black and brown people.”<sup>140</sup>

## 2. Prison Gerrymandering

The Committee heard testimony indicating that, like felony disenfranchisement, prison gerrymandering is manner by which incarceration impacts the democratic process. Ms. Rivers explained that prison gerrymandering occurs as a result of the fact that U.S. Census counts prisoners as residents of the particular facility in which they are incarcerated. Ms. Rivers stated that, in the current system, a non-incarcerated person is still counted as a resident of their

<sup>137</sup> Prison Policy Initiative, *Illinois Profile*, 50 State Incarceration Profiles (June 7, 2017), <https://www.prisonpolicy.org/profiles/IL.html>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Mbekeani-Wiley, *Transcript* at 104.

permanent home for electoral representation purposes, but individuals in prison are counted as constituents of the location in which they are serving their sentence.<sup>141</sup> Ms. Rivers reported that the typical Census procedures that apply to citizens who are temporarily residing outside their homes (including college students, military personnel, and individuals working out of state/abroad) do not apply to the incarcerated, despite the fact that the average stay in prison of three to five years is comparable to the academic tenure of a college student.<sup>142</sup> She also stated that, since the prison population is counted as part of the prison district's population, inmates become "phantom constituents, zombie constituents, [or] ghost constituents" who are ineligible to vote.<sup>143</sup> Ms. Rivers noted that "in this way, inmates provide political power to their elected officials through their population numbers, without the accompanying right to vote."<sup>144</sup> She also drew a parallel between this prison gerrymandering and the three-fifths clause of the U.S. Constitution, which allowed slaves who were not afforded the right to vote to be counted for representation within the Electoral College.<sup>145</sup> Specifically, Ms. Rivers stated that "in a very real sense, there is a reinvigoration of the three-fifths clause, this time not strictly targeting African Americans, but also it's at a one-to-one ratio."<sup>146</sup>

Additionally, Ms. Rivers explained that the process of prison gerrymandering presents certain districts with an unfair advantage because of the fact that they use their local prison population to obtain added representation.<sup>147</sup> Ms. Mbekeani-Wiley described how Pinckneyville, Illinois

<sup>141</sup> Rivers, *Transcript* at 84.

<sup>142</sup> *Id.*; see also Mbekeani-Wiley, *Transcript* at 121.

<sup>143</sup> Rivers, *Transcript* at 84.

<sup>144</sup> *Id.* at 83-84.

<sup>145</sup> See *Id.* (noting that the three-fifths clause (Article 1, Section 2, Subsection 3 of the United States Constitution) states: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." The three-fifths clause is was a compromise between the northern, non-slaveholding states who argued that disenfranchised slaves should not be counted for representation and the southern, slaveholding states who wanted to increase their representation in congress by counting slaves as individuals requiring representation. The implementation of the Three-Fifths Compromise greatly increased the representation and political power of slave-owning states. The Southern states, if represented equally [if only those who could vote/non-slaves were counted for representation] would have accounted for 33 of the seats in the House of Representatives. However, because of the Three-Fifths Compromise, the Southern states accounted for 47 seats in the House of Representatives of the first United States Congress of 1790).

<sup>146</sup> *Id.* at 84.

<sup>147</sup> *Id.* at 85.

exemplifies this phenomenon.<sup>148</sup> Ms. Mbekeani-Wiley reported that there are more inmates in Pinckneyville Correctional Center than there are non-incarcerated people in the city, yet both inmates and eligible voters are counted for electoral representation, which increases each voting eligible Pinkney resident voting power.<sup>149</sup> She also stated that cities like Pinckneyville can obtain government funding using these artificially inflated population statistics, which in turn, may lead elected officials to seek a prison within their district as a way to raise money for their constituents.<sup>150</sup>

According to “The Color of Representation” Report, Cook County is one of the Illinois jurisdictions influenced by prison-based gerrymandering because “60% of the state prison population comes from Cook County, yet 99% of the population is housed and counted in districts outside of Cook County.”<sup>151</sup> The report indicates that prison gerrymandering reduces comparative urban representation within Cook County and increases rural representation in rural prison-containing counties, which leaves minority voters (who make up a large portion of urban communities) underrepresented.<sup>152</sup>

Legislators concerned with the issue of prison gerrymandering drafted Illinois State Senate bill HB1489, which would create the “No Representation Without Population Act” and make it illegal to count disenfranchised prisoners as constituents in the county they are incarcerated.<sup>153</sup> The bill has been tabled and no future hearing date has been assigned.<sup>154</sup>

### 3. *Barriers to Voting in Jail*

The Committee was also presented testimony on the difficulties associated with voting while in jail. Although Illinois residents residing in jail while waiting for trial or serving a misdemeanor sentence are eligible to vote, panelists identified several barriers that place limitations on jail inmates’ ability to engage in the electoral process. Cara Smith, the Policy Chief for Cook County Sheriff Tom Dart, noted that the majority of inmates in Illinois’ Cook County Jail, the largest

<sup>148</sup> Mbekeani-Wiley, *Transcript* at 121.

<sup>149</sup> *Id.*

<sup>150</sup> Rivers, *supra* note 142, at 86.

<sup>151</sup> The Joyce Foundation, *supra* note 105, at 29.

<sup>152</sup> *Id.*

<sup>153</sup> H.R. 1489, 99th Gen. Assembly. (Ill. 2017) Illinois General Assembly, *available at* <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1489&GAID=13&DocTypeID=HB&LegId=86237&SessionID=88&GA=99>.

<sup>154</sup> *Id.*

single site jail in the nation<sup>155</sup>, are eligible to vote absentee. Specifically, she stated that that “95 percent [of inmates in Cook County Jail] are pre-trial, and only about 30 percent are maximum security detainees.”<sup>156</sup>

Panelist Michael Nasir Blackwell of the Inner-City Muslim Action Network revealed that he spent time some in Cook County Jail before he entered prison to serve 24 and a half years inside the Illinois Department of Corrections.<sup>157</sup> Mr. Blackwell testified that he would have liked to vote in the state election that took place while he was awaiting his trial in Cook County Jail, but he was “adamantly told by jail officials, you [Mr. Blackwell] do not have the right to vote.”<sup>158</sup>

While discussing the demographic markup of voting-eligible inmates in Cook County Jail, Ms. Smith testified that 90 percent of the inmates Cook County Jail are non-white.<sup>159</sup> Ms. Mbekeani-Wiley also noted that the majority of inmates who are eligible to vote in Cook County Jail are black men under the age of twenty-five, which demonstrates that the barriers to voting that disadvantage the jail population have a disparate impact on people of color.<sup>160</sup>

#### *Social Security Numbers*

Ms. Mbekeani-Wiley stated that one of the main barriers to voting access in jail is the potential registrants’ inability to access their social security numbers.<sup>161</sup> She explained that, although social security numbers are frequently used to identify voters, they are not included on standard arrest reports or criminal court case dockets.<sup>162</sup> Because of this, people in jail must rely on their own memory and/or resources to find their social security number. Ms. Mbekeani-Wiley testified that this requirement is difficult to meet because many jail inmates have transitioned straight from the juvenile justice system to jail and have become adults while in custody awaiting trial, never having the occasion to learn their social security number.<sup>163</sup>

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<sup>155</sup> Smith, *Transcript* at 107.

<sup>156</sup> *Id.* at 105.

<sup>157</sup> Blackwell, *Transcript* at 108.

<sup>158</sup> *Id.*

<sup>159</sup> Smith, *Transcript* at 105.

<sup>160</sup> Mbekeani-Wiley, *Transcript* at 95-96.

<sup>161</sup> *Id.* at 96.

<sup>162</sup> *Id.* at 116.

<sup>163</sup> *Id.* at 104.

### *Lack of an Address*

In addition to providing testimony on social security numbers access, Ms. Mbekeani-Wiley also testified that the inability to register to vote without providing a residential address makes it difficult for inmates to exercise their right to vote. Ms. Mbekeani-Wiley reported that people awaiting trial in Illinois may find themselves in jail for extraordinarily lengthy periods of time, which, in some instances, can extend up to four years.<sup>164</sup> She explained that, despite this fact, inmates are not allowed to list a jail address as their place of residence on a voting registration form, regardless of the amount of time they have spent there.<sup>165</sup> Even though the inmates physically reside in jail, they cannot register the jail as either their personal residence or claim the address as shelter in an attempt to register as a homeless voter.<sup>166</sup> Ms. Mbekeani-Wiley asserted that, within the present system, jail inmates are essentially living in “residential exile.”<sup>167</sup> She clarified that the current legislation makes it impossible for some inmates to register because the duration of time spent in jail can be so lengthy that an individual may no longer recall their last address or no longer have family ties at their most recent place of residence.<sup>168</sup>

### *4. Misinformation among the Formerly Incarcerated*

The Committee also heard testimony indicating that barriers to voting access impede democratic participation among individuals who have been released from prison after serving a felony conviction. Illinois law states that individuals who were convicted of a felony are eligible to vote immediately after they are released from prison, even if they must remain on parole or probation.<sup>169</sup> However, Mr. Marlon Chamberlain of the Community Renewal Society testified that he was not informed of his right to vote after he served 10 years in federal prison. Mr. Chamberlain reported that “when I was released from prison, my probation officer told me that I couldn’t vote, and along with like pretty much 90 percent of [the residents at] the halfway house that I was sent home to I was under the impression that we couldn’t vote.”<sup>170</sup> Similarly, Mr. Blackwell testified that an individual who had just served 33 years in Statesville Maximum Security Prison did not know that

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<sup>164</sup> *Id.* at 98.

<sup>165</sup> *Id.* at 99.

<sup>166</sup> *Id.* at 100.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 99-100.

<sup>169</sup> Rivers, *Transcript* at 82; see also *Illinois Online Voter Application: State Board of Elections*, Illinois Online Voter Registration Application (May 12, 2017), <https://ova.elections.il.gov/>.

<sup>170</sup> Chamberlain, *Transcript* at 113.

he had the ability to vote because prison officials did not inform him of his renewed right.<sup>171</sup> Along the same lines, Ms. Mbekeani-Wiley described her interactions with a formerly incarcerated 64 year old black man who recently registered to vote for the first time. She explained that the man had never registered previously because he thought his prior felony convictions disqualified him.<sup>172</sup> According to Ms. Mbekeani-Wiley, such misinformation was cited as a frequent reason why those with felony records do not engage in the electoral process.<sup>173</sup> Because of this, she suggested that the State Election Board should be responsible for challenging the myth that individuals with past convictions cannot vote in Illinois.<sup>174</sup>

## 5. Overcoming Voting Barriers

### *Distributing Ballots in Jails*

Additionally, Ms. Mbekeani-Wiley provided testimony on recent efforts to increase voter registration and facilitate in person ballot access within Cook County Jail. She explained the Sargent Shriver National Center on Poverty Law has posted signs describing inmates' voting rights in all eight divisions of the facility.<sup>175</sup> Ms. Mbekeani also noted that that within same year, the Shriver Center, the Cook County Sheriff's office and the Cook County Clerk's office collaboratively distributed 7,500 registration forms and absentee ballots to what was essentially the entire population of Cook County Jail.<sup>176</sup> Ms. Mbekeani-Wiley revealed that, after these efforts, more than 1,000 people registered to vote in Cook County Jail throughout the period leading up to the November 8, 2016, general election.<sup>177</sup> During the same election, nearly 1,200 ballots were cast from Cook County Jail.<sup>178</sup>

After describing the process by which absentee ballots were distributed throughout Cook County Jail, Ms. Mbekeani-Wiley stated that Cook County Jail is currently the only facility outside the District of Columbia where ballots are distributed in person rather than by mail.<sup>179</sup> She noted that,

<sup>171</sup> Blackwell, *Transcript* at 110.

<sup>172</sup> Mbekeani-Wiley, *Transcript* at 102.

<sup>173</sup> *Id.* at 101.

<sup>174</sup> *Id.* at 104.

<sup>175</sup> *Id.* at 102.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 95.

<sup>178</sup> La Risa Lynch, *Ability to Vote Compromised for Thousands Behind Bars*, Chicago Rep. (July 6, 2017), <http://chicagoreporter.com/ability-to-vote-compromised-for-thousands-behind-bars/>.

<sup>179</sup> Mbekeani-Wiley, *Transcript* at 103.

in order for efforts like those undertaken in Cook County Jail to be successful, both inter-organization coordination and sufficient funding are necessary.<sup>180</sup> She also asserted that the success of future efforts is contingent on the political landscape of a particular county, which can determine whether elected leadership will be enthusiastic about jail voting initiatives.<sup>181</sup> To that point, Ms. Mbekeani-Wiley suggested that some counties may be unlikely to support jail absentee voting initiatives because of partisan beliefs, just as they have historically resisted funding other inmate programs (including ones dedicated to basic education).<sup>182</sup>

#### ***Jail Voter Registration IDs***

In order to facilitate voter registration among jail inmates who are unable to access their social security numbers, Ms. Mbekeani-Wiley suggested expanding the range of acceptable forms of identification. Ms. Mbekeani explained that, although municipal jail records do not include social security numbers, they do include fingerprint information for every inmate.<sup>183</sup> Because of this fact, she suggested that these readily available fingerprints could be used as alternative form of identification in lieu of a social security number, especially since fingerprints are technically a more reliable form of identification.<sup>184</sup> Alternatively, she proposed that an inmate's county jail identification card, which contains both their name and photograph, could potentially serve as a form of identification for voter registration.<sup>185</sup>

#### ***Training Jail and Prison Staff***

Panelists also testified that teaching jail and prison staff about voting policies would help increase rates of voter registration among individuals who are or have been incarcerated. According to Mr. Blackwell, maximum security prisons do not provide adequate pre-release programs that teach inmates about their rights outside of the correctional facility.<sup>186</sup> Ms. Mbekeani-Wiley suggested that a possible way to ensure that inmates are properly informed would be to assign the dissemination of information to probation and parole officers who already discuss government programs with their parolees. She testified that the Sargent Shriver National Center on Poverty Law has worked extensively to teach probation and parole about Medicaid and the Affordable

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<sup>180</sup> *Id.* at 127.

<sup>181</sup> *Id.* at 127-28.

<sup>182</sup> *Id.* at 129.

<sup>183</sup> *Id.* at 116.

<sup>184</sup> *Id.* at 116-117.

<sup>185</sup> *Id.* at 119.

<sup>186</sup> Blackwell, *Transcript* at 110.



Health Care Act eligibility requirements so that the officers can help inmates register.<sup>187</sup> Ms. Mbekeani-Wiley speculates that a similar program focused on voting rights education could be also implemented, since the “Office of Probation and Parole have typically been fairly open to receiving” training.<sup>188</sup>

### *Community Engagement*

In addition to the aforementioned efforts to increase voter registration among jail inmates and the formerly incarcerated, a number of Illinois community groups are working to improve voting rights awareness and education for individuals who have been released from prison. For example, Mr. Chamberlain explained that the Chicago-based Community Renewal Society holds both Know Your Rights and Exercise Your Rights workshops for formerly incarcerated community members in order to teach people who their representatives are and to encourage engagement in the development of legislation that will affect their lives.<sup>189</sup> Additionally, Mr. Blackwell explained that the Inner-City Muslim Action Network will be making an effort to distribute community surveys focused specifically on this matter, which will ask people about their basic knowledge regarding voting rights. He stated that the data collected will be used to inform individuals who plan to create programs that will address the gaps in voter education.<sup>190</sup> According to Mr. Blackwell, the organization’s ultimate goal is to increase voter registration within the community.<sup>191</sup>

## **C. Voting Access for Limited English Proficient Voters**

### ***1. The Voting Rights Act***

The Voting Rights Act of 1965 prohibited discrimination against voters because of race or ethnicity, but did not mandate language access until ten years later when Congress recognized that guaranteeing the availability of translated materials would prevent discrimination based on national origin, race, and level of education.<sup>192</sup> While justifying the 1975 language access

<sup>187</sup> Mbekeani-Wiley, *Transcript* at 126.

<sup>188</sup> *Id.*

<sup>189</sup> Chamberlain, *Transcript* at 113.

<sup>190</sup> Blackwell, *Transcript* at 112.

<sup>191</sup> *Id.*

<sup>192</sup> The U.S. Dep’t of Justice, *The History of Federal Voting Rights Laws*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/history-federal-voting-rights-laws>.supra note ; see also: Cortazar, *Transcript* at 135

provisions, United States Congress stated: “citizens of language minorities have been effectively excluded from participation in the electoral process.”<sup>193</sup> Additionally, they remarked that “among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal education opportunities afforded them resulting in high illiteracy and low voting participation.”<sup>194</sup> Ryan Cortazar of the Chicago Lawyers’ Committee for Civil Rights Under Law reported that the language access provisions guaranteed by the 1975 amendment have not been updated since, despite the fact that “language and minority communities have evolved over the last 40 years, not just geographically, but also in terms of the different languages that these communities speak.”<sup>195</sup>

## 2. Background Information on Sections 203 and 208

Several panelists discussed the ways in which the provisions guaranteed in the amended Voting Rights Act have impacted limited English proficient voters. Specifically, Mr. Cortazar explained that sections 203 and 208 of the Voting Rights Act were established in 1975 in order to provide assistance to “language minorities” at the polls.<sup>196</sup> Together, these two sections were designed to make voting accessible to all Americans as guaranteed by 14<sup>th</sup> and 15<sup>th</sup> Amendments of the Constitution.

Mr. Cortazar stated that, under Section 203, jurisdictions are required to provide written and oral assistance in a language other than English if that particular jurisdiction demonstrates a significant need for translated materials.<sup>197</sup> He noted that, specifically, if more than 10,000 or 5% of voting age citizens within a particular jurisdiction are a) members of a single language minority, b) limited English proficient, and c) have an illiteracy rate higher than the national average, then that particular jurisdiction will be covered by Section 203.<sup>198</sup> Mr. Cortazar reported that there are currently 263 jurisdictions that receive Section 203 accommodations.<sup>199</sup> He added that, although

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<sup>193</sup> U.S. Dep’t of Justice, *The Language Minority Provisions of the Voting Rights Act*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/about-language-minority-voting-rights>.

<sup>194</sup> *Id.*

<sup>195</sup> Cortazar, *Transcript* at 136.

<sup>196</sup> *Id.* at 138.

<sup>197</sup> *Id.* at 139.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

these Section 203 eligible regions make up only 3.3% of the total jurisdictions in the nation, 31.3% of voters cast their ballots in these districts.<sup>200</sup>

Mr. Cortazar also explained that, since Section 203 does not provide resources to every jurisdiction, limited English proficient voters often rely on the provisions guaranteed by Section 208.<sup>201</sup> Mr. Cortazar reported that Section 208 allows voters to bring any person (other than a representative of their employer or their union) with them to their polling place to translate a ballot.<sup>202</sup> Furthermore, he stated that Section 208 allows voters to bring a person of their choice to assist them if they are unable to (or lack confidence in their ability to) vote by themselves because of impaired vision, a disability, or the inability to read or write.<sup>203</sup>

The Committee also heard testimony on the topic language access from the Chicago Board of Elections, a body that, according to Shobhana Verma, Director of the South Asian Outreach Program at the Chicago Board of Election Commissioners, “oversees one of the largest election operations in the United States with approximately 1.6 million registered voters and 2,069 precincts.”<sup>204</sup> Although the Committee only had the opportunity to hear from the Board of Elections for the city of Chicago, the testimony provided gave sufficient insight into the government’s perspective on the efforts required to accommodate language minorities. Ms. Verma reported that the Chicago Board of Election Commissioners provides translated materials for three major language groups: Spanish which it has incorporated since the 1970’s, Chinese, which was included in the early 2000’s, and most recently, Hindi, which was included after the 2010 Census findings.<sup>205</sup> The Board has emphasized the importance of community outreach as a method to reach the various diverse immigrant groups in the city of Chicago.<sup>206</sup>

Additionally, Ms. Verma spoke about the efforts required for a jurisdiction to implement Section 203. She stated that dispensing adequate verbal and written assistance requires “translating every possible voter contact material, every voter form, all polling place signs and materials including the smallest of stickers on voting equipment, all banners for outreach events or election functions like early voting by mail and election day voting, all news releases, all legal notices that are

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<sup>200</sup> *Id.* at 6.

<sup>201</sup> *Id.* at 139-40.

<sup>202</sup> *Id.* at 140.

<sup>203</sup> U.S. Dep’t of Justice, *About Language Minority Voting Rights*, Justice.gov (May 12, 2017), <https://www.justice.gov/crt/statutes-enforced-voting-section>.

<sup>204</sup> Verma, *Transcript* at 154.

<sup>205</sup> *Id.* at 155.

<sup>206</sup> *Id.* at 163-64.

published in local newspapers.”<sup>207</sup> Mr. Cortazar also emphasized that providing effective language access services for voters requires a strong cross-agency effort that can only be achieved through a “constant collaboration between voters, between civic groups, and between the election authorities.”<sup>208</sup>

Currently, the Election Assistance Commission delivers language access voting materials to Section 203 jurisdictions by certifying specialized voting equipment and providing technical support to election officials.<sup>209</sup> Additionally, the Election Assistance Commission works collaboratively with advocacy and policy organizations to create and disseminate materials through the Commission’s Language Accessibility Program.<sup>210</sup>

In January 2017, a bill seeking to terminate the programs and activities of the Election Assistance Commission (H.R. 634, also known as the “Election Assistance Commission Termination Act”) was filed in the United States House of Representatives.<sup>211</sup> Most recently, H.R. 634 is has been ordered to be reported in the house administration Committee.<sup>212</sup> Mr. Kang expressed concern that this bill would jeopardize the future of voting rights for limited English proficient voters.<sup>213</sup> If passed, the impacts of this piece of legislation would be far reaching, because, according to Ms. Verónica Cortez, Staff Attorney at the Mexican American Legal Defense and Education Fund, “70 percent of [Limited English Proficient] people have said they would not vote if they didn’t have language access.”<sup>214</sup>

### 3. *Determining Language Access Eligibility*

Panelists identified several issues impeding voter language access, some of which pertained to the manner in which jurisdictions are selected for Section 203 coverage. Mr. Cortazar explained that, in the current system, jurisdictions may be unduly denied coverage because the federal government uses the American Community Survey, rather than the decennial Census, to determine Section 203

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<sup>207</sup> *Id.* at 158.

<sup>208</sup> Cortazar, *Transcript*, at 141.

<sup>209</sup> *Voting Accessibility*, the U.S. Election Assistance Comm’n (May 12, 2017), <https://www.eac.gov/election-officials/voting-accessibility/>.

<sup>210</sup> *Id.*

<sup>211</sup> H.R.634, 115th Cong. (2017), available at <https://www.congress.gov/bills/115th-congress/house-bill/634>.

<sup>212</sup> *Id.*

<sup>213</sup> Kang, *Transcript* at 185.

<sup>214</sup> Cortez, *Transcript* at 151.

jurisdiction eligibility.<sup>215</sup> Mr. Cortazar stated that the sample of survey respondents from a given district is used to make generalizations about the district as a whole, creating the potential for sampling error.<sup>216</sup> Furthermore, he explained that the extrapolated survey data will probably indicate that there are fewer language minority citizens than their actually are, for it is likely that people who are not comfortable with their English will not respond a government survey at all.<sup>217</sup> Additionally, Mr. Cortazar suggested that those who do submit responses may overestimate their level of English proficiency since the survey does not explicitly mention that responses will be used to determine whether a community needs translated election materials.<sup>218</sup> He explained that, “for example, a voter may think she speaks English ‘very well’ but still be uncomfortable navigating confusing election procedures and ballot language without language assistance.”<sup>219</sup> Mr. Cortazar stipulates that data collection and sampling error made DuPage County ineligible for Section 203 coverage in 2016, although they were previously covered in 2011.<sup>220</sup> These issues with methodology, Mr. Cortazar explains, may cause districts to lose Section 203 coverage even though the need for language access in that particular jurisdiction had grown.<sup>221</sup>

Additionally, Mr. Cortazar suggested that the American Community Survey data may not accurately identify the jurisdictions that require language access because limited English proficient immigrant communities have high rates of mobility. Mr. Cortazar explained that there is “a constant shift in these populations across the [Chicago] metropolitan area, not just in the city, but also in the suburbs... and so even though we might have a county be covered, from election to election, those populations might shift from one precinct to another.”<sup>222</sup>

#### 4. Language Access in Illinois

The Committee heard testimony on the number of voters whose fundamental civil rights are affected by language access provisions in Illinois. Ms. Cortez stated that there are approximately 435,000 Limited English Proficient voters in Illinois, a majority of whom are located in Cook,

<sup>215</sup> Cortazar, *Transcript* at 7.

<sup>216</sup> *Id.* at 140.

<sup>217</sup> *Id.* at 140-41.

<sup>218</sup> *Id.* at 8.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 144.

<sup>221</sup> *Id.* at 184.

<sup>222</sup> *Id.* at 143.

Lake, and Kane Counties, and, to a slightly lesser extent, in Will and DuPage Counties.<sup>223</sup> She clarified that Cook, Kane, and Lake Counties qualify for Section 203 coverage because they each have Limited English Proficient Spanish speaking voter populations of more than 10,000.<sup>224</sup> Additionally, Ms. Verma testified that select precincts in Chicago are required to provide translated materials in Chinese and Hindi.<sup>225</sup> Ms. Cortez testified that DuPage County lost Section 203 Spanish language coverage in 2016 because their population of Spanish-speaking Limited English Proficient voters fell just 220 under the 10,000 population requirement.<sup>226</sup> Similarly, she reported that Will County fell just 400 voters short of qualifying for Spanish Language Section 203 coverage with a Spanish-speaking population of 9,600 in 2016.<sup>227</sup>

### 5. *The Implementation of Language Access Provisions*

#### *Ballot Issues*

Several panelists identified various barriers to language access that exist within Section 203 jurisdictions. For instance, Mr. Cortazar explained that even when ballots and supplemental information is translated, voting materials can include complex and technical language to the extent that it is very difficult for people who are proficient in a language to understand it.<sup>228</sup> He noted that the complexity of voting material language causes “difficulties ...for context specific minority language translations.”<sup>229</sup>

Ms. Cortez also explained that in Section 208 jurisdictions where voting materials are only available in English, many voters are unaware that they have right to bring a ballot translator into the polling place with them, and many of those who are aware of this right are unsure of the procedures for doing so.<sup>230</sup> She also stated that, if election judges do not clearly explain that the voter and the person assisting them must sign affidavits, the voter and translator may be confused and unnecessarily intimidated.<sup>231</sup>

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<sup>223</sup> Cortez, *Transcript* at 145.

<sup>224</sup> *Id.* at 145-46.

<sup>225</sup> Verma, *Transcript* at 158.

<sup>226</sup> Cortez, *Transcript* at 146.

<sup>227</sup> *Id.*

<sup>228</sup> Cortazar, *Transcript* at 141.

<sup>229</sup> *Id.*

<sup>230</sup> Cortez, *Transcript* at 147-48.

<sup>231</sup> *Id.*

*Election Judges*

Panelists explained that, in addition to facing ballots issues, limited English proficient voters may also be denied the language access because of issues with poll staff. Ms. Cortez explained that there are not always bilingual judges at the polls, even though Section 203 jurisdictions are required to have such staff present.<sup>232</sup> When a jurisdiction has more polling places than bilingual election judges, only certain polling places will be fully language accessible. Ms. Cortez also noted that Limited English proficient voters may be left unassisted because authorities reduce the total number of open polling places during local elections, which leads to instability in the location of polling places with bilingual workers.<sup>233</sup> In addition, she explained that there may be only one bilingual election judge at a particular polling place, which makes it highly unlikely that every voter who needs language assistance can interact with bilingual personnel.<sup>234</sup> Ms. Cortez testified that when there are not enough bilingual officials available, language access voters may need to perform requisite verbal check in process in English, which would be extremely intimidating to a person who is limited English proficient.<sup>235</sup>

Additionally, Ms. Cortez, Mr. Kang and Mr. Cortazar provided testimony on the ways in which improper election judging can also adversely impact limited English proficient voters. Ms. Cortez noted that she once saw translated materials stored away in a locker, even though judges were required to post those materials throughout the polling place.<sup>236</sup> Mr. Kang revealed that during the March 2016 primary election there were eighteen instances in which required language access materials were not displayed, and election judges in two of those instances expressed resistance when they were asked to provide the appropriate Section 203 materials.<sup>237</sup> Mr. Cortazar noted that there have been instances in which election judges have directed racially charged and xenophobic comments towards limited English proficient voters.<sup>238</sup> This type of inappropriate commentary, and many of the other obstacles that limited English proficient individuals encounter at the polls, are likely to have a disparate impact based on race/ethnicity and national origin.

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<sup>232</sup> *Id.* at 149.

<sup>233</sup> Cortazar, *Transcript* at 11.

<sup>234</sup> Cortez, *Transcript* at 150.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* at 148.

<sup>237</sup> Kang, *Transcript* at 168.

<sup>238</sup> Cortazar, *Transcript* at 143.

#### 6. *Improving Voter Language Access*

In order to ensure that the jurisdictions with significant language access needs are covered by Section 203, Mr. Cortazar suggested that district eligibility determinations should be altered. Specifically, he proposed that the accuracy of Section 203 eligibility determinations could be improved if the Census Bureau were engaged with the public and accepted public comment in the jurisdiction selection process.<sup>239</sup> Mr. Cortazar suggested that, this were the case, the public would have the opportunity to report that Section 203 coverage was mistakenly revoked from a particular district.<sup>240</sup> Additionally, Ms. Cortez suggested that officials can improve voter language access at the polls is by engaging election judges and community leaders during the periods between elections to ensure that language access requirements are maintained between years.<sup>241</sup> More generally, enhancing the frequency and scope of election judge training would make it more likely that election judges are aware of the specific requirements for jurisdictions covered under Section 203 and/or Section 208.

#### *Expanding Language Access*

Ms. Cortez explained that the goal of language access is to engage as many voters as possible, regardless of their English language ability. To that point, Ms. Cortez testified that, as long as survey data continues to indicate that voter populations continue to “need help with accessing the ballots because of their language abilities...then we’re hoping they’re still going to continue to receive those services.”<sup>242</sup>

Additionally, the Committee heard testimony indicating that, in order to expand language access, strong community outreach programs will be necessary. Ms. Verma explained that a community liaison who can work with both voters and election officials must be available in order to guarantee the effective provision of language assistance. Specifically, she stated that “having a language assistance program does not automatically benefit the community...it requires extensive voter outreach, education, and communication with voters.”<sup>243</sup>

Mr. Kang emphasized the importance of maintaining language access when he reported that the number of individuals requiring language assess is likely to increase, particularly among first

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<sup>239</sup> Cortazar, *Transcript* at 143-44.

<sup>240</sup> *Id.* at 143.

<sup>241</sup> *Id.* at 142.

<sup>242</sup> *Id.* at 176.

<sup>243</sup> Verma, *Transcript* at 157.



generation immigrants who have expressed the desire to engage in the democratic process during the recent years.<sup>244</sup> After acknowledging the political climate surrounding the 2016 general elections, Mr. Kang explained that recent events have led to “stronger interest in voting among immigrants” and a “renewed, healthy interest in being engaged” within immigrant communities.<sup>245</sup> Also, Ms. Cortez testified that, because naturalization applications are on the rise, there are “going to be more people probably that are going to need language access that are citizens but also more people that are going to want to go and register.”<sup>246</sup>

#### **D. Voting Access within Other Community Groups**

##### ***1. The Homeless***

In addition to hearing testimony on the manner in which incarcerated and limited English proficient individuals are impacted by Illinois voting laws, the Committee also heard testimony on voting rights within various community/social groups. Panelist Sharon Legenza, the Executive Director of Housing Action Illinois, explained that a person is considered to be homelessness if they are unsheltered (living in locations generally not considered inhabitable) or if they are living in transitional housing, supportive housing, a temporary shelter, or with friends or relatives.<sup>247</sup> Ms. Legenza reported that, according to the US Census, there were 259,484 homeless individuals experiencing homelessness in Illinois. She also noted that half of this population was based in Chicago.<sup>248</sup> The gender and racial demographics of Chicago’s homeless population (not including those living “doubled up” with family or friends) are broken down as follows:

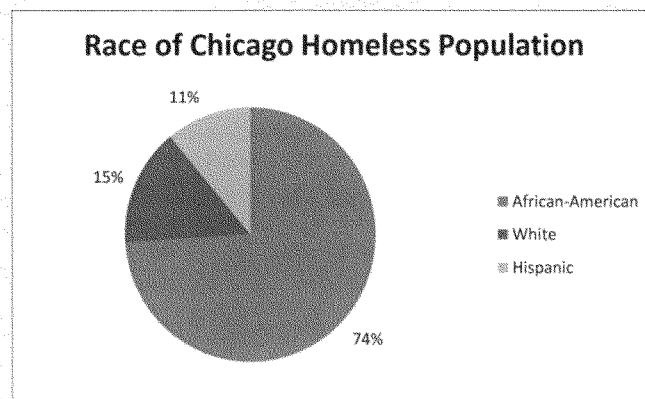
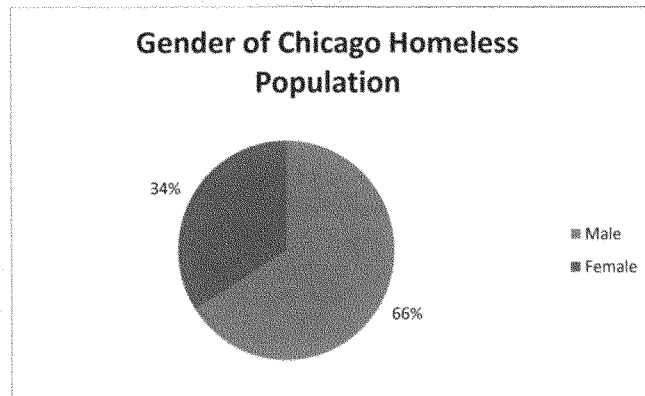
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<sup>244</sup> Kang, *Transcript* at 176.

<sup>245</sup> *Id.* at 180-81.

<sup>246</sup> Cortez, *Transcript* at 181.

<sup>247</sup> Legenza, *Transcript* at 211.



Like the Illinois incarcerated population, Chicago's homeless population is disproportionately black/African American, which means that the barriers impeding democratic participation among the homeless have a disparate impact on racial/ethnic minority individuals.

<sup>249</sup> *Id.* at 213 (noting that within the population depicted, 0.5% of individuals are transgender).

<sup>250</sup> *Id.*

According to Ms. Legenza, 53% of males and 26% of females within the Chicago homeless population reported that they had been previously incarcerated.<sup>251</sup> Additionally, veterans account for 14% of Chicago's homeless population.<sup>252</sup>

Ms. Legenza explained that in 2013, the Illinois State Legislature approved the Bill of Rights for the Homeless, which prohibits the denial of any rights, privileges, or access to public service because of homelessness.<sup>253</sup> Ms. Legenza stated that, among other things, this act requires Illinois to provide homeless individuals who receive assistance from a social service agency the opportunity to obtain a Homeless Status Certification, which may be used to acquire identification acceptable for voter registration.<sup>254</sup> To apply for a Homeless Status Certification, an applicant must provide identification that states their name, date of birth, and social security number.<sup>255</sup>

Ms. Legenza testified that, despite the protections guaranteed by the Bill of Rights for the Homeless Act, homeless individuals still face numerous challenges when attempting to exercise their right to vote. For instance, she reported that homeless people lack the forms of identification required to a register as homeless (such as a birth certificate) and explained that it is very difficult for homeless individuals to obtain such documentation because the process often requires fees, which many homeless people cannot afford to pay.<sup>256</sup> Ms. Legenza also noted that many of the homeless individuals that are able to register to vote and have trouble accessing their polling places, which can be located in areas that cannot be reached via public transit.<sup>257</sup> Furthermore, Ms. Legenza revealed that those who advocate for homeless voters are "usually under-resourced and over-stretched," and thus their ability to assist the homeless with applications and transportation is often limited.<sup>258</sup>

During her testimony, Ms. Legenza shared the story of a homeless voter who called the Chicago Lawyers Committee for Civil Rights' Election Protection Program hotline on the day of the 2016

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<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 214; see also Ellyn Fortino, *Illinois Enacts Landmark Homeless Bill of Rights*, Progress Ill. (June 7, 2017), <http://progressillinois.com/quick-hits/content/2013/08/27/illinois-enacts-landmark-homeless-bill-rights>; see also Bill of Rights for the Homeless Act (2013), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3517&ChapterID=64>.

<sup>254</sup> Legenza, *Transcript* at 216.

<sup>255</sup> *Homeless Status Certification*, Office of the Sec'y of State Driver Serv. Dep't (May 12, 2017), [https://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_a230.pdf](https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a230.pdf).

<sup>256</sup> Legenza, *Transcript* at 216.

<sup>257</sup> *Id.* at 217.

<sup>258</sup> *Id.* at 216.

election.<sup>259</sup> The caller was temporarily staying with a friend, but did not possess documentation or mail tying him to that address.<sup>260</sup> Ms. Legenza testified that when the homeless voter arrived at his polling place, he found that the election judges were not familiar with the Illinois provision allowing homeless voters to cast a ballot in the precinct where they receive mail.<sup>261</sup> According to Ms. Legenza, the situation was resolved when “the voter, the friend [with whom the homeless voter was living] and the election judge, and the election protection worker were all able to get on the phone and figure out what was going on and get the proper documentation.”<sup>262</sup> Ms. Legenza testimony indicates that, although the election judge was ultimately able to assist the voter, this situation exemplifies the manner in which uninformed election judges can limit ballot access among the homeless.<sup>263</sup>

## 2. *Individuals with Disabilities*

During the panel on community/social groups, the Committee heard from Cheryl Jansen, Public Policy Director for Equip for Equality, who provided testimony on voting rights within the community of individuals with disabilities. Ms. Jansen explained that the Help America Vote Act, which was approved by Congress in 2002, requires areas in and around polling places (e.g., electronic voting machines, balloting areas, the path of travel, facility entrances, and facility exits) to be accessible to people with disabilities.<sup>264</sup> Ms. Jansen stated that the Act also requires election officials be trained to assist individuals with disabilities and mandates the distribution of information on disability accommodations through outreach programs.<sup>265</sup>

Although the Help America Vote Act requires all polling places to accommodate individuals with disabilities, Ms. Jansen testified that individuals with disabilities are very likely to report that they have had or expect to encounter issues at the polls.<sup>266</sup> Specifically, she stated that, in the 2012 election, 30% of people with disabilities reported difficulty voting, while only 8% of people

<sup>259</sup> *Id.* at 217.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 218.

<sup>262</sup> *Id.* at 217.

<sup>263</sup> *Id.*

<sup>264</sup> Jansen, *Transcript*, at 222, 224-25; see also: *Help America Vote Act*, the U.S. Election Assistance Comm’n (May 15, 2017), <https://www.eac.gov/about/help-america-vote-act/>.

<sup>265</sup> *Help America Vote Act*, the U.S. Election Assistance Comm’n (May 15, 2017), <https://www.eac.gov/about/help-america-vote-act/>.

<sup>266</sup> Jansen, *Transcript* at 221.

without disabilities reported difficulty.<sup>267</sup> According to Ms. Jansen, this is likely the case because less than one third of U.S. polling places are fully accessible to disabled voters.<sup>268</sup> She also noted that these difficulties are reflected in the fact that 57% of eligible voters with disabilities voted 2012 presidential election, while 63% of voters without disabilities cast ballots that same year.<sup>269</sup>

Ms. Jansen also mentioned that there have recently been surveys designed to measure the level of disability access at the polls. She reported that the Equip for Equality partnered with the Chicago Board of Election to create the Voting Access Chicago program in preparation for the 2016 election.<sup>270</sup> Ms. Jansen stated that, together, these two organizations enlisted volunteers who distributed surveys that asked about the level of disability access at 1,900 polling places in Chicago.<sup>271</sup> She also reported that, at the same time, the U.S. Department of Justice's Election Access Initiative identified numerous polling place problems that had an adverse impact on individuals with disabilities in several cities, including Chicago.<sup>272</sup> Ms. Jansen testified that both voting access surveys found that there are often circumstances that make it difficult for individuals with disabilities to cast their vote in person. Specifically, she stated that the Voting Access Chicago program found that some voters believed that accessible voting machines were not working, although upon investigation, officials later discovered that the machines were not plugged in.<sup>273</sup> Furthermore, she noted that the report revealed that disabled voters were asked to wait up to 30 minutes while judges or other volunteers attempted to get the accessible machines working.<sup>274</sup> In other reported instances, voters with disabilities were told come back and vote at another time because a technician had to be called in to repair or setup the accessible voting system.<sup>275</sup> Additionally, Ms. Jansen stated that there have been reported incidences in which election judges have failed to display assistance tools, including magnifying lenses used to assist individuals with visual impairments.<sup>276</sup>

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 223.

<sup>269</sup> *Id.* at 221.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Equip for Equality Partner with Chicago Board of Election to Conduct Accessibility Surveys of 1700 Polling Places*, PR Newswire (May 15, 2017), <http://www.prnewswire.com/news-releases/equip-for-equality-partners-with-chicago-board-of-election-to-conduct-accessibility-surveys-of-1700-polling-places-300359155.html>.

<sup>273</sup> Jansen, *Transcript* at 225.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 224.

Ms. Jansen recommended improving voting access for Illinoisans with disabilities by taking basic and practical steps towards making polling places universally accessible.<sup>277</sup> She suggested that, if officials would like to make polling places more welcoming to individuals with disabilities, they should designate parking areas with the international symbol for disability access, position accessible voting systems in a location that is both easily reachable and private, and install doorbells that voters can use to let election judges know they require assistance.<sup>278</sup>

### 3. Youth

Panelist Christian Diaz, the former-director of Chicago Votes, testified about voting rights among youth. Mr. Diaz explained that Millennials (individuals between age 18 and 45) will soon be the most powerful age-based voting bloc in the country.<sup>279</sup> Specifically, he stated that by 2036, it is estimated that there will be 81.1 million Millennials, which would make voters born between 1982 and 2004 the largest age group constituency in history.<sup>280</sup> Furthermore, Mr. Diaz reported that the levels of civic and political engagement among college students are currently the highest they have been in a decade.<sup>281</sup> Mr. Diaz also testified that commitment to community engagement has also become increasingly important to young people, with the majority of millennials surveyed reporting that community engagement is either a “very important” or “essential” objective.<sup>282</sup>

Mr. Diaz reported that, although the U.S. has seen a recent increase in political engagement among youth, Illinois remains the state with the fifth lowest rate of youth participation in local elections.<sup>283</sup> However, he also revealed that Illinois had the 13<sup>th</sup> highest level of youth reporting that they discuss community issues with their friends and families<sup>284</sup>, which shows potential for increased electoral participation among Illinois youth. To that point, Mr. Diaz stated that Illinois already had

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<sup>277</sup> *Id.* at 223.

<sup>278</sup> *Id.* at 224.

<sup>279</sup> Diaz Testimony, *Transcript* at 203-04.

<sup>280</sup> *Id.* at 204.

<sup>281</sup> Kevin Eagan et al., *The American Freshman: National Norms Fall 2015* (May 12, 2017), <https://www.heri.ucla.edu/monographs/TheAmericanFreshman2015.pdf>.

<sup>282</sup> *Id.*

<sup>283</sup> Diaz, *Transcript* at 203.

<sup>284</sup> *Id.*

the second largest increase in primary election voter turnout among young people during the 2016 election year, indicating that a surge in electoral participation among youth has already begun.<sup>285</sup>

However, Mr. Diaz testified that the likelihood of electoral participation among any given millennial is highly dependent upon that young person's background. Mr. Diaz stated that "as early as the 4<sup>th</sup> grade and continuing into 8<sup>th</sup> and 12<sup>th</sup> grade, African-American, Hispanic, and poor students perform significantly worse on tests of civic knowledge than their white, Asian and middle class peers."<sup>286</sup> He explained that youths who receive a low quality civics education are less likely to understand and participate in the electoral process, which inevitably decreases political candidates' motivation to cater to the needs of low-SES and minority people.<sup>287</sup>

This disparity in the quality of civics education may soon be reduced, for, as Mary Schaafsma, Executive Director of the League of Women Voters of Illinois, noted, the Illinois General Assembly approved House Bill 4025, which requires that all high school students take a stand-alone civics course before graduation.<sup>288</sup> In August 2015, Governor Rauner signed HB4025 into law and recognized the importance of "helping young people acquire and learn to use the skills, knowledge, and attitudes that will prepare them to be competent and responsible citizens throughout their lives."<sup>289</sup>

## **E. Voting Procedures in Illinois**

### **1. Illinois Election Judges**

#### ***Election Judge Recruitment***

Election judges hold a crucial role in ensuring free and fair elections, where all eligible citizens have equal access to vote. However, testimony indicated that recruiting election judges is a significant challenge in many jurisdictions. Brent Davis, Director of Election Operations for the Illinois State Board of Elections, explained that it is difficult to recruit election judges because there is provision in the Illinois Election Code requiring officials to work from the time the polls

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<sup>285</sup> *Id.* at 207.

<sup>286</sup> *Id.* at 205-06.

<sup>287</sup> *Id.* at 206.

<sup>288</sup> Schaafsma, *Transcript* at 240.

<sup>289</sup> H.R. 4025, 99th Gen. Assemb. (Ill. 2015), available at: <http://ilga.gov/legislation/billstatus.asp?DocNum=4025&GAID=13&GA=99&DocTypeID=HB&LegID=90242&SessionID=88>.

open to the time that they close.<sup>290</sup> This provision was designed to keep election judges accountable and allows officials to maintain a complete record of poll activity on an election day, which can last up to 14 hours.<sup>291</sup> Owing to the long hours, Mr. Orr described this provision as “the biggest single impediment to [recruiting] good judges who want to do the job.”<sup>292</sup>

Additionally, Mr. Davis noted that it can be difficult to recruit election judges because of funding limitations.<sup>293</sup> He explained to the Committee that, in well-funded jurisdictions, it is relatively easy to recruit election judges because each poll worker can be paid enough to incentivize participation.<sup>294</sup> In counties with smaller budgets, recruitment is difficult because judges must work between 13 and 14 hours for little pay.<sup>295</sup>

In addition to the aforementioned challenges, Mr. Davis explained that it can be difficult to hire election judges because recruits are required to state that they are a Democrat or Republican in order to be considered for the job. In Illinois, all election judges must be appointed by the two most popular political parties (currently Democrat and Republican) in order to ensure that there is an equal balance of partisan individuals at each polling place.<sup>296</sup> The county chairmen of a political party may provide the county clerk with a list of election judge recruits from each precinct, but it is more often the case that the county clerk must find election judges themselves by distributing application forms.<sup>297</sup> In this system, potential election judges may not submit an application because they do not identify as a Democrat or Republican or because they are hesitant to reveal political affiliation.<sup>298</sup>

#### *Election Judge Training*

In addition to the selection of election judges, panelists noted that the training judges receive can also have a significant impact on the way elections are administered in each jurisdiction. However, Mr. Davis testified that election judge training is inconsistent between jurisdictions because of

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<sup>290</sup> Davis, *Transcript* at 279-90.

<sup>291</sup> *Id.*

<sup>292</sup> Orr, *Transcript* at 278.

<sup>293</sup> Davis, *Transcript* at 252.

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.* at 276.

<sup>297</sup> *Id.* at 276-77.

<sup>298</sup> *Id.* at 277.



differences in district funding.<sup>299</sup> The Illinois State Board of Elections provides training to jurisdictions only that do not have the resources necessary to instruct their own election judges; as a result, approximately half of Illinois jurisdictions are trained by the board.<sup>300</sup> In 2016, the Illinois State Board of Elections conducted training in 51 of the state's 109 jurisdictions, a majority of which were small districts.<sup>301</sup> The typical Illinois State Board of Elections training presentation varies slightly from jurisdiction to jurisdiction due to regional differences in polling place regulations, but the vast majority of presentations include information on setting up the polling place, the use of affidavits, provisional ballot procedures, accommodating special needs, and electioneering.<sup>302</sup> The Illinois State Election Board also offers to consult jurisdictions that provide their own training, but they do not require jurisdictions to confer with them.<sup>303</sup>

Mr. Davis explained that the 58 Illinois jurisdictions that do not receive state board training must educate their election judges themselves, which causes between-jurisdiction variability in the extent to which judges are taught regulations and requirements. Although there are some basic requirements, there is room for each locality to decide what they would like cover in training.<sup>304</sup>

Additionally, Ms. Schaafsma explained that election judge training may be further restricted by budgetary constraints, so much so that some jurisdictions cannot afford to retrain judges between elections.<sup>305</sup> She told the Committee that, without retraining, when "laws rapidly change and as some things get replaced with other things, there's some confusion at the polls."<sup>306</sup>

Panelists testified also that, even in well-funded jurisdictions with high quality training, enforcing such policies can pose an additional challenge. Mr. Davis reported that issues arise because, within the population of over 50,000 Illinois election judges, some individuals have been judging for decades and do not wish to follow current rules because they are used to different procedures.<sup>307</sup> Karyn Bass Ehler of the Civil Rights Bureau of the Office of the Illinois Attorney General noted that, in some instances, election judges might not follow procedure for

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<sup>299</sup> *Id.* at 246.

<sup>300</sup> *Id.* at 245.

<sup>301</sup> *Id.* at 246.

<sup>302</sup> *Id.* at 246-52.

<sup>303</sup> *Id.* at 274.

<sup>304</sup> *Id.*

<sup>305</sup> Schaafsma, *Transcript* at 231.

<sup>306</sup> *Id.*

<sup>307</sup> Davis, *Transcript* at 252.

the sake of efficiency. Ms. Bass Ehler reported that Illinois election judges have asked voters for a driver's license at the polls in an effort to expedite the check-in process.<sup>308</sup> This improper procedure gave voters the erroneous impression that photo ID was required to vote.<sup>309</sup> In an effort eliminate incidents like this one, the Office of the Attorney General reminds voters and local officials that voters "do not need to show identification to cast [their] vote so long as [their] voter registration is active and you are in the correct precinct."<sup>310</sup>

Also, Mr. Davis explained that when multiple districts share a polling place, there is a risk that voters may receive the incorrect ballot if judges are not trained properly. Mr. Davis explained that if an individual submits a ballot from a jurisdiction that they do not reside in, their vote will not be counted in the appropriate local races.<sup>311</sup> He further noted that, although it is not difficult to determine the correct ballot to give a voter, one of the most frequent grievances his office hears pertains to an individual who was given the wrong ballot style.<sup>312</sup> Ms. Schaafsma revealed that she herself was once given wrong ballot, and she expressed that if she had not been an employee of the League of Women Voters, she may not have recognized the error.<sup>313</sup> Upon asking for a new ballot, an election judge told Ms. Schaafsma that "it really doesn't matter because that person [candidate] is going to win any way."<sup>314</sup> Ms. Schaafsma testified that she was horrified to have that sort of value judgement raised in this situation.<sup>315</sup> She also revealed that when she insisted on receiving the correct ballot, the election judge complained that retrieving the correct ballot would be extra work.<sup>316</sup>

Additionally, Mr. Thomas stated that early voters from municipalities that spread over county lines may also encounter issues because officials do not clearly explain which specific location/building each individual must visit to pick up their ballot.<sup>317</sup> Mr. Thomas explained that he resides in the

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<sup>308</sup> Bass Ehler, *Transcript* at 269.

<sup>309</sup> *Id.*

<sup>310</sup> *Id.* at 272.

<sup>311</sup> Davis, *Transcript* at 243-249.

<sup>312</sup> *Id.* 250-251.

<sup>313</sup> Schaafsma, *Transcript* at 232.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> Thomas, *Transcript* at 233.

city of Aurora, which is “in Kane, DuPage, Kendall and a portion of Will” counties.<sup>318</sup> Mr. Thomas noted that some of Aurora’s early voting population is required to receive their ballots at the Will County Clerk’s office, while others are required to retrieve their ballots at the Kane County Clerk’s office.<sup>319</sup> Mr. Thomas testified that that the location of early ballot pickup is can be confusing for it is sometimes “not explained to voters in a way that they fully understand.”<sup>320</sup> Mr. Thomas also revealed that that in Aurora (and the city of Naperville) some municipal elections are run by the city’s election commission while others are run by the county election commission, which causes confusion for voters and election officials alike.<sup>321</sup> Specifically, Mr. Thomas stated that the municipal election system may be confusing because “sometimes voters are told to go the wrong place to go vote early or to register to vote or to change their voter registration information.”<sup>322</sup>

Mr. Davis testified that improper judge training can result in issues related to the distribution of provisional ballots. According to Mr. Davis, even if an individual is unable to register on or before Election Day, they can still exercise their right to vote using a provisional ballot.<sup>323</sup> He stated that these ballots are distributed in various circumstances, including when an individual cannot register on Election Day because they do not have the necessary forms of identification or when a voter’s registration forms cannot be located.<sup>324</sup> Ms. Schaafsma stated that her organization has received public comments expressing confusion about provisional ballots, along with concerns that provisional votes will not be counted.<sup>325</sup> She presumes that provisional ballots confuse the public because election judges are not aware of all the options that should be provided at each polling location.<sup>326</sup>

Mr. Davis reported that the Illinois State Board of Elections is currently looking to expand election judge training by providing on-line orientations and attempting by to make training sessions more accessible to judges who cannot attend their local training sessions.<sup>327</sup>

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<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 233-234.

<sup>322</sup> *Id.* at 234.

<sup>323</sup> *Id.* at 248.

<sup>324</sup> *Id.*

<sup>325</sup> Schaafsma, *Transcript* at 235-236.

<sup>326</sup> *Id.* at 236.

<sup>327</sup> Davis, *Transcript* at 275.

## 2. Potential Improvements

### *Improving Election Judge Training*

As noted in previous sections of this report, improperly trained election judges can adversely impact individuals attempting to exercise their right to vote. Panelists testified that increasing funding for election judge compensation, expanding the reach of the Illinois State Election Board Election programs, and increasing the frequency of mandatory election judge training sessions would make officials more prepared to help voters at the polls.<sup>328</sup> Additionally, Ms. Bass Ehler testified that enforcement efforts that can be used to ensure that election officials are trained and held accountable “are key to ensuring that our elections are fair and balanced.”<sup>329</sup>

### *All In*

Mr. Orr provided a detailed description of All In, his proposed plan to increase voter registration rates in Illinois. Upon implementation, All In would automatically register eligible voters, require data sharing between state agencies, and guarantee election day registration.<sup>330</sup>

According to Mr. Orr, the first provision of All In would guarantee automatic voter registration when an individual interacts with a state government agency.<sup>331</sup> This system would allow eligible individuals to opt out of voter registration, instead of requiring them request registration as the current system does.<sup>332</sup> Research has shown that, in this form, automatic voter registration would increase overall voter registration rates and eliminate the costs associated with traditional on-paper registration at the local level.<sup>333</sup> In addition, automatic voter registration would help increase registration rates among language minority voters.<sup>334</sup> Specifically, Mr. Kang suggested that automatic voter registration would provide a great deal of assistance to the Asian American community, which currently has the lowest registration and voter turnout rates of any racial/ethnic group in Illinois.<sup>335</sup> Ms. Legenza stated that automatic voter registration would also simplify the registration process for homeless individuals, who frequently interact with state agencies, but often

<sup>328</sup> Diaz, *Transcript* at 209; see also Schaafsma, *Transcript* at 231; see also Davis, *Transcript* at 253.

<sup>329</sup> Ehler, *Transcript* at 272.

<sup>330</sup> Orr, *Transcript* at 260-261.

<sup>331</sup> *Id.* at 260.

<sup>332</sup> *Id.*

<sup>333</sup> Chapin & Keunnen Written, *Transcript* at 10.

<sup>334</sup> Kang, *Transcript* at 171.

<sup>335</sup> *Id.* at 172.

do not have access to the financial means or methods of transportation necessary to acquire the identification required for registration.<sup>336</sup>

Additionally, Mr. Orr explained that the voter registration system proposed in All In would automatically update a registrant's address, which would be a significant change from Illinois' current system requiring individuals to re-register every time they move.<sup>337</sup> Mr. Orr justified the necessity of this provision by explaining that the current registration policy places an unfair burden on members of highly mobile groups, which disproportionality include the low income and racial/ethnic minority communities.<sup>338</sup> Specifically, he testified that, in the year 2015, more than 13% of all Illinois residents moved.<sup>339</sup> He then noted that, of those 1.7 million total movers, 21% of people low-income, 15% were African American and 13.9% were Hispanic.<sup>340</sup> Mr. Orr also told the Committee that, in any given year, individuals living in poverty are two times more likely to move than those living above the poverty line and African American people are likely to move twice as often as white people.<sup>341</sup> If All In were implemented, highly mobile groups would no longer be subject to the inconvenience associated with repeating the voter registration process after each move.

Mr. Orr also explained All In's second provision, which calls for secure data sharing between States to ensure that all voter information on file can be used to register people who move across state lines.<sup>342</sup> He stated that Illinois is currently a member of Electronic Registration Information Center, which allows states to share driver's license data, social security information, birth records and death records.<sup>343</sup> According to Mr. Orr, All In would allow Illinois to share voter registration data with other states on Electronic Registration Information Center, which would eliminate instances of duplicate registration between states and improve registration efficiency.<sup>344</sup>

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<sup>336</sup> Legenza, *Transcript* at 218-219.

<sup>337</sup> Orr, *Transcript* at 260-261.

<sup>338</sup> *Id.* at 262.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 263.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.* at 264.

The third provision of All In mandates Election Day registration at polling places.<sup>345</sup> According to Mr. Orr, if All In were implemented, Election Day registration would serve as a backstop allowing eligible voters who were not registered automatically to receive a ballot at the last minute.<sup>346</sup> Mr. Orr asserted that the recent success of Election Day registration within Illinois' larger counties indicates that expanding Election Day registration would further increase democratic participation throughout the state.<sup>347</sup>

Mr. Orr reported that the State Board of elections is currently considering adapting All In, but they are not ready to implement the provisions quite yet.<sup>348</sup>

#### *Expanding the Teen Judge Program*

In addition to proposing All In, two panelists also suggested expanding the Teen Judge Program in order to improve the Illinois election system. In the year 2000, the Chicago Board of Election teamed up with Mikva Challenge, an organization that aims to help young people become "informed, empowered, and active citizens and community leaders"<sup>349</sup>, to create the Student Judge Program.<sup>350</sup> Since its inception, the program has provided election judge training to 2,000 high school juniors and seniors from over 50 schools across the city of Chicago.<sup>351</sup> Ms. Diaz explained that, in addition to providing the city with many well-trained judges, the Student Judge Program teaches young people about voting rights so that they can share the information they learned with their peers and family members.<sup>352</sup> According to Mr. Orr, the program has been highly successful, in part because the teenaged program participants understand technology well, making them extremely helpful at polling places.<sup>353</sup> While describing the program's success, Mr. Orr stated that Student Judge Program is "one of the best things" that he had ever worked on.<sup>354</sup> Mr. Diaz, who was also enthusiastic about the program, proposed expanding training to include City Colleges of

<sup>345</sup> *Id.* at 260-261.

<sup>346</sup> *Id.*

<sup>347</sup> *Id.* at 264.

<sup>348</sup> *Id.* at 261.

<sup>349</sup> *Elections in Action*, Mikva Challenge (June 13, 2017), <http://www.mikvachallenge.org/programs/electoral-engagement/>.

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> Diaz, *Transcript* at 239.

<sup>353</sup> Orr, *Transcript* at 254.

<sup>354</sup> *Id.*

Chicago students, which would further broaden the base of young people engaged in the electoral process.<sup>355</sup>

### *A Day Off to Vote*

Additionally, the Committee heard testimony on the possibility of addressing some of the issues facing the Illinois electoral system by making Election Day a holiday. Mr. Orr noted that, currently, the United States is one of only two major nations that hold elections on a work day.<sup>356</sup> He suggested that the federal government should make Election Day a holiday because it is very difficult for low income people and individuals with transportation issues to vote without the day off.<sup>357</sup> Mr. Orr argued that the federal government could move Election Day to an already existing federal holiday (such as Veteran's Day), but recognized that it would take a great deal effort to alter the United States' statute requiring elections to take place the first Tuesday of November.<sup>358</sup> Alternatively, Mr. Orr proposed closing schools for elections, which would eliminate many of the issues associated with election judge recruitment.<sup>359</sup> He argued that, if schools were closed on Election Day, thousands of teachers, administrators, and students, who are well suited to serve as election judges, would be available to work at the polls.<sup>360</sup>

### *Public Campaign Financing*

After hearing testimony on civil rights issues related to voting in Illinois, the Committee also heard testimony on civil rights concerns associated with campaign finance. In the 2010 *Citizens United* decision, the Supreme Court ruled that the First Amendment's freedom of speech clause protects political campaign donations.<sup>361</sup> This ruling made limiting individual campaign donation illegal, which led to a dramatic increase in large donations from wealthy people and special interest groups.<sup>362</sup>

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<sup>355</sup> Diaz, *Transcript* at 239.

<sup>356</sup> Orr, *Transcript* at 259.

<sup>357</sup> *Id.* at 290.

<sup>358</sup> *Id.* at 290-291.

<sup>359</sup> *Id.* at 254.

<sup>360</sup> *Id.*

<sup>361</sup> *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, available at <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

<sup>362</sup> Sarah Childress, *Report: After Citizens United, Outside Spending Doubles*, PBS Frontline (June 14, 2017), <http://www.pbs.org/wgbh/frontline/article/report-after-citizens-united-outside-spending-doubles/>.

Brian Gladstein, Executive Director of Illinois Common Cause, an organization that aims to “ensure that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles”<sup>363</sup> noted that the individuals who make large political donations are more likely to be older, white and male.<sup>364</sup> These trends were reflected in an analysis of campaign contributions during Chicago’s 2015 mayoral race, which found that over 90% donations to the top two mayoral candidates came from donors who gave more than \$1000 each, 80% of donations to the current mayor’s campaign came from individuals earning more than \$100,000 per year, and 94% of the current mayor’s donors were white.<sup>365</sup> Mr. Gladstein reported that the policy preferences of influential donors tend to be very different from marginalized groups’ preferences, and that elected officials are likely influenced by the donors who helped them secure their position.<sup>366</sup>

Other panelists also expressed concern that the current system of campaign finance is fundamentally unfair.<sup>367</sup> Speaking generally, Mr. Orr stated “if we don’t deal with money and politics and the rise of voter suppression in this country, our fragile democracy will be gone.”<sup>368</sup> He later explained that campaign donations contribute to both election outcomes and public policy changes, which is why political actors may support policies that please their donors rather than the policies that would benefit the average voter.<sup>369</sup> Mr. Orr suggested that this disparity between public opinion and political outcome may be a reason why people give up on the democratic process altogether.<sup>370</sup> Ms. Schaafsma described the manner in which campaign finance impacts individuals who are deciding whether to become a political candidate themselves. She explained that, while the League of Women Voters of Illinois encourages females to run for office, they realize that candidates are challenged by the need to raise money to mount a serious campaign.<sup>371</sup> Mr. Orr and Ms. Schaafsma both recommended campaign finance reform.<sup>372</sup>

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<sup>363</sup> Gladstein, *Transcript* at 2.

<sup>364</sup> *Id.* at 3.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 3-4

<sup>367</sup> Schaafsma, *Transcript* at 195; *see also* Orr, *Transcript* at 265.

<sup>368</sup> Orr, *Transcript* at 265.

<sup>369</sup> *Id.* at 297-298.

<sup>370</sup> *Id.* at 298.

<sup>371</sup> Schaafsma, *Transcript* at 195.

<sup>372</sup> *Id.*; *see also* Orr, *Transcript* at 265, 298.



Mr. Gladstein proposed that Illinois should replace its private campaign donation system with a voluntary public campaign finance system, just as New York City did.<sup>373</sup> He explained that, in New York City's public campaign finance system, political contributions are limited to \$500 in aggregate per election cycle per donor.<sup>374</sup> The first \$175 each individual donates is matched 6 to 1 with money from the district's general fund.<sup>375</sup> In order to receive these funds, politicians must raise a requisite number of small donations, agree not to accept any donations from corporate interests and abide by restrictions that limit self-funding.<sup>376</sup> He testified that this form of campaign finance aims to: "help contain campaign expenditures; ensure that politicians remain in close contact with the people that voted them into office; and provide a pathway for citizens with limited access to capital to support the candidate of their choosing to run for office themselves."<sup>377</sup>

Mr. Gladstein stated that after New York City switched from private to public campaign finance, more people donated money to candidates, which contributed to an overall increase in political participation.<sup>378</sup> He also explained that public campaign finance increases civic engagement because people who contribute to political campaigns (even through very small donations) are more likely to vote on Election Day.<sup>379</sup>

Alternatively, Mr. Orr suggested that Illinois could instead improve campaign finance by adapting a voucher system similar to the one that will be implemented in Seattle, Washington.<sup>380</sup> In 2015, Seattle residents voted to create a new campaign finance system in which each citizen will be allotted four \$25 "Democracy Vouchers" to donate to whichever political candidate(s) they choose.<sup>381</sup> Seattle will hold its first voucher-funded election in the fall of 2017.<sup>382</sup>

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<sup>373</sup> Gladstein, *Transcript* at 308.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.* at 308, 314.

<sup>376</sup> *Id.* at 4-5.

<sup>377</sup> *Id.* at 5.

<sup>378</sup> *Id.* at 309.

<sup>379</sup> *Id.* at 298.

<sup>380</sup> Orr, *Transcript* at 298.

<sup>381</sup> *Id.*; see also *Democracy Voucher Program: About the Program*, Seattle Gov't (June 21, 2017), <http://www.seattle.gov/democracyvoucher/about-the-program>.

<sup>382</sup> *Id.*

#### IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory Committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>383</sup>

The Illinois Advisory Committee heard testimony that current voting access may disproportionately disenfranchise voters on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to prevent voter fraud and maintain the integrity of all elections at the local, state, and federal levels.

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Illinois and to the nation as a whole.

##### A. Findings

###### 1. Election Day Registration

- a. Only districts with both electronic voting records and more than 100,000 eligible voters are required to offer Election Day registration at all jurisdiction polling places. In 2016, 24 Illinois jurisdictions provided universal polling place Election Day registration while 82 counties did not.
- b. In 2016, over 100,000 voters registered on Election Day.

###### 2. Voter Fraud and ID Laws

- a. The Illinois Board of Elections has estimated that suspected instances of voter fraud in Illinois equate to a couple thousandths of a single percent of the votes cast in the state. No evidence was presented that widespread voter fraud was a problem in Illinois between 2000 and 2016.

###### 3. Voter Intimidation

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<sup>383</sup> 45 C.F.R. § 703.2.

- a. Multiple incidents of polling place voter intimidation and harassment have been reported in Illinois.

#### 4. Electoral Representation

- a. Partisan redistricting has been associated with Illinois' high rates of uncontested state house and senate races, along with low levels of minority representation throughout the state.
- b. Individuals of color are underrepresented within hundreds of elected bodies in Illinois.
- c. Illinois jurisdictions legally engage in prison gerrymandering, a process by which disenfranchised prison inmates are counted as constituents of the district in which they are incarcerated for the purposes of electoral representation. Prison gerrymandering unfairly advantages prison-containing districts, which, in most instances, increases comparative rural representation in within elected bodies.

#### 5. Voting in Jail or with a Prior Felony Conviction

- a. Barriers inhibiting electoral participation within jails include difficulty accessing social security numbers and restrictions prohibiting inmates from listing a jail as a residential address.
- b. Individuals who have been released from prison after serving a felony conviction can be discouraged from voting because they are unaware of their renewed enfranchisement.

#### 6. Language Access

- a. The current method used to determine Section 203 jurisdiction eligibility utilizes survey responses from a sample of a given district's population to measure that district's language access needs. These estimates of language access need can be affected by sampling error and biased rates of response.
- b. In jurisdictions covered by Section 203 of the VRA, limited English proficient voters may still be disadvantaged by complicated ballot language and/or election judge misconduct. Limited English Proficient voters in Section 208 jurisdictions may also be adversely impacted by the same issues, along with the potential that they could be misinformed or unaware of their right to bring a translator to the polls.

#### 7. Voting in Social/Community Groups

- a. It is difficult for homeless individuals to engage in the electoral process because of financial and transportation barriers that limit their ability to partake in voter registration and/or access their polling place.
- b. Individuals with disabilities are often disadvantaged by inaccessible polling places and faulty voting machines.
- c. Electoral participation among youth depends on education quality, which is influenced by social class and race/ethnicity.

#### 8. Illinois Election Judges

- a. Election judge recruitment is limited by the Illinois Election Code provision requiring judges to work from the time the poll opens to the time that it closes. In addition, individuals may be dissuaded from applying to be an election judge because judges are required to declare that they are either a Democrat or a Republican.
- b. Jurisdiction funding impacts election judge recruitment because wealthier districts are able to pay election judges more than jurisdictions with limited funding. Budgetary constraints also determine how often jurisdictions can afford to hold judge retraining.
- c. In 2016, the Illinois State Board of Elections conducted election judge training in 51 of the state's 109 districts. Jurisdictions that are not trained by the Illinois State Board of Elections have freedom to decide what to cover in training, which allows for between-jurisdiction variability in the extent to which judges are taught regulations and requirements.
- d. Panelists testified that election judge error and misconduct adversely impacted Illinois voters.

### B. Recommendations

- I. The U.S. Commission on Civil Rights' national study on voting rights in the United States should include:
  - a. An analysis of changes in state voting laws and related changes in voter participation following the 2013 U.S. Supreme Court *Shelby County v. Holder* decision;
  - b. An analysis of changes in voter participation following the 2010 U.S. Supreme Court *Citizens United v. Federal Election Commission* decision;

- c. An analysis of changes in voter participation following the passage of Automatic Voter Registration and/or Election Day registration legislation;
  - d. An analysis of current allegations of voter fraud and its related evidence; such a review should include a cost/benefit analysis comparing evidence of voter fraud with evidence of voter suppression, including concerns regarding potential fees associated with required identity documents, poll worker training, and public education efforts.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Congress:
  - a. The U.S. Congress should establish a working committee to study the impact of the 2013 U.S. Supreme Court decision *Shelby County v. Holder* including a review of any changes in state voting laws and related changes in voter participation since the ruling;
  - b. According to the results of this study, the Congress should develop updated formulae to identify which states require continued review under the Voting Rights Act and/or require Section 203 language access, then introduce appropriate legislation to implement the new formulae.
3. The U.S. Commission on Civil Rights should issue the following, formal recommendations to the U.S. Department of Justice, Civil Rights Division, Voting Section:
  - a. The Division should conduct a thorough review of the requirements imposed under Illinois voting laws to assess their compliance with applicable federal law including but not limited to: the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act; and
  - b. If such a review reveals areas of noncompliance or conflict with federal law, then the Division should take appropriate enforcement action to correct them.
4. The U.S. Commission on Civil Rights should issue a letter to the U.S. Election Assistance Commission, to the Illinois Governor, and the Illinois Legislature urging them to:
  - a. Review the findings and recommendations contained within this report; and
  - b. Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them.

**V. APPENDIX****A. Hearing Agenda: March 9, 2017****B. Written Testimony:**

1. Ami Gandhi
2. Jeff Raines
3. Ryan Cortazar
4. Chapin and Keunnen
5. Brian Gladstein

**C. Panelist Presentations**

1. Ami Gandhi
2. David Orr
3. Ryan Cortazar
4. Shobhana Johri-Verma

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**Illinois Advisory Committee to the  
United States Commission on Civil Rights**



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**U. S. Commission on Civil Rights Contact**

USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 55 W. Monroe, Suite 410 Chicago IL, 60603 (312) 353-8311
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*This report is the work of the Illinois Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.*

## U.S. COMMISSION ON CIVIL RIGHTS



## Civil Rights and Voting in Illinois

**Hosted By:**

The Illinois Advisory Committee to the U.S. Commission on Civil Rights

**Date:**

Thursday March 9, 2017

**Time:**

8:00am—5:00pm

**Location:**

Ralph H. Metcalfe Federal Building, 3rd Floor

77 W. Jackson Blvd.  
Chicago, IL 60604

**U.S. COMMISSION ON CIVIL RIGHTS**

Midwestern Regional Office  
55 West Monroe  
Suite 410  
Chicago IL, 60603

Phone: 312-353-8311  
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Twitter: @USCCRGov

The Illinois Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to voting rights in the State. This meeting is free and open to the public.

- Opening Remarks and Introductions (8:00am-8:15am)
  - Panel 1: Legal and Academic Research on Voting Rights (8:15am-9:30am)
  - Panel 2: Voting and Incarceration (9:45am-11:00am)
  - Panel 3: Language Access (11:15am-12:30pm)
- Break (12:30pm-1:30pm)
  - Panel 4: Voting Across Social Groups (1:30pm-2:45pm)
  - Panel 5: Government Perspectives (3:00pm-4:15pm)
  - Open Forum (4:15pm-5:00pm)
- Closing Remarks (5:00pm)

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. The record is also open for written testimony and will remain so for thirty days following the hearing. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

*State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.*



## Agenda

### Opening Remarks and Introductions (8:00-8:15am)

Juan Carlos Linares, Chair, Illinois Advisory Committee  
 Mauro Morales, Staff Director, U.S. Commission on Civil Rights

### Legal and Academic Research on Voting Rights (8:15am –9:30pm)

Ruth Greenwood, Campaign Legal Center  
 Ami Gandhi, Chicago Lawyers Committee for Civil Rights Under Law, Inc.  
 Jacob H. Huebert, Liberty Justice Center  
 Rebecca Glenberg, American Civil Liberties Union of Illinois

### Voting and Incarceration (9:45am-11:00am)

Christina R. Rivers, DePaul University Political Science Department  
 Michelle Mbekeani-Wiley, Sargent Shriver National Center on Poverty Law  
 Cara Smith, Office of the Cook County Sheriff  
 Nasir Blackwell, Inner-City Muslim Action Network  
 Marlon Chamberlain, Community Renewal Society

### Language Access (11:15am-12:30pm)

Ryan Cortazar, Chicago Lawyers Committee for Civil Rights Under Law, Inc.  
 Shobhana Verma, Chicago Board of Election Commissioners  
 Verónica Cortez, Mexican American Legal Defense and Education Fund  
 Andy Kang, Asian Americans Advancing Justice

### Break (12:30pm-1:30pm)

### Voting Across Social Groups (1:30pm-2:45pm)

Cheryl Jansen, Equip for Equality  
 Sharon Legenza, Housing Action Illinois  
 Christian Diaz, Chicago Votes  
 Juan Thomas, National Association for the Advancement of Colored People  
 Mary H. Schaafsma, League of Women Voters of Illinois

### Government Perspectives (3:00pm-4:15pm)

Brent Davis, Illinois State Board of Elections  
 David Orr, Cook County Clerk  
 Karyn Bass Ehler, Civil Rights Bureau, Office of the Illinois Attorney General  
 Representative, Illinois Secretary of State (*tentative*)

### Open Forum (4:15pm-5:00pm)

### Closing Remarks (5:00pm)



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COMMITTEE  
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Appendix B.1: Gandhi

CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
BEFORE THE ILLINOIS ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
MARCH 9, 2017**

Submitted By:

Ami Gandhi, Director of Voting Rights & Civic Empowerment  
Chicago Lawyers' Committee for Civil Rights  
100 North LaSalle Street, Suite 600, Chicago, Illinois 60602  
Phone: (312) 888-4193  
E-mail: [agandhi@clcclul.org](mailto:agandhi@clcclul.org)

**I. Introduction**

Thank you for the opportunity to speak today. My name is Ami Gandhi, and I am the director of voting rights and civic empowerment at Chicago Lawyers' Committee for Civil Rights. Chicago Lawyers' Committee is a nonprofit, nonpartisan civil rights legal organization in operation since 1969, and we work to secure racial equity and economic opportunity for all. We provide legal representation through partnerships with nearly 50 member law firms. We also collaborate with grassroots organizations and diverse coalitions to implement community-based solutions that advance civil rights.

The Voting Rights Project of the Chicago Lawyers' Committee was established to prevent, reduce, and eliminate barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Election Protection hotline and pollwatcher volunteers have answered thousands of voter questions over the phone and in person. That puts us in a unique position to understand voter access barriers, investigate and remedy problematic practices, provide information on voting rights, and advocate for necessary reforms. For the 2016 general election, we trained and deployed hundreds of law firm and other volunteer attorneys with diverse political views – but they stand united in the belief that all eligible voters should have access to the polls.

Illinois has made great strides to expand its citizens' voting rights in recent years, but much work remains, particularly for those voters who are most vulnerable to discrimination and exclusion. To address these barriers in a comprehensive and practical way, community organizations, elected officials, and election administrators must all work together.

**II. Takeaways from November 2016 Election**

Chicago Lawyers' Committee led 300 legal volunteers who served as nonpartisan Election Protection poll watchers and who answered more than 1,000 calls to the 866-OUR-VOTE

hotline on November 8, 2016 from across Illinois and Indiana. On Election Day, we helped many voters who experienced disenfranchisement, and fortunately, we worked with voters and election officials to resolve many of the problems. At the same time, many of the problems are preventable, especially through modernization of registration. A diversity of communities in Illinois have advocated for the preservation of Election Day Registration, which is currently being challenged in federal litigation, and are currently advocating for Automatic Voter Registration.

Data and stories from Illinois voters are available at [www.electionprotectionillinois.org](http://www.electionprotectionillinois.org), with a particular focus on the November 2016 election. The content points to recent voter experiences and provides ideas for aspects of voter access that should be improved going forward. Below are highlights of the content available at our site:

- An overview of the voting experience, including confirming the polling place, checking into the polling place, receiving the ballot, filling in the ballot, submitting the ballot, and leaving the polling place;
- Breakdown of when and where in Illinois voting issues arose, represented in maps and charts;
- Breakdown of types and locations of voter problems and questions, including ballot issues, registration issues, and polling place issues;
- An explanation of how we assist voters who report voting rights issues and how we take action after Election Day, through community outreach, legislative reform, administrative reform, and litigation;
- Description of ballot-related problems, including problems requesting mail-in ballots (also called absentee ballots), mail-in ballots being lost in the mail, vague ballot instructions, partially completed ballots, fragmented ballots, and the perception of insecure ballot storage;
- Description and examples of registration problems, including general registration and information needs, incorrect status on voter rolls, and unclear steps to confirm registration status;
- Description and examples of polling place problems, including difficulty locating polling place, needing to switch polling places, unexpectedly encountering a closed polling place, electioneering, incorrect voting procedures, and voting equipment malfunctions and delays; and
- Voter stories about the types of problems mentioned above, as well as questions from voters with disabilities, voters with limited English proficiency, homeless voters, voters facing intimidation and electioneering, and voters interfacing with the criminal justice system.

A few examples of voter access issues are detailed below and throughout today's testimonies. We would be glad to provide more details about these or other issues upon request.



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Appendix B.1: Gandhi

CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

### III. Voter Intimidation

We all can agree that we must not tolerate any instances of voter intimidation, as they are a threat to our values of freedom and democracy. Throughout our country's history as well as today, voter intimidation uniquely impacts communities of color, particularly African American voters. This intimidation can come from fellow voters, election personnel, police officers or guards, or others. In order for all our communities to have the full and fair right to vote, it is critical for every voter to feel safe at the polling place. Safety means different things for different people, especially given the vastly different experiences between communities of color and law enforcement.

While police officers and guards work hard to keep our polling places safe, there are still incidents of voter intimidation involving police or authority figures in Illinois. We received a report of police officers outside a polling place during the 2015 municipal elections, improperly telling voters that they needed identification or voter registration information to vote. Unfortunately, this is not the first time that we have received a report like this. In the November 2016 election, a voter reported harassment by the police regarding the voter's political views. We also received a report of a police officer inaccurately stating the poll closing time to young African American voters in line to vote. We were proud to collaborate with community organizations such as Chicago Votes and Black Youth Project 100, as well as election administrators, to resolve some of these problems and open lines of communication. However, the lasting sting of such an experience is not trivial to voters who are made to feel like they do not belong at the polls.

The problem of political inclusion for people whose lives have intersected with the criminal justice system extends beyond these instances. To tackle these problems, we must eliminate voting barriers for individuals in pretrial detention and ensure that individuals can get back on the voter rolls after completing a sentence. These barriers that exclude eligible voters do not reflect the type of inclusive and fair community that we strive for in Illinois.

We urge government leaders to work closely with community organizations to decrease voter intimidation and increase safety and comfort for voters of all backgrounds, especially those who have faced discrimination and exclusion. It is essential that reforms to improve voter access are designed with input from community members and election administrators so that the implementation is positioned for success. We welcome the chance to work with government and community leaders to improve channels of communication so that when intimidation does occur, it can be addressed rapidly and effectively.

### IV. Election Day Registration

Over 100,000 voters in Illinois used Election Day Registration (EDR) in the March 2016 primary election and over 100,000 voters used it in the November 2016 general election – in every single county in Illinois. We hear stories of voters of color in urban areas using EDR, as well as veterans, rural voters who work on farms, and a diversity of others who use EDR. Research shows that that “many [EDR voters] had tried to update their



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Appendix B.1: Gandhi

CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

information prior to the registration deadline but, due to administrative errors by government agencies or confusion over the procedure to update their voter registration, were unable to do so."

EDR is required by statute to be in every county in Illinois, and there is an additional requirement for high-population counties that EDR be required in each polling place. The litigation addresses whether it is constitutional for there to be polling place EDR in high population counties. It is important to remember that, as we argued in our amicus brief in the case, that EDR could be required in more polling places, rather than removed where it has already proven to be useful and even necessary. It is also important to remember that even after the lawsuit was filed, election administrators from Democratic-leaning and Republican-leaning counties are proudly implementing EDR in polling places in a diversity of areas and working hard to improve voter access and registration access in their jurisdictions. Many election administrators are trying to move forward, not backward, in terms of modernizing elections.

We saw the huge success of EDR in Illinois and the ability of eligible voters to navigate through the process and eventually vote successfully. This was in stark contrast to our experience helping voters in Indiana - now remember, we focused today's remarks on Illinois but we also took Indiana calls on Election Day. We received numerous calls from voters seeking to register to vote on or shortly before Election Day in Indiana, but unfortunately, we were unable to help them cast a ballot. We also observed and documented other concerning barriers facing voters in Indiana and would be happy to provide additional details upon request.

#### V. Automatic Voter Registration

Automatic Voter Registration (AVR) is a proposed reform in Illinois that would add over 1,000,000 voters to the rolls by leveraging information from other state databases, including those relating to drivers' licenses, social services, and other interactions that we all have with state government agencies. There is bipartisan support of this reform in Illinois, and it has been reformulated this year in a way that is more likely to bring consensus from voters, community advocates, elected officials from both parties, and election administrators and government agencies who would be tasked with implementing these changes to the registration system.

Registration systems have been used in our country's history to disenfranchise voters of color and reduce and self-select the electorate. That said, expanding access to registration would benefit not only communities of color. Senior voters, military personnel, and low-income citizens of all races would be brought onto the rolls through AVR. Today, fair access to registration *goes hand in hand* with modernizing our country's registration system to increase the integrity of our election systems so that we have a full and accurate list of eligible voters.



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## VI. Conclusions and Recommendations

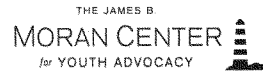
Numerous voting barriers can be resolved when lines of communication are open between advocates, voters, and election officials, and such problem solving often occurs in both Democratic-leaning and Republican-leaning counties in Illinois. **In order to improve election administration, it is essential for voters to trust their election officials. Recent renewed rhetoric about widespread voter fraud threatens to weaken such trust and intimidate voters.** We urge government leaders to denounce restrictive voting laws and myths of widespread voter fraud.

Illinois could serve as a model for ensuring full and fair ballot access for eligible voters from all communities, but a variety of interrelated barriers exist at the current time, including barriers for voters with disabilities, voters with limited English proficiency, and homeless voters. Registration barriers, improper requests for identification, equipment problems, and errors by election judges also happen much more than they should. Many voter access problems point to the need for systemic reforms. In addition to Election Day Registration and Automatic Voter Registration, we also need robust election judge training, voting modernization, improved protocols for mail-in ballots, access for voters with disabilities and limited English proficiency, redistricting reform, and fairness for voters interfacing with the criminal justice system.

Voting rights are intertwined with civil rights more broadly. In our civil rights work, we see that barriers to voting and civic engagement can cause or exacerbate barriers to education, housing, economic stability, and safety. And for community members facing inequities, for example unjust treatment by police, it is difficult for communities to achieve meaningful change unless there is a mechanism to elect candidates of their choice and hold government leaders accountable. While we focus our remarks today on a few examples of barriers to voter access, we urge the United States Commission on Civil Rights and the Illinois State Advisory Committee to keep in mind the broader systemic barriers to voting and civic engagement and to continue working with federal agencies, local election administrators, and community advocates to address them.

Voting rights are fundamental, not only as an inherently vital part of our democratic system, but also as a means for self-empowerment and self-determination for all of our communities. It is imperative that our laws reflect our values and that our government actively seeks to ensure the full and fair right to vote for all eligible voters.

Appendix B.2: Gandhi (2)



## MEMORANDUM

To: Cook County Commissioner Larry Suffredin  
 From: Emily Powers, Business and Professional People for the Public Interest  
 Ami Gandhi, Chicago Lawyers' Committee for Civil Rights Under Law, Inc.  
 Jennifer Vollen-Katz, John Howard Association  
 Patrick Keenan-Devlin, James B. Moran Center for Youth Advocacy  
 Michelle Mbekeani-Wiley, Sargent Shriver National Center on Poverty Law

Date: April 20, 2017

Re: Improving Cook County's efforts to support inmates obtain vital records and secure the franchise

**Issue Presented:**

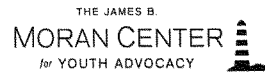
Recently released inmates lack access to the vital identification records they need to obtain state identification, such as a birth certificate or Social Security card either because they did not have these documents when they entered custody, or because these documents were lost or misplaced while they were in custody.<sup>1</sup> Without vital identification documents, reentrants have a weak foundation to start a new life and are more likely to recidivate. A study conducted by the H.I.R.E Network found that without state identification, a reentrant is not only unable to access critical services for reintegration, such as housing, public benefits and subsidies, and entrance into mandated treatment programs, but he or she may also experience difficulty obtaining employment and be prompted to partake in criminal activity to fulfill basic needs.<sup>2</sup> Further, detention also may undermine individuals' proper standing to vote if they have been removed from voter rolls, if they lack access to voter registration (or even ways to check the status of their voter registration), or if they lack access to the actual voting process itself. While the relationship between civic engagement and the criminal justice system is complex, supporting voting while awaiting trial and supporting registration upon release affirms the returning community member's value to the polity, encourages participation in civic life, and thus helps to rebuild the ties to fellow citizens that motivate law-abiding behavior.<sup>3</sup>

<sup>1</sup> La Vigne, Nancy, Elizabeth Davies, Tobi Palmer, Robin Halberstadt (2008 September). Release Planning for Successful Reentry: A guide for Corrections, Service Providers, and Community Groups. Urban Institute- Justice Policy Center. Retrieved from: <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411767-Release-Planning-forSuccessful-Reentry.PDF>.

<sup>2</sup> Id.

<sup>3</sup> Restoring the Right to Vote, Brennan Center for Justice at New York University School of Law (2009); measuring the causal relationship between voting rights and criminal behavior is difficult. But the one published study tracking the relationship between voting and recidivism did find "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior." Christopher Uggen & Jeff Manza, Voting and Subsequent Crime and Arrest: Evidence From a Community Sample, 36 Colum. Hum. Rts. L. Rev. 193, 213 (2004). In fact, the study found that the former offenders who voted were half as likely to be re-arrested as those who did not. Id. at 205. And in a more recent study, Brennan Center concluded that protecting and restoring voting rights is gaining traction as a smart-on-crime reform because of the associated public safety benefits. The Sustained Momentum and Growing Bipartisan Consensus for Voting Rights Restoration, Brennan Center for Justice at New York University School of Law (2015).

Appendix B.2: Gandhi (2)

**Background:**

In its December 2015 report, the Illinois Governor's Commission on Criminal Justice and Sentencing Reform identified that an offender's access to a state identification card upon release is critical to successful reentry. In 2016, the Illinois General Assembly and Governor Rauner acted upon the Commission's recommendation, enacting Public Act 99-0907 ("the Act"). The Act provides for the Illinois Secretary of State to issue a free Illinois Identification Card to persons being released from the Illinois Department of Corrections ("IDOC") and Illinois Department of Juvenile Justice ("IDJJ") ("the Departments") who present their birth certificate, Social Security card, or other documents authorized by the Secretary, as well as two proofs of address. For those who cannot offer proofs of address, they can present a limited-verification issued by the Departments valid for 90 days. Unfortunately many inmates will still lack access to the delineated identifying documents and will be unable to obtain a state identification card.

Cook County operates the Department of Cook County Corrections, which houses approximately 100,000 detainees annually,<sup>4</sup> and the Juvenile Temporary Detention Center, which detains 4,500 youth annually.<sup>5</sup> The Circuit Court of Cook County also commits 49.6% of all persons sentenced to the IDOC, totaling approximately 25,000 individuals per year,<sup>6</sup> and 42% of all youth sentenced to the IDJJ, totaling approximately 300 juveniles per year.<sup>7</sup>

With Cook County either locally detaining or committing nearly 130,000 individuals to state penitentiaries each year, the County is well positioned to help a significant number of incarcerated adults and youth in Illinois obtain the critical records necessary to reenter society upon release and register to vote.

**Recommendations:**

- Issue a certified birth certificate to all inmates in the Cook County Department of Corrections ("CCDOC") and Juvenile Temporary Detention Center ("JTDC"), who were born in Cook County, upon their release as an intergovernmental exchange of records;
- Issue a birth certificate to the IDOC or IDJJ for all individuals born in and sentenced from Cook County, either by including a certified paper copy in inmates' IDOC Master Files or through a secure electronic system from the Cook County Clerk to IDOC, as an intergovernmental exchange of records;
- If the Cook County Department of Corrections does not presently have a Memorandum of Understanding with the Social Security Administration ("SSA"), we strongly recommend entering into such a formal agreement so that inmates can obtain free replacement Social Security cards (given that the SSA will accept the facility's certification as proof of identity.)<sup>8</sup> Once the MOU is in place, then apply for free replacement Social Security cards on behalf of inmates;

<sup>4</sup> Cook County Department of Corrections.

<sup>5</sup> Juvenile Justice in Illinois: A Data Snapshot, April 2014.

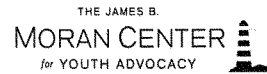
<sup>6</sup> Illinois State Commission on Criminal Justice and Sentencing Reform, 2015.

<sup>7</sup> Juvenile Justice in Illinois: A Data Snapshot, April 2014.

<sup>8</sup> SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM, RM 10225.125 Replacement SSN Cards for Prison Inmates Covered by a Memorandum of Understanding (February 27, 2014).



Appendix B.2: Gandhi (2)



- Partner with local election authorities to register all eligible CCDOC and JTDC inmates to vote while awaiting trial and prior release; and
- Partner with local election authorities and advocacy organizations, like the Chicago Lawyers' Committee for Civil Rights Under Law, Shriver Center, and JHA, to ensure all eligible CCDOC and JTDC inmates have ready access to vote in elections during their period of detention – replicating and expanding upon efforts from the April 4, 2017 municipal election.

Appendix B.2: Raines



## **CHANGE Illinois Testimony to the Illinois Advisory Committee to the U.S. Commission on Civil Rights**

Submitted By:

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Thank you for the invitation to provide testimony for your March 9<sup>th</sup> hearing on voting rights in Illinois. CHANGE Illinois is a part of the Just Democracy Coalition (Asian Americans Advancing Justice- Chicago, Chicago Votes, Common Cause Illinois, the Illinois Coalition for Immigrant and Refugee Rights, & Illinois Public Interest Research Group). Our broad, diverse coalition is comprised of dozens of organizations that recognize that access to the vote and robust civic participation is fundamental to a thriving democracy.

Our coalition strongly supports electoral modernization proposals in SB1933 and HB3695. These two bills would enact automatic voter registration (AVR), a procedure that would alleviate costs incurred by the state of Illinois close to a registration deadline, reduce barriers to ballots access for communities of color, and streamline registration processes for voters.

Research from Oregon's first-in-the-nation automatic voter registration law indicates that by enacting AVR here in Illinois, our cash-strapped state could actually save money. Because of the influx of registration applications right before a registration deadline, it is common for a state government to have to spend additional money and hire temporary staff to process all the paper registrations and complete the follow-ups for erroneous or illegible forms before the deadline. Many election offices also incur high mailing costs related to sending out paper voter registration that would be reduced by AVR.

Second, automatic voter registration would act as one safeguard for voter disenfranchisement. U.S. Census Bureau data from 2016 demonstrates a concerning racial disparity in Illinois voter registrations. In fact, it's 50 percent lower in Illinois than nationwide. Overall, Illinois is below the national average for voter registration. National research also demonstrates that communities of color - especially in Black and Latino neighborhoods - are much less likely to have a drivers' licenses/state IDs than whites, lowering the chances that the state's current DMV/ "motor voter" registration laws adequately engage

these minority populations. AVR would expand the number of state agencies that are permitted to be used to update a person's voter registration.

Lastly, automatic voter registration would modernize and improve the accuracy of Illinois voter rolls while ensuring safeguards are in place to prevent ballot access issues for communities of color and stop ineligible residents from voting.

CHANGE Illinois on behalf of the Just Democracy Coalition encourages you to recommend AVR legislation in Illinois and nationwide.



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Appendix B.3: Cortazar

CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
BEFORE THE ILLINOIS STATE ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
MARCH 9, 2017**

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**I. INTRODUCTION**

Thank you for the opportunity to testify today. The Chicago Lawyers' Committee for Civil Rights (Chicago Lawyers' Committee) has operated as Chicago's preeminent nonprofit, nonpartisan civil rights legal organization since 1969, and we work to secure racial equity and economic opportunity for all. The Chicago Lawyers' Committee provides legal representation through partnerships with the private bar, including our nearly 50 member law firms. We collaborate with grassroots organizations to implement community-based solutions that advance civil rights, and we participate in coalitions such as Just Democracy Illinois.

The Voting Rights Project of the Chicago Lawyers' Committee was established to eliminate, reduce, and prevent barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports



companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Partnering with area law firms and nonprofit organizations, Election Protection hotline and poll watcher volunteers have answered thousands of voter questions and resolved numerous problems at the polls.

Because Illinois has elections of some kind every year, the Chicago Lawyers' Committee for Civil Rights works year-round with local election authorities to make sure that the officials who run our elections comply with federal and state voting rights laws and know about voting barriers experienced by community members. Our voting rights work often involves open communication and collaboration with election officials to address voters' concerns on Election Day and throughout the year. Our voting rights attorneys meet with election officials in the months leading up to Election Day to assess their plans and provide any assistance that we can in improving training materials, recruiting poll workers, assisting voters, and facilitating community input about areas where language assistance is needed. An important part of this outreach is helping election authorities meet their bilingual election requirements and expand language access in the voting process.

Every American citizen has the right to cast an informed ballot in the language they are most comfortable speaking and reading. Congress first planted the seed of this right in the Voting Rights Act of 1965,<sup>1</sup> and it blossomed in subsequent amendments in

<sup>1</sup> Pub. L. No. 89-110, 79 Stat. 437 (1965).



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the 1970s<sup>2</sup> as Congress recognized the growing need of language access and the substantial language barriers that had been erected to discriminate against American based on national origin, educational level, and language ability in exercising their voting rights. Although there are administrative determinations about language needs every few years, Congress has not revisited these language access requirements since the 1970s, even as the needs of our country's language minority communities have significantly evolved over the last forty years. It is past time for the federal government to revisit its language access laws to ensure every citizen's right to vote. Any expansion of language access rights must take into account past and current discrimination against voters based on their English-language proficiency, current Voting Rights Act requirements for bilingual elections, how local governments implement or fail to implement bilingual elections, and the sufficiency of the government's data analysis to meet community needs, including U.S. Census Bureau methodologies. Any future action must also take into account America's growing diversity both in terms of the geographic distribution of individuals with limited English proficiency as they move to new areas outside of core cities as well as the growing number of languages that these individuals speak.

<sup>2</sup> Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Act of Aug. 6, 1975, Pub. L. No. 94-73, Tit. I, 89 Stat. 400.

## II. HISTORY

For generations, states have erected language access barriers to discriminate against a broad swath of eligible voters with limited English proficiency, from natural born Americans to naturalized immigrant citizens. When Congress banned literacy tests in jurisdictions that historically disenfranchised black voters through the Voting Rights Act of 1965, it also banned discrimination against Puerto Rican voters in New York.<sup>3</sup> Section 4(e) of the Act forbade states from disenfranchising voters based on English literacy tests if a voter had completed sixth grade in a school in the United States and its territories.<sup>4</sup> The direct attack on New York's history of discrimination is apparent from the statute itself, which specifically names Puerto Rico as a covered jurisdiction.<sup>5</sup> The Supreme Court, in declaring the provision unconstitutional, noted that prejudice against Southern and Eastern European immigrants "played a prominent role in the enactment" of New York state's literacy test,<sup>6</sup> and the Court emphasized that the requirement "may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment."<sup>7</sup>

From this tiny but important intervention, recognition of this type of discrimination grew, and Congress revisited this issue in 1970 when it included additional protections in the Voting Rights Act. Although some courts and election

<sup>3</sup> See *Katzbach v. Morgan*, 384 U.S. 641, 643–45 & n.1 (1966).

<sup>4</sup> Voting Rights Act of 1965, 79 Stat. 439, 52 U.S.C. § 10303(e) (2012).

<sup>5</sup> See *id.*

<sup>6</sup> *Katzbach*, 384 U.S. at 654, 654 n.14 (1966).

<sup>7</sup> *Id.* at 652.



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authorities read the original law expansively to provide bilingual voting resources, Congress recognized that a legislative fix was needed because the original law had been drafted too narrowly to only apply to certain jurisdictions and certain ethnic minorities.<sup>8</sup> In particular, the growing Chicano movement and civil rights litigation brought attention to voting discrimination against Mexican Americans in Texas and California that fell outside of the original Voting Rights Act protections.<sup>9</sup> To better protect the rights of language minorities nationwide, Congress adopted a nationwide ban on literacy tests and passed several provisions aimed at assisting language minorities at the polls. These protections developed as a result of crosspollination between social movements as civil rights advocates and minority communities saw commonality between discriminatory literacy tests aimed at African American communities throughout the South and literacy tests directed at language minorities in other parts of the country. The most important of these provisions for Illinois are sections 203 and 208.

### III. LEGAL REQUIREMENTS

With this context in mind, we can better understand the legal requirements of the Voting Rights Act. Section 203 requires covered states and political subdivision –

<sup>8</sup> James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 195, 203–04 (2006).

<sup>9</sup> David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254–57 (1976); *id.* at 255 n.29.





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typically counties<sup>10</sup>—to provide election materials in minority languages. A jurisdiction is covered by section 203 when it meets one of the following two thresholds:

- (1) five percent of the voting age population of the jurisdiction are members of a single language minority and limited-English proficient; *or*
- (2) more than 10,000 citizens in a political subdivision are members of a single language minority and are limited-English proficient.<sup>11</sup> Additionally, the illiteracy rate of the citizens of the language minority as a group must be higher than the national illiteracy rate.<sup>12</sup>

Once the federal government determines that a jurisdiction meets these requirements, that jurisdiction must provide written and oral assistance in the designated minority language for voters. There are currently 263 covered jurisdictions.<sup>13</sup> Although this is just 3.3 percent of the country's political subdivisions, these areas have 68,800,641 eligible voters, or 31.3 percent of the total eligible voters in the country.<sup>14</sup> In other words, nearly one in three eligible voters lives in a community that is mandated by law to provide bilingual election resources.

Section 203 is a practical provision that measures the community need for bilingual resources in light of the administrative concerns of election authorities. Because of this, section 203 does not assist every voter who has language access needs.

<sup>10</sup> In Illinois, these subdivisions include some cities that have election authorities that operate independently of county authorities. For example, Chicago and Cook County both execute their bilingual election requirements independently.

<sup>11</sup> 52 U.S.C. § 10503 (2014).

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Census Bureau, *Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act* (Dec. 5, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

<sup>14</sup> *Id.*



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For voters not residing in section 203-covered jurisdictions, section 208<sup>15</sup> is critical. In section 208, Congress provided that any eligible voter may receive language assistance from any person that the voter chooses so long as that person is not an agent of the voter's employer or union.<sup>16</sup> This means that voters who require language assistance can bring their relatives, including their children, friends, or neighbors to help them vote. This provision is an essential part of the regulatory scheme not only for individuals who live in areas without significant language minorities but also for voters who reside areas that have significant need for bilingual resources but that Census Bureau studies have concluded do not meet section 203 criteria.

#### IV. IMPLEMENTATION

The Voting Rights Act delegates to the Census Bureau the work of determining whether counties meet the demographic requirements for section 203-coverage outlined above. The Census Bureau collects data for this determination through the American Community Survey. The survey asks individuals what languages other than English the person speaks at home and how well they speak English. All responses that rank below "very well" are categorized as limited-English proficient.<sup>17</sup> The survey has substantial sampling error in small populations, so it uses regression techniques and weighting to get more accurate estimates of language minority populations.<sup>18</sup>

<sup>15</sup> 52 U.S.C. § 10508.

<sup>16</sup> *Id.*

<sup>17</sup> See U.S. Census Bureau, Voting Rights Act Section 203 Determinations 23 (2011), [https://www.census.gov/2010census/news/pdf/20111011\\_203slides.pdf](https://www.census.gov/2010census/news/pdf/20111011_203slides.pdf).

<sup>18</sup> *Id.* at 25.



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In the last decade, the Census Bureau has prioritized improving the quality of data from individuals with limited English proficiency. Despite improvements, challenges remain.<sup>19</sup> According to its own data, the Census estimated undercounts for Black, Hispanic, and American Indian and Alaskan Native populations while it estimated an overcount for the Non-Hispanic white population.<sup>20</sup> Based on qualitative observations of the changing demographics in the Chicago metropolitan area, advocates and community members have expressed concern that the determinations made by the Census Bureau do not match demographic changes that they have witnessed over the years. These advocates have highlighted a number of factors that may lead to the Census underestimating the number of limited English proficient voters, including lower response rates and incomplete responses from these voters as well as overestimation of the level of English proficiency since the survey does not explicitly tie its English proficiency questions to voting needs. For example, a voter may think she speaks English “very well” but still be uncomfortable navigating confusing election procedures and ballot language without language assistance. In fact, many voters who use bilingual voter resources do speak English and have passed a citizenship test in English but feel more comfortable voting in their native language. Additionally, many voters using bilingual resources are actively working to improve their English fluency.

<sup>19</sup> See U.S. Census Bureau, American Community Survey Design and Methodology (January 2014), at 98–102, [http://www2.census.gov/programs-surveys/acs/methodology/design\\_and\\_methodology/acs\\_design\\_methodology\\_report\\_2014.pdf](http://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf).

<sup>20</sup> U.S. Census Bureau, DSSD 2010 Census Coverage Measurement Memorandum Series #2010-G-01, at 1–2 (May 22, 2012), <https://www.census.gov/coverage-measurement/pdfs/g01.pdf>.



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Effective language access does not automatically materialize after the federal government makes its section 203 designations. In practice, providing language access at the polls requires relationship-building and coordination between election administrators and language minority communities, often with the input of civil rights advocates. Election authorities often have tight budgets that limit their resources. Although some election authorities like the Chicago Board of Election Commissioners and the Cook County Clerk's office have retained staff to aid in bilingual election assistance, others do not. Decisions on whether to hire professional staff devoted to language assistance should not be made only by considering additional labor costs because noncompliance and litigation may end up being more costly in the long run. These decisions should also take into account equitable factors like the importance of serving all members of a constituency and the increased voter participation that can result from greater bilingual resources.<sup>21</sup> But even those election authorities that have hired translation, interpretation, and outreach staff must work closely with community groups to ensure effective implementation.

Other presenters today will provide more details on how to leverage the relationships between public officials and civic groups to improve the efficiency and effectiveness of language access, but I want to highlight the key types of assistance that government agencies can obtain from community groups. Covered jurisdictions must

<sup>21</sup> See DEMOS, MILLIONS TO THE POLLS: PRACTICAL POLICIES TO FULFILL THE FREEDOM TO VOTE FOR ALL AMERICANS 63 (2014).

provide translated informational materials and ballots. These documents often contain specialized language that requires professional, context-sensitive translation – something that tools like free web translation tools are ill equipped to provide. Community groups have often facilitated connections between election authorities and professional translators to make sure that the translators retained by the government are high quality. Election authorities also struggle to recruit and retain poll workers of any type, but bilingual poll workers can be particularly difficult although not impossible to recruit. Community groups often play a crucial role in helping the government recruit and retain high-quality bilingual poll workers to provide oral assistance at the polling place. This involvement in the political process also leads to greater political empowerment. Studies have shown that higher rates of voting also correlate with higher levels of civic and community engagement.<sup>22</sup>

#### V. RECENT DEVELOPMENTS

Because of the periodic nature of elections, election officials and community groups must constantly engage each other to guarantee that advancements in bilingual services are not lost in the space between elections and that election authorities appropriately address any demographic changes that occur within the jurisdiction. If

<sup>22</sup> E.g. Jennifer Oser, *Assessing How Participators Combine Acts in Their "Political Tool Kits": A Person-Centered Measurement Approach for Analyzing Citizen Participation*, J. SOC. INDICATORS RES. (2016), <https://link.springer.com/article/10.1007/s11205-016-1364-8>; Seth H. Werfel, *Voting and Civic Engagement: Results from an Online Field Experiment*, RES. & POLITICS 1-3 (Jan.-Mar. 2017), <http://journals.sagepub.com/doi/pdf/10.1177/2053168017690736>; RGK Center, *The Investigator #2: Volunteering by States*, <http://rgkcenter.org/research/4/investigator/2>.

these details fall through the cracks, eligible voters are excluded from elections, and the discriminatory effects of language-based disenfranchisement fall along lines of national origin, language ability, education level, and race.

Because all communities are mobile and language minority communities are particularly mobile, the nature and location of bilingual election services should evolve from election to election. Other factors can also complicate the effective administration of bilingual election services. For example, election authorities sometimes change polling places based on projected turnout needs. Since far fewer voters turn out for local elections than for presidential elections, some election authorities reduce the number of polling places for local elections. This means that the locations having bilingual poll workers are not stable, and the election authorities have to adjust their recruitment of bilingual poll workers accordingly.

Beyond these inevitable polling place changes, demographic changes also complicate bilingual election needs. Over the past few decades, immigrant communities have expanded outside of urban centers and moved to more suburban and rural locales. In addition to the City of Chicago, Suburban Cook County, Kane, Lake, and DuPage counties have all met the requirements for section 203 coverage in the last ten years.<sup>23</sup> Several jurisdictions in Illinois currently fall just short of federal language access coverage despite significant language access needs in those areas, such

<sup>23</sup> Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63,602, 63,604 (Oct. 13, 2011), [https://www.census.gov/rdo/pdf/2011\\_26293.pdf](https://www.census.gov/rdo/pdf/2011_26293.pdf).

as DuPage and Will counties, and we expect those areas to meet the requirements for bilingual election coverage in the future.<sup>24</sup> In addition to greater geographic coverage, language diversity has greatly increased over time. In Chicago and suburban Cook County, the Census Bureau requires bilingual language access for Hispanic, Chinese, and Indian voting populations. In practice, written materials are provided in Spanish, Chinese, and Hindi, and oral assistance is provided in Spanish, Mandarin, Cantonese, Hindi, Gujarati, and Urdu. Additionally, Kane and Lake counties must provide language access services in Spanish.

And beyond federal requirements, election authorities also provide voluntary language access in certain circumstances. Chicago and suburban Cook County election officials also provide language access in Polish and Korean, and DuPage County will continue to provide Spanish language access services even though it is not required to do so after the most recent December 2016 section 203 determinations. We applaud these efforts and welcome the opportunity to collaborate with jurisdictions looking to expand their language access in the future.

These concrete data points can obscure more subtle changes that complicate language access programs every year. Although we know what counties must provide these language services, determining what specific communities in these massive counties require language assistance is a more difficult determination. Continuous

<sup>24</sup> See U.S. Census Bureau, Public Use Data File and Technical Documentation (Dec. 5, 2016), [https://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](https://www.census.gov/rdo/data/voting_rights_determination_file.html).



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population shifts mean that every year some polling places might need bilingual election judges or materials that they did not carry in previous elections.<sup>25</sup> And while the demographics of these communities are changing, often many of the poll workers have worked the precincts for much longer periods of time and have not been trained fully on the changes to the law or regulations and how to implement them.

In addition to the recruiting problems that election officials face in finding new poll workers who can provide bilingual oral assistance, election authorities at times must address ethnic tensions, cultural clashes, and even problems of xenophobia and racism that arise as these communities diversify. As Cook County Clerk David Orr testified, despite training that advises poll workers on the legal rights of limited English proficient voters, some poll workers inject their personal frustration with bilingual voting and limited English proficient voters into the voting process.<sup>26</sup> In early voting for the November 2016 election, we received a report of local poll workers complaining about South Asian and Latino limited English proficient voters to other poll workers and voters. In other circumstances, even years of experience operating bilingual elections has not prevented serious problems arising on Election Day. On November 8, 2016, a local Spanish-speaking voter was improperly turned away from the polls even

<sup>25</sup> An appendix to this memorandum contains a list compiled by the Chicago Lawyers' Committee for Civil Rights of polling sites in the greater Chicago area that local election authorities identified as needing bilingual election judges.

<sup>26</sup> See Transcript, U.S. Commission on Civil Rights, Civil Rights and Voting in Illinois 299-300 (Mar. 9, 2017) (comments of Cook County Clerk David Orr).





though she was a registered voter and unsuccessfully tried to find a bilingual election judge to help her explain this fact to other election judges.

#### VI. PATHS FORWARD

As mentioned earlier, the most recent Census estimates removed the requirement for Spanish bilingual language access in DuPage County despite the belief from community groups and election officials that the need for language access in DuPage County may actually be growing. This problem raises serious concerns about the adequacy of the Census Bureau's determinations. To improve these processes, we recommend that the Census Bureau open up its section 203 determinations to a notice and comment process for community input and response to its determinations. Section 203's requirements are purely quantitative and based on one data set, but we believe that community input in these determinations would point to how language access can be implemented most efficiently and effectively and also put pressure on the Census Bureau to look more critically at its methodology for weaknesses and areas of improvement that might expand language access to new jurisdictions under section 203.

Information from our Election Protection program also raises serious concerns about the adequacy of section 203 to meet the needs of an increasingly diverse voting population. Through our hotline and poll watchers we received reports of voters unsuccessfully seeking assistance in different languages, beyond the language coverage that the election jurisdiction offered. At least eight states and the District of Columbia

have expanded language access beyond the requirements of section 203.<sup>27</sup> Proposals are currently being considered in Illinois, and while we support increased language access to the polls for all eligible voters, it is essential that state-level language access protections are designed and implemented with input from community members and election administrators so that the on-the-ground implementation of language assistance is successful.

Additionally, while section 208 provides an important failsafe for limited English proficient voters by allowing them to bring the person of their choice to help them translate the ballot, too few voters, poll workers, and observers are aware of this right. As Illinois State Advisory Committee member Tabassum Haleem noted, election authorities throughout the state should create clearer and more accessible voters bills of rights that they distribute widely to inform voters of the availability of personal language assistance at the polls.<sup>28</sup> If necessary, polling sites should post prominent materials that advise voters of this important right.

As I laid out before, in the first ten years after passage of the Voting Rights Act, Congress continuously amended its language access provisions in growing recognition of the barriers to voting encountered by citizens with limited English proficiency. Since then, Congress has allowed these protections to stagnate as the facts on the ground and

<sup>27</sup> See Brian J. Sutherland, *The Patchwork of State and Federal Language Assistance for Minority Voters and a Proposal for Model State Legislation*, 65 N.Y.U. ANN. SURV. AM. L. 323, 352–60 (2009).

<sup>28</sup> See Transcript, U.S. Commission on Civil Rights, *Civil Rights and Voting in Illinois* 298–99 (Mar. 9, 2017) (comments of Illinois Advisory Committee Member Tabassum Haleem).



CHICAGO  
LAWYERS'  
COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW, INC.

Appendix B.3: Cortazar

CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

the demographics of the electorate have changed. To meet these demands, Congress should examine the voting rights expansions of the several states that have expanded language access beyond federal requirements as well as the technological advances that make the administration of bilingual elections significantly easier since 1975.

In addition to these technological changes, the country has also undergone significant social changes in the last forty years and even the last two years. The damage from false rhetoric about voting fraud and undocumented immigrant votes falls hard on language minorities. Part of this rhetoric undoubtedly comes from ignorance of the language access laws we passed decades ago. Even knowledgeable voters are unaware that section 208 permits eligible voters to bring a friend or relative to help them with translation and interpretation. As we work to expand voting rights on the local and state level and protect the voting rights from an attorney general hostile to the Voting Rights Act and voices amplifying xenophobia, we continue to strive to protect the right of all citizens, regardless of their English proficiency, to cast an informed ballot.

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

Chicago Precincts with Bilingual Judges		
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Ward	Precinct	Language
3	3	Chinese
3	13	Chinese
3	26	Chinese
4	1	Chinese
4	35	Chinese
4	36	Chinese
4	38	Chinese
11	1	Chinese
11	4	Chinese
11	5	Chinese
11	7	Chinese
11	8	Chinese
11	9	Chinese
11	10	Chinese
11	11	Chinese
11	14	Chinese
11	15	Chinese
11	16	Chinese
11	17	Chinese
11	18	Chinese
11	19	Chinese
11	20	Chinese
11	22	Chinese
11	23	Chinese
11	25	Chinese
11	26	Chinese
11	27	Chinese
11	29	Chinese
11	30	Chinese
11	32	Chinese
11	34	Chinese
11	35	Chinese
11	36	Chinese
11	37	Chinese
12	1	Chinese
12	2	Chinese
12	3	Chinese
12	4	Chinese
12	5	Chinese
12	6	Chinese
12	8	Chinese
12	9	Chinese
12	17	Chinese

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Ward	Precinct	Language
12	19	Chinese
12	23	Chinese
14	31	Chinese
15	10	Chinese
15	11	Chinese
25	3	Chinese
25	4	Chinese
25	6	Chinese
25	14	Chinese
25	18	Chinese
25	25	Chinese
25	27	Chinese
25	32	Chinese
48	2	Chinese
48	7	Chinese
48	10	Chinese
48	11	Chinese
48	19	Chinese
4	6	Hindi
11	2	Hindi
11	7	Hindi
11	33	Hindi
25	3	Hindi
25	27	Hindi
39	3	Hindi
39	13	Hindi
39	15	Hindi
39	16	Hindi
39	18	Hindi
39	22	Hindi
39	25	Hindi
39	30	Hindi
39	34	Hindi
39	43	Hindi
40	1	Hindi
40	4	Hindi
40	9	Hindi
40	10	Hindi
40	14	Hindi
40	17	Hindi
40	18	Hindi
40	20	Hindi
40	24	Hindi
40	29	Hindi
40	30	Hindi
40	34	Hindi
40	35	Hindi

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Ward	Precinct	Language
40	39	Hindi
42	3	Hindi
42	16	Hindi
42	41	Hindi
49	2	Hindi
49	7	Hindi
49	12	Hindi
49	17	Hindi
50	7	Hindi
50	10	Hindi
50	13	Hindi
50	17	Hindi
50	19	Hindi
50	20	Hindi
50	22	Hindi
50	23	Hindi
50	25	Hindi
50	26	Hindi
50	28	Hindi
50	29	Hindi
50	30	Hindi
50	31	Hindi
50	32	Hindi
50	35	Hindi
50	36	Hindi
50	37	Hindi
50	39	Hindi
1	1	Spanish
1	2	Spanish
1	3	Spanish
1	4	Spanish
1	5	Spanish
1	6	Spanish
1	7	Spanish
1	8	Spanish
1	9	Spanish
1	10	Spanish
1	11	Spanish
1	12	Spanish
1	13	Spanish
1	14	Spanish
1	15	Spanish
1	16	Spanish
1	17	Spanish
1	18	Spanish
1	19	Spanish
1	20	Spanish

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Ward	Precinct	Language
1	21	Spanish
1	22	Spanish
1	23	Spanish
1	24	Spanish
1	25	Spanish
1	26	Spanish
1	27	Spanish
1	28	Spanish
1	29	Spanish
1	30	Spanish
1	31	Spanish
1	32	Spanish
1	33	Spanish
1	34	Spanish
1	35	Spanish
1	37	Spanish
1	38	Spanish
1	39	Spanish
1	40	Spanish
1	41	Spanish
1	42	Spanish
1	43	Spanish
1	44	Spanish
2	1	Spanish
2	3	Spanish
2	4	Spanish
2	5	Spanish
2	6	Spanish
2	8	Spanish
2	20	Spanish
3	5	Spanish
3	10	Spanish
3	18	Spanish
3	23	Spanish
3	29	Spanish
3	35	Spanish
4	27	Spanish
5	11	Spanish
5	18	Spanish
5	20	Spanish
5	23	Spanish
7	25	Spanish
7	28	Spanish
7	30	Spanish
7	31	Spanish
7	45	Spanish
7	46	Spanish

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Ward	Precinct	Language
9	7	Spanish
9	28	Spanish
9	31	Spanish
9	37	Spanish
9	46	Spanish
10	1	Spanish
10	2	Spanish
10	3	Spanish
10	5	Spanish
10	6	Spanish
10	7	Spanish
10	8	Spanish
10	9	Spanish
10	10	Spanish
10	11	Spanish
10	12	Spanish
10	13	Spanish
10	14	Spanish
10	16	Spanish
10	17	Spanish
10	18	Spanish
10	19	Spanish
10	20	Spanish
10	21	Spanish
10	22	Spanish
10	23	Spanish
10	24	Spanish
10	26	Spanish
10	27	Spanish
10	28	Spanish
10	29	Spanish
10	30	Spanish
10	31	Spanish
10	32	Spanish
10	33	Spanish
10	34	Spanish
10	35	Spanish
10	36	Spanish
11	1	Spanish
11	3	Spanish
11	4	Spanish
11	5	Spanish
11	8	Spanish
11	9	Spanish
11	10	Spanish
11	11	Spanish
11	12	Spanish



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Ward	Precinct	Language
11	13	Spanish
11	15	Spanish
11	16	Spanish
11	17	Spanish
11	18	Spanish
11	19	Spanish
11	22	Spanish
11	25	Spanish
11	26	Spanish
11	28	Spanish
11	31	Spanish
11	32	Spanish
11	34	Spanish
11	35	Spanish
11	37	Spanish
11	38	Spanish
12	1	Spanish
12	2	Spanish
12	3	Spanish
12	4	Spanish
12	5	Spanish
12	6	Spanish
12	7	Spanish
12	8	Spanish
12	9	Spanish
12	10	Spanish
12	11	Spanish
12	12	Spanish
12	13	Spanish
12	14	Spanish
12	15	Spanish
12	16	Spanish
12	17	Spanish
12	18	Spanish
12	19	Spanish
12	20	Spanish
12	21	Spanish
12	22	Spanish
12	23	Spanish
12	24	Spanish
13	1	Spanish
13	2	Spanish
13	3	Spanish
13	4	Spanish
13	5	Spanish
13	6	Spanish
13	7	Spanish

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Ward	Precinct	Language
13	8	Spanish
13	9	Spanish
13	10	Spanish
13	11	Spanish
13	12	Spanish
13	13	Spanish
13	14	Spanish
13	15	Spanish
13	16	Spanish
13	17	Spanish
13	18	Spanish
13	19	Spanish
13	20	Spanish
13	21	Spanish
13	22	Spanish
13	23	Spanish
13	24	Spanish
13	25	Spanish
13	26	Spanish
13	27	Spanish
13	28	Spanish
13	29	Spanish
13	30	Spanish
13	31	Spanish
13	32	Spanish
13	34	Spanish
13	35	Spanish
13	36	Spanish
13	37	Spanish
13	38	Spanish
13	39	Spanish
13	40	Spanish
13	41	Spanish
13	42	Spanish
13	43	Spanish
13	44	Spanish
13	45	Spanish
13	46	Spanish
13	47	Spanish
14	2	Spanish
14	3	Spanish
14	4	Spanish
14	5	Spanish
14	6	Spanish
14	7	Spanish
14	8	Spanish
14	9	Spanish

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Ward	Precinct	Language
14	10	Spanish
14	11	Spanish
14	12	Spanish
14	13	Spanish
14	14	Spanish
14	15	Spanish
14	16	Spanish
14	17	Spanish
14	18	Spanish
14	19	Spanish
14	20	Spanish
14	21	Spanish
14	22	Spanish
14	23	Spanish
14	24	Spanish
14	25	Spanish
14	26	Spanish
14	27	Spanish
14	28	Spanish
14	29	Spanish
15	1	Spanish
15	3	Spanish
15	4	Spanish
15	5	Spanish
15	6	Spanish
15	8	Spanish
15	9	Spanish
15	10	Spanish
15	11	Spanish
15	12	Spanish
15	13	Spanish
15	14	Spanish
15	15	Spanish
15	16	Spanish
15	19	Spanish
16	1	Spanish
16	2	Spanish
16	3	Spanish
16	4	Spanish
16	6	Spanish
16	7	Spanish
16	8	Spanish
16	10	Spanish
16	11	Spanish
16	12	Spanish
16	13	Spanish
16	17	Spanish

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Ward	Precinct	Language
16	18	Spanish
16	19	Spanish
16	21	Spanish
16	22	Spanish
16	23	Spanish
16	32	Spanish
16	35	Spanish
17	1	Spanish
17	6	Spanish
17	7	Spanish
17	12	Spanish
17	14	Spanish
17	16	Spanish
17	25	Spanish
17	30	Spanish
18	1	Spanish
18	2	Spanish
18	3	Spanish
18	6	Spanish
18	7	Spanish
18	8	Spanish
18	10	Spanish
18	11	Spanish
18	12	Spanish
18	13	Spanish
18	15	Spanish
18	17	Spanish
18	21	Spanish
18	23	Spanish
18	24	Spanish
18	25	Spanish
18	27	Spanish
18	28	Spanish
18	29	Spanish
18	30	Spanish
18	31	Spanish
18	35	Spanish
18	36	Spanish
18	37	Spanish
18	39	Spanish
18	40	Spanish
18	42	Spanish
18	43	Spanish
18	44	Spanish
18	45	Spanish
18	46	Spanish
18	47	Spanish

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Ward	Precinct	Language
18	49	Spanish
18	50	Spanish
19	32	Spanish
20	2	Spanish
20	4	Spanish
20	6	Spanish
20	15	Spanish
20	17	Spanish
20	20	Spanish
20	21	Spanish
20	38	Spanish
20	39	Spanish
22	2	Spanish
22	3	Spanish
22	4	Spanish
22	5	Spanish
22	6	Spanish
22	7	Spanish
22	8	Spanish
22	9	Spanish
22	10	Spanish
22	11	Spanish
22	12	Spanish
22	13	Spanish
22	14	Spanish
22	15	Spanish
22	16	Spanish
22	17	Spanish
22	18	Spanish
22	19	Spanish
22	20	Spanish
22	21	Spanish
22	22	Spanish
22	24	Spanish
22	25	Spanish
23	1	Spanish
23	2	Spanish
23	3	Spanish
23	4	Spanish
23	5	Spanish
23	6	Spanish
23	7	Spanish
23	8	Spanish
23	9	Spanish
23	10	Spanish
23	11	Spanish
23	12	Spanish

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Ward	Precinct	Language
23	13	Spanish
23	14	Spanish
23	15	Spanish
23	17	Spanish
23	18	Spanish
23	19	Spanish
23	20	Spanish
23	22	Spanish
23	23	Spanish
23	24	Spanish
23	25	Spanish
23	26	Spanish
23	28	Spanish
23	29	Spanish
23	30	Spanish
23	31	Spanish
23	32	Spanish
23	33	Spanish
23	34	Spanish
23	35	Spanish
23	36	Spanish
23	37	Spanish
23	39	Spanish
24	7	Spanish
24	9	Spanish
24	16	Spanish
24	39	Spanish
24	41	Spanish
25	1	Spanish
25	2	Spanish
25	5	Spanish
25	7	Spanish
25	8	Spanish
25	9	Spanish
25	11	Spanish
25	12	Spanish
25	13	Spanish
25	14	Spanish
25	15	Spanish
25	17	Spanish
25	19	Spanish
25	22	Spanish
25	23	Spanish
25	24	Spanish
25	26	Spanish
25	27	Spanish
25	28	Spanish

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Ward	Precinct	Language
	25	30 Spanish
	25	32 Spanish
	26	1 Spanish
	26	2 Spanish
	26	3 Spanish
	26	4 Spanish
	26	5 Spanish
	26	6 Spanish
	26	7 Spanish
	26	8 Spanish
	26	9 Spanish
	26	10 Spanish
	26	11 Spanish
	26	12 Spanish
	26	13 Spanish
	26	14 Spanish
	26	15 Spanish
	26	16 Spanish
	26	17 Spanish
	26	18 Spanish
	26	19 Spanish
	26	20 Spanish
	26	21 Spanish
	26	22 Spanish
	26	23 Spanish
	26	24 Spanish
	26	25 Spanish
	26	26 Spanish
	26	27 Spanish
	26	28 Spanish
	26	29 Spanish
	26	30 Spanish
	26	31 Spanish
	26	32 Spanish
	26	33 Spanish
	26	34 Spanish
	26	35 Spanish
	26	36 Spanish
	26	37 Spanish
	26	38 Spanish
	26	39 Spanish
	26	40 Spanish
	26	41 Spanish
	26	42 Spanish
	26	43 Spanish
	26	44 Spanish
	26	45 Spanish

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Ward	Precinct	Language
26	46	Spanish
26	47	Spanish
26	48	Spanish
26	49	Spanish
27	1	Spanish
27	3	Spanish
27	5	Spanish
27	7	Spanish
27	13	Spanish
27	19	Spanish
27	22	Spanish
27	24	Spanish
27	27	Spanish
27	28	Spanish
27	29	Spanish
27	33	Spanish
27	36	Spanish
27	40	Spanish
27	43	Spanish
27	48	Spanish
28	11	Spanish
28	19	Spanish
28	23	Spanish
28	34	Spanish
28	38	Spanish
29	1	Spanish
29	3	Spanish
29	6	Spanish
29	7	Spanish
29	9	Spanish
29	10	Spanish
29	15	Spanish
29	22	Spanish
29	23	Spanish
29	29	Spanish
29	30	Spanish
29	31	Spanish
29	32	Spanish
29	34	Spanish
29	36	Spanish
29	38	Spanish
29	39	Spanish
29	42	Spanish
29	43	Spanish
30	1	Spanish
30	2	Spanish
30	3	Spanish



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Ward	Precinct	Language
30	4	Spanish
30	5	Spanish
30	6	Spanish
30	7	Spanish
30	8	Spanish
30	9	Spanish
30	10	Spanish
30	11	Spanish
30	12	Spanish
30	13	Spanish
30	14	Spanish
30	15	Spanish
30	16	Spanish
30	17	Spanish
30	18	Spanish
30	19	Spanish
30	20	Spanish
30	21	Spanish
30	22	Spanish
30	23	Spanish
30	24	Spanish
30	25	Spanish
30	26	Spanish
30	27	Spanish
30	28	Spanish
30	29	Spanish
30	30	Spanish
30	31	Spanish
30	32	Spanish
31	1	Spanish
31	2	Spanish
31	3	Spanish
31	4	Spanish
31	5	Spanish
31	6	Spanish
31	7	Spanish
31	8	Spanish
31	9	Spanish
31	10	Spanish
31	11	Spanish
31	12	Spanish
31	13	Spanish
31	14	Spanish
31	15	Spanish
31	16	Spanish
31	17	Spanish
31	18	Spanish

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Ward	Precinct	Language
31	19	Spanish
31	20	Spanish
31	21	Spanish
31	22	Spanish
31	23	Spanish
31	24	Spanish
31	25	Spanish
31	26	Spanish
31	27	Spanish
31	28	Spanish
31	29	Spanish
31	30	Spanish
31	31	Spanish
31	32	Spanish
31	33	Spanish
31	34	Spanish
31	35	Spanish
31	36	Spanish
31	37	Spanish
31	38	Spanish
31	39	Spanish
31	40	Spanish
31	41	Spanish
32	1	Spanish
32	3	Spanish
32	4	Spanish
32	5	Spanish
32	6	Spanish
32	9	Spanish
32	11	Spanish
32	12	Spanish
32	14	Spanish
32	15	Spanish
32	16	Spanish
32	17	Spanish
32	19	Spanish
32	20	Spanish
32	22	Spanish
32	26	Spanish
32	29	Spanish
32	31	Spanish
32	32	Spanish
32	33	Spanish
32	34	Spanish
32	35	Spanish
32	37	Spanish
32	43	Spanish

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Ward	Precinct	Language
33	1	Spanish
33	2	Spanish
33	3	Spanish
33	4	Spanish
33	5	Spanish
33	6	Spanish
33	7	Spanish
33	8	Spanish
33	9	Spanish
33	10	Spanish
33	11	Spanish
33	12	Spanish
33	13	Spanish
33	14	Spanish
33	15	Spanish
33	16	Spanish
33	17	Spanish
33	18	Spanish
33	19	Spanish
33	20	Spanish
33	21	Spanish
33	22	Spanish
33	23	Spanish
33	24	Spanish
33	25	Spanish
33	26	Spanish
33	27	Spanish
33	28	Spanish
35	1	Spanish
35	2	Spanish
35	3	Spanish
35	4	Spanish
35	5	Spanish
35	6	Spanish
35	7	Spanish
35	8	Spanish
35	9	Spanish
35	10	Spanish
35	11	Spanish
35	12	Spanish
35	13	Spanish
35	14	Spanish
35	15	Spanish
35	16	Spanish
35	17	Spanish
35	18	Spanish
35	19	Spanish

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Ward	Precinct	Language
35	20	Spanish
35	21	Spanish
35	22	Spanish
35	23	Spanish
35	24	Spanish
35	25	Spanish
35	26	Spanish
35	27	Spanish
35	28	Spanish
35	29	Spanish
35	30	Spanish
35	31	Spanish
36	1	Spanish
36	2	Spanish
36	3	Spanish
36	4	Spanish
36	5	Spanish
36	6	Spanish
36	8	Spanish
36	9	Spanish
36	10	Spanish
36	11	Spanish
36	12	Spanish
36	13	Spanish
36	14	Spanish
36	15	Spanish
36	16	Spanish
36	17	Spanish
36	18	Spanish
36	19	Spanish
36	20	Spanish
36	21	Spanish
36	22	Spanish
36	23	Spanish
36	24	Spanish
36	25	Spanish
36	26	Spanish
36	27	Spanish
36	28	Spanish
36	29	Spanish
36	30	Spanish
37	2	Spanish
37	3	Spanish
37	4	Spanish
37	6	Spanish
37	7	Spanish
37	8	Spanish

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Ward	Precinct	Language
37	10	Spanish
37	12	Spanish
37	13	Spanish
37	14	Spanish
37	16	Spanish
37	19	Spanish
37	21	Spanish
37	22	Spanish
37	24	Spanish
37	26	Spanish
37	27	Spanish
37	28	Spanish
37	30	Spanish
37	41	Spanish
38	2	Spanish
38	3	Spanish
38	4	Spanish
38	5	Spanish
38	6	Spanish
38	7	Spanish
38	8	Spanish
38	9	Spanish
38	11	Spanish
38	12	Spanish
38	14	Spanish
38	15	Spanish
38	16	Spanish
38	18	Spanish
38	19	Spanish
38	20	Spanish
38	21	Spanish
38	23	Spanish
38	26	Spanish
38	30	Spanish
38	33	Spanish
38	34	Spanish
38	35	Spanish
38	36	Spanish
38	37	Spanish
38	38	Spanish
38	39	Spanish
38	40	Spanish
39	3	Spanish
39	5	Spanish
39	6	Spanish
39	7	Spanish
39	8	Spanish

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

<b>Chicago Precincts with Bilingual Judges</b>		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
39	9	Spanish
39	10	Spanish
39	11	Spanish
39	12	Spanish
39	13	Spanish
39	14	Spanish
39	16	Spanish
39	17	Spanish
39	18	Spanish
39	19	Spanish
39	22	Spanish
39	28	Spanish
39	29	Spanish
39	30	Spanish
39	31	Spanish
39	33	Spanish
39	35	Spanish
40	1	Spanish
40	2	Spanish
40	3	Spanish
40	4	Spanish
40	5	Spanish
40	6	Spanish
40	7	Spanish
40	8	Spanish
40	9	Spanish
40	10	Spanish
40	11	Spanish
40	12	Spanish
40	13	Spanish
40	14	Spanish
40	15	Spanish
40	16	Spanish
40	18	Spanish
40	19	Spanish
40	20	Spanish
40	21	Spanish
40	22	Spanish
40	23	Spanish
40	24	Spanish
40	25	Spanish
40	27	Spanish
40	28	Spanish
40	29	Spanish
40	30	Spanish
40	32	Spanish
40	33	Spanish

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<b>Chicago Precincts with Bilingual Judges</b>		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
40	34	Spanish
40	35	Spanish
40	36	Spanish
40	37	Spanish
40	38	Spanish
40	39	Spanish
41	11	Spanish
41	16	Spanish
41	21	Spanish
41	22	Spanish
41	27	Spanish
41	32	Spanish
41	35	Spanish
45	1	Spanish
45	2	Spanish
45	3	Spanish
45	5	Spanish
45	7	Spanish
45	8	Spanish
45	9	Spanish
45	10	Spanish
45	11	Spanish
45	12	Spanish
45	13	Spanish
45	14	Spanish
45	15	Spanish
45	16	Spanish
45	17	Spanish
45	30	Spanish
45	33	Spanish
45	34	Spanish
45	35	Spanish
45	36	Spanish
45	37	Spanish
45	38	Spanish
46	1	Spanish
46	4	Spanish
46	5	Spanish
46	6	Spanish
46	8	Spanish
46	9	Spanish
46	10	Spanish
46	11	Spanish
46	14	Spanish
46	20	Spanish
46	21	Spanish
46	22	Spanish

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

<b>Chicago Precincts with Bilingual Judges</b>		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
46	23	Spanish
46	26	Spanish
46	27	Spanish
46	29	Spanish
46	32	Spanish
46	34	Spanish
46	35	Spanish
46	38	Spanish
47	3	Spanish
47	5	Spanish
47	8	Spanish
47	9	Spanish
47	10	Spanish
47	12	Spanish
47	13	Spanish
47	14	Spanish
47	15	Spanish
47	17	Spanish
47	18	Spanish
47	19	Spanish
47	20	Spanish
47	22	Spanish
47	23	Spanish
47	24	Spanish
47	25	Spanish
47	26	Spanish
47	28	Spanish
47	30	Spanish
47	31	Spanish
47	32	Spanish
47	34	Spanish
47	35	Spanish
47	36	Spanish
47	38	Spanish
47	39	Spanish
47	40	Spanish
47	41	Spanish
47	42	Spanish
47	45	Spanish
47	46	Spanish
47	48	Spanish
48	1	Spanish
48	20	Spanish
48	25	Spanish
48	30	Spanish
48	31	Spanish
48	32	Spanish



Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

<b>Chicago Precincts with Bilingual Judges</b>		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
48	34	Spanish
48	37	Spanish
48	38	Spanish
48	40	Spanish
48	42	Spanish
48	44	Spanish
48	45	Spanish
49	1	Spanish
49	2	Spanish
49	3	Spanish
49	4	Spanish
49	5	Spanish
49	6	Spanish
49	10	Spanish
49	11	Spanish
49	13	Spanish
49	14	Spanish
49	15	Spanish
49	16	Spanish
49	18	Spanish
49	19	Spanish
49	20	Spanish
49	22	Spanish
49	23	Spanish
49	24	Spanish
49	28	Spanish
49	30	Spanish
49	32	Spanish
49	33	Spanish
50	6	Spanish
50	10	Spanish
50	13	Spanish
50	15	Spanish
50	17	Spanish
50	19	Spanish
50	20	Spanish
50	21	Spanish
50	22	Spanish
50	23	Spanish
50	26	Spanish
50	28	Spanish
50	29	Spanish
50	30	Spanish
50	31	Spanish
50	32	Spanish
50	34	Spanish
50	36	Spanish

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the  
Appendix B.S. Cortazar  
Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

Chicago Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where the Chicago Board of Election Commissioners will station bilingual judges.		
Ward	Precinct	Language
50		39 Spanish
50		40 Spanish

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Cook County Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.		
The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.		
		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
8300008	Chinese	70-Barrington
8300009	Chinese	71-Bloom
8300023	Chinese	72-Bremen
8300028	Chinese	73-Calumet
8300037	Chinese	74-Elk Grove
8300045	Chinese	75-Evanston
7400017	Hindi	76-Hanover
7400018	Hindi	77-Lemont
7600019	Hindi	78-Leyden
8000015	Hindi	79-Lyons
8000033	Hindi	80-Maine
8000040	Hindi	81-New Trier
8000057	Hindi	82-Niles
8000070	Hindi	83-Northfield
8000071	Hindi	84-Norwood Park
8000090	Hindi	85-Oak Park
8200003	Hindi	86-Orland
8200007	Hindi	87-Palatine
8200030	Hindi	88-Palos
8200032	Hindi	89-Proviso
8200038	Hindi	90-Rich
8200046	Hindi	91-River Forest
8200050	Hindi	92-Riverside
8200052	Hindi	93-Schaumburg
8200060	Hindi	94-Stickney
8200062	Hindi	95-Thornton
9300018	Hindi	96-Wheeling
9300027	Hindi	97-Worth
9300031	Hindi	98-Cicero
9300035	Hindi	99-Berwyn
9300043	Hindi	
9300044	Hindi	
9300045	Hindi	
7400004	Hindi/ Spanish	
7400015	Hindi/ Spanish	

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Cook County Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.		
The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.		
		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
7400024	Hindi/ Spanish	
7400031	Hindi/ Spanish	
7400036	Hindi/ Spanish	
7400038	Hindi/ Spanish	
7400049	Hindi/ Spanish	
7600024	Hindi/ Spanish	
8000001	Hindi/ Spanish	
8000002	Hindi/ Spanish	
8000005	Hindi/ Spanish	
8000008	Hindi/ Spanish	
8000023	Hindi/ Spanish	
8000028	Hindi/ Spanish	
8000045	Hindi/ Spanish	
8000051	Hindi/ Spanish	
8000056	Hindi/ Spanish	
8000066	Hindi/ Spanish	
8000073	Hindi/ Spanish	
8000078	Hindi/ Spanish	
8000081	Hindi/ Spanish	
8000084	Hindi/ Spanish	
8000089	Hindi/ Spanish	
8000092	Hindi/ Spanish	
9300001	Hindi/ Spanish	
9300004	Hindi/ Spanish	
9300005	Hindi/ Spanish	
9300006	Hindi/ Spanish	
9300007	Hindi/ Spanish	
9300008	Hindi/ Spanish	
9300009	Hindi/ Spanish	
9300012	Hindi/ Spanish	
9300015	Hindi/ Spanish	
9300022	Hindi/ Spanish	
9300029	Hindi/ Spanish	
9300030	Hindi/ Spanish	
9300034	Hindi/ Spanish	
9300038	Hindi/ Spanish	
9300039	Hindi/ Spanish	
9300042	Hindi/ Spanish	
9300049	Hindi/ Spanish	
9300051	Hindi/ Spanish	

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<b>Cook County Precincts with Bilingual Judges</b>		
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		<u>The locations of all polling places in Cook County is searchable here.</u>
Precinct	Language	
9300058	Hindi/ Spanish	
9300060	Hindi/ Spanish	
9300068	Hindi/ Spanish	
9300071	Hindi/ Spanish	
9300077	Hindi/ Spanish	
9300078	Hindi/ Spanish	
7100001	Spanish	
7100004	Spanish	
7100009	Spanish	
7100012	Spanish	
7100025	Spanish	
7100028	Spanish	
7100031	Spanish	
7100035	Spanish	
7100042	Spanish	
7100046	Spanish	
7100050	Spanish	
7100051	Spanish	
7100054	Spanish	
7100056	Spanish	
7100057	Spanish	
7100059	Spanish	
7100061	Spanish	
7200006	Spanish	
7200009	Spanish	
7200012	Spanish	
7200014	Spanish	
7200015	Spanish	
7200021	Spanish	
7200034	Spanish	
7200041	Spanish	
7200043	Spanish	
7200044	Spanish	
7200045	Spanish	
7200052	Spanish	
7200055	Spanish	
7200073	Spanish	
7300001	Spanish	
7300002	Spanish	
7300003	Spanish	

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<b>Cook County Precincts with Bilingual Judges</b>		
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The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.		
		<u>The locations of all polling places in Cook County is searchable here.</u>
Precinct	Language	
7300006	Spanish	
7300007	Spanish	
7300008	Spanish	
7400006	Spanish	
7400008	Spanish	
7400021	Spanish	
7400022	Spanish	
7400026	Spanish	
7400028	Spanish	
7400032	Spanish	
7400035	Spanish	
7400039	Spanish	
7400041	Spanish	
7400042	Spanish	
7400044	Spanish	
7400048	Spanish	
7400050	Spanish	
7400052	Spanish	
7502002	Spanish	
7502003	Spanish	
7502004	Spanish	
7504004	Spanish	
7504005	Spanish	
7505001	Spanish	
7505003	Spanish	
7505004	Spanish	
7508002	Spanish	
7508003	Spanish	
7508004	Spanish	
7508005	Spanish	
7600002	Spanish	
7600003	Spanish	
7600004	Spanish	
7600005	Spanish	
7600006	Spanish	
7600007	Spanish	
7600008	Spanish	
7600010	Spanish	
7600011	Spanish	
7600012	Spanish	

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Cook County Precincts with Bilingual Judges		
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The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.		
		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
7600013	Spanish	
7600014	Spanish	
7600015	Spanish	
7600017	Spanish	
7600018	Spanish	
7600020	Spanish	
7600021	Spanish	
7600022	Spanish	
7600023	Spanish	
7600025	Spanish	
7600027	Spanish	
7600029	Spanish	
7600030	Spanish	
7600032	Spanish	
7600033	Spanish	
7600034	Spanish	
7600035	Spanish	
7600037	Spanish	
7600040	Spanish	
7600041	Spanish	
7600044	Spanish	
7800001	Spanish	
7800002	Spanish	
7800004	Spanish	
7800005	Spanish	
7800006	Spanish	
7800007	Spanish	
7800008	Spanish	
7800009	Spanish	
7800010	Spanish	
7800013	Spanish	
7800014	Spanish	
7800015	Spanish	
7800016	Spanish	
7800017	Spanish	
7800018	Spanish	
7800020	Spanish	
7800021	Spanish	
7800024	Spanish	
7800025	Spanish	

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Cook County Precincts with Bilingual Judges		
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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
7800027	Spanish	
7800028	Spanish	
7800029	Spanish	
7800030	Spanish	
7800031	Spanish	
7800032	Spanish	
7800033	Spanish	
7800035	Spanish	
7800036	Spanish	
7800040	Spanish	
7800041	Spanish	
7800043	Spanish	
7800044	Spanish	
7800045	Spanish	
7800046	Spanish	
7800047	Spanish	
7800048	Spanish	
7900001	Spanish	
7900003	Spanish	
7900010	Spanish	
7900019	Spanish	
7900022	Spanish	
7900025	Spanish	
7900030	Spanish	
7900037	Spanish	
7900047	Spanish	
7900049	Spanish	
7900053	Spanish	
7900056	Spanish	
7900057	Spanish	
7900059	Spanish	
7900060	Spanish	
7900064	Spanish	
7900066	Spanish	
7900076	Spanish	
8000006	Spanish	
8000009	Spanish	
8000018	Spanish	
8000034	Spanish	
8000041	Spanish	



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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
8000047	Spanish	
8000048	Spanish	
8000049	Spanish	
8000053	Spanish	
8000061	Spanish	
8000079	Spanish	
8000086	Spanish	
8200017	Spanish	
8200024	Spanish	
8200055	Spanish	
8300001	Spanish	
8300004	Spanish	
8300042	Spanish	
8300052	Spanish	
8300056	Spanish	
8600001	Spanish	
8600007	Spanish	
8600009	Spanish	
8600031	Spanish	
8600038	Spanish	
8600064	Spanish	
8700001	Spanish	
8700002	Spanish	
8700004	Spanish	
8700006	Spanish	
8700014	Spanish	
8700016	Spanish	
8700032	Spanish	
8700035	Spanish	
8700042	Spanish	
8700056	Spanish	
8700057	Spanish	
8700058	Spanish	
8700060	Spanish	
8700064	Spanish	
8700066	Spanish	
8700069	Spanish	
8900001	Spanish	
8900002	Spanish	
8900003	Spanish	

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Cook County Precincts with Bilingual Judges		
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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
8900007	Spanish	
8900009	Spanish	
8900010	Spanish	
8900011	Spanish	
8900012	Spanish	
8900013	Spanish	
8900014	Spanish	
8900015	Spanish	
8900016	Spanish	
8900017	Spanish	
8900018	Spanish	
8900019	Spanish	
8900020	Spanish	
8900022	Spanish	
8900030	Spanish	
8900031	Spanish	
8900039	Spanish	
8900041	Spanish	
8900045	Spanish	
8900047	Spanish	
8900048	Spanish	
8900049	Spanish	
8900050	Spanish	
8900051	Spanish	
8900052	Spanish	
8900053	Spanish	
8900057	Spanish	
8900059	Spanish	
8900060	Spanish	
8900064	Spanish	
8900069	Spanish	
8900071	Spanish	
8900078	Spanish	
8900080	Spanish	
8900082	Spanish	
8900083	Spanish	
8900085	Spanish	
8900087	Spanish	
8900088	Spanish	
8900091	Spanish	

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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
8900092	Spanish	
8900094	Spanish	
8900095	Spanish	
8900098	Spanish	
8900099	Spanish	
8900100	Spanish	
8900101	Spanish	
9200001	Spanish	
9200002	Spanish	
9200003	Spanish	
9200004	Spanish	
9200005	Spanish	
9200006	Spanish	
9200007	Spanish	
9200012	Spanish	
9200013	Spanish	
9300002	Spanish	
9300003	Spanish	
9300013	Spanish	
9300014	Spanish	
9300020	Spanish	
9300023	Spanish	
9300024	Spanish	
9300028	Spanish	
9300032	Spanish	
9300036	Spanish	
9300040	Spanish	
9300041	Spanish	
9300046	Spanish	
9300050	Spanish	
9300053	Spanish	
9300061	Spanish	
9300063	Spanish	
9300065	Spanish	
9300072	Spanish	
9400001	Spanish	
9400002	Spanish	
9400003	Spanish	
9400004	Spanish	
9400005	Spanish	

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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
9400006	Spanish	
9400007	Spanish	
9400009	Spanish	
9400010	Spanish	
9400011	Spanish	
9400012	Spanish	
9400014	Spanish	
9400015	Spanish	
9400016	Spanish	
9400017	Spanish	
9400019	Spanish	
9400020	Spanish	
9500001	Spanish	
9500002	Spanish	
9500003	Spanish	
9500004	Spanish	
9500005	Spanish	
9500010	Spanish	
9500011	Spanish	
9500012	Spanish	
9500014	Spanish	
9500030	Spanish	
9500031	Spanish	
9500032	Spanish	
9500039	Spanish	
9500041	Spanish	
9500042	Spanish	
9500048	Spanish	
9500049	Spanish	
9500050	Spanish	
9500053	Spanish	
9500062	Spanish	
9500068	Spanish	
9500078	Spanish	
9500085	Spanish	
9500094	Spanish	
9500097	Spanish	
9500099	Spanish	
9500112	Spanish	
9500114	Spanish	

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		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
9500116	Spanish	
9500123	Spanish	
9600001	Spanish	
9600004	Spanish	
9600005	Spanish	
9600009	Spanish	
9600016	Spanish	
9600022	Spanish	
9600029	Spanish	
9600031	Spanish	
9600033	Spanish	
9600037	Spanish	
9600047	Spanish	
9600048	Spanish	
9600049	Spanish	
9600050	Spanish	
9600056	Spanish	
9600064	Spanish	
9600065	Spanish	
9600067	Spanish	
9600069	Spanish	
9600074	Spanish	
9600076	Spanish	
9600077	Spanish	
9600080	Spanish	
9600084	Spanish	
9600088	Spanish	
9600089	Spanish	
9700014	Spanish	
9700017	Spanish	
9700019	Spanish	
9700020	Spanish	
9700024	Spanish	
9700036	Spanish	
9700040	Spanish	
9700043	Spanish	
9700048	Spanish	
9700068	Spanish	
9700096	Spanish	
9800001	Spanish	

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Precinct	Language	
9800002	Spanish	
9800003	Spanish	
9800004	Spanish	
9800005	Spanish	
9800006	Spanish	
9800007	Spanish	
9800008	Spanish	
9800009	Spanish	
9800010	Spanish	
9800011	Spanish	
9800012	Spanish	
9800013	Spanish	
9800014	Spanish	
9800015	Spanish	
9800016	Spanish	
9800017	Spanish	
9800018	Spanish	
9800019	Spanish	
9800020	Spanish	
9800021	Spanish	
9800022	Spanish	
9800023	Spanish	
9800024	Spanish	
9800025	Spanish	
9800026	Spanish	
9800027	Spanish	
9800028	Spanish	
9800029	Spanish	
9800030	Spanish	
9800031	Spanish	
9800032	Spanish	
9901002	Spanish	
9901003	Spanish	
9902001	Spanish	
9902002	Spanish	
9902003	Spanish	
9902004	Spanish	
9903001	Spanish	
9903002	Spanish	
9903003	Spanish	

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

Cook County Precincts with Bilingual Judges		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Cook County will station bilingual judges.		
The first two numbers in the precinct codes below correspond to the township, and the remaining numbers correspond to the precinct. The pink boxes on the right provide the numeric code for each township.		<a href="#">The locations of all polling places in Cook County is searchable here.</a>
Precinct	Language	
9903004	Spanish	
9904001	Spanish	
9904002	Spanish	
9904003	Spanish	
9904004	Spanish	
9905001	Spanish	
9905002	Spanish	
9905003	Spanish	
9906001	Spanish	
9906002	Spanish	
9906003	Spanish	
9906004	Spanish	
9907001	Spanish	
9907002	Spanish	
9907003	Spanish	
9907004	Spanish	
9908001	Spanish	
9908002	Spanish	
9908003	Spanish	

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DuPage County Polling Places with Bilingual Election Judges					DuPage County only provides language assistance in Spanish
Poll Name	Address	City	Total Judges	Bilingual Judges	
Addison Links & Tees Golf Facility	950 W Lake St	Addison	8	2	
Lutheran Church of the Master	580 Kuhn Rd	Carol Stream	6	2	
St John Lutheran Church	7214 Cass Ave	Darien	9	2	
Marquette Manor Baptist Church	333 75th St	Downers Grove	7	2	
Historic Log Cabin	1600 S Main St	Lombard	6	2	
The Oak Brook Club	1 Oak Brook Club Dr	Oak Brook	4	2	
Oak Brook Golf Club	2606 York Rd	Oak Brook	6	3	
Wegner School	1180 Marcella Ln	West Chicago	7	3	
Leman Middle School	238 E Hazel St	West Chicago	9	2	
Westmont Community Center	75 E Richmond St	Westmont	7	2	
Hinsdale Lake Terrace Apartments	16w610 Honeysuckle Rose Ln	Willowbrook	7	2	



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<b>Kane County Precincts with Bilingual Judges</b>		
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Kane County will station bilingual judges.		Kane County is only required to provide language assistance in Spanish.
Township	Precinct	
Aurora	2	
Blackberry	2	
Elgin	2	
Geneva	2	
St. Charles	2	
Sugar Grove	2	
Aurora	3	
Blackberry	3	
Elgin	3	
Aurora	4	
Dundee	4	
Elgin	4	
Aurora	5	
Dundee	5	
Elgin	5	
St. Charles	5	
Aurora	6	
Dundee	6	
Elgin	6	
Dundee	7	
Elgin	7	
Dundee	8	
Elgin	8	
Aurora	9	
Dundee	9	
Elgin	9	
St. Charles	9	
Dundee	10	
Elgin	10	
Aurora	11	
Dundee	11	
Elgin	11	
Aurora	12	
Dundee	12	
Dundee	13	
Elgin	13	
Dundee	14	
Elgin	14	
Dundee	15	

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

Kane County Precincts with Bilingual Judges	
Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the precincts where Kane County will station bilingual judges.	
Kane County is only required to provide language assistance in Spanish.	
Township	Precinct
Elgin	15
Elgin	17
Dundee	18
Elgin	18
Dundee	19
Elgin	19
Dundee	20
Elgin	20
Dundee	21
Elgin	21
Dundee	22
Elgin	22
St. Charles	22
Elgin	23
Dundee	24
Elgin	24
St. Charles	24
Elgin	25
Dundee	26
Elgin	26
Dundee	27
Elgin	27
St. Charles	27
Dundee	28
Elgin	28
Elgin	29
Dundee	30
Dundee	31
Elgin	32
St. Charles	32
Elgin	33
St. Charles	33
Dundee	34
Elgin	34
Dundee	35
Elgin	35
Elgin	37
Elgin	39
Elgin	40
Elgin	42
Elgin	47
Elgin	52
Elgin	58
Elgin	59

Appendix to testimony of Ryan Cortazar, legal fellow for the Chicago Lawyers' Committee for Civil Rights before the Illinois State Advisory Commission to the U.S. Commission on Civil Rights.

<b>Lake County Polling Places with Bilingual Election Judges</b> Under Section 203 of the Voting Rights Act, certain jurisdictions must provide bilingual written materials and bilingual judges. The information below details the polling places where Lake County will station bilingual judges.	
<b>Polling Place</b>	Lake County is only required to provide language assistance in Spanish.
Beach Haven Tower - RLB	
RLB Cultural Civic Center - RLB	
Calvary Presbyterian Church - Round Lake	
Round Lake Park Village Hall - RLP	
North Point Christian Church - Winthrop Harbor	
Kenneth Murphy Elem School - Beach Park	
The Chapel - Grayslake	
Fremont Public Library - Mundelein	
Community Protestant Church - Mundelein	
Highwood Rec Center - Highwood	
Foss Park Dist. Community Center - North Chicago	
Bonnie Brook Golf Club - Waukegan	
John S. Clark Elem School - Waukegan	
Oakdale Elem School - Waukegan	
St. John's United Church of Christ - Waukegan	
Grace Life Christian Church - Waukegan	
Jane Adams Center	
Living Faith United Methodist Church - Waukegan	
Robert Abbott Middle School - Waukegan	
Park Place - Waukegan	
Lyon Magnet Schhl - Waukegan	
Jesus Name Apostolic church - Waukegan	
Zion Park Dist Leisure Center - Zion	

# THE COST (SAVINGS) OF REFORM:

An Analysis of Local  
Registration-Related Costs  
and Potential Savings Through  
Automatic Voter Registration

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DOUG CHAPIN AND DAVID KUENNEN

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## INTRODUCTION

Few election policy issues have captured more recent attention at the state and local level than voter registration. Across the nation, legislatures and local election offices are transitioning to a greater use of technology to assist voters with creating and updating their registration records – whether via portals for online voter registration (OVR) or programs, known as automatic or automated voter registration (AVR), whereby eligible voters are added to the rolls based on motor vehicle or other government data. The trend follows a strong endorsement for registration reform by the Presidential Commission on Election Administration – and in several states has emerged as a bipartisan compromise aimed at both expanding voter rolls and making them more reliable and secure.

Typically, however, these issues are framed in the context of whether they will increase participation and/or create issues regarding the integrity of the voter rolls. Often lost in the discussion is any recognition of the fiscal impacts of registration reform; namely, the degree to which moving away from a predominantly paper-based registration system could result in reduced costs for state and local election offices.

To that end, we constructed and fielded a simple survey, intended to assess what the current landscape looks like for local election offices regarding costs for voter registration. The results suggest that while costs vary from jurisdiction to jurisdiction, the data is consistent with arguments that, in addition to other benefits like making elections more secure, moving away from paper-based registration is a reform that can save states and municipalities resources.

## METHODOLOGY

After reviewing previous studies of voter registration and consulting with election officials across the nation, we built a simple survey using Google Forms with the following questions related to paper-based voter registration costs in 2016:

- How many registrations did you process in 2016?
- What were your costs for (full-time) staff related to data entry of paper registration forms?
- What were your costs for staff time, postage and paper needed to follow up on missing information or errors on registration forms?
- What were your costs for paper registration forms (layout, printing, etc.)?
- What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?
- What were your costs related to issuing, counting and notifying voters about provisional ballots necessitated by registration issues?
- What were your costs for duplicate mailings related to duplicate registration entries?
- What were your postage costs associated with forwarding registration forms to the proper recipient (Secretary of State, neighboring jurisdiction, etc.)?

The survey was sent to 420 recipients representing localities in 49 states and the District of Columbia.<sup>1</sup> Using Election Assistance Commission data from the Election Administration and Voting Survey, the pool was chosen from jurisdictions with the largest, median and smallest number of registered voters in each state ("largest 3", "median 3," smallest 3") and was compared to data on demographics and other characteristics (e.g. minority-language designation under Section 203 of the Voting Rights Act and Census data on race and ethnicity) to ensure that it was a generally representative list of jurisdictions.<sup>2</sup>

Targeted jurisdictions received the initial survey invitation, along with three follow-up emails seeking and encouraging their responses. To encourage responses from a larger number of states, some jurisdictions received follow-up phone calls as well. Ultimately, we received 66 responses from 34 states broken down as follows:

- 25 from "largest 3" jurisdictions
- 19 from "median 3" jurisdictions
- 22 from "smallest 3" or "smallest with at least 1k or 2k" jurisdictions

Many jurisdictions simply did not respond to the survey, and three declined to participate.

Detailed analysis of these responses is provided below.

<sup>1</sup> North Dakota was excluded as it does not maintain voter registration rolls.

<sup>2</sup> In 16 states with very small jurisdictions (i.e. where the smallest jurisdictions had less than 1,000 registered voters), we sent surveys to additional jurisdictions with at least 1,000 and 2,000 registered voters. The very smallest jurisdictions (i.e. those with less than 500 registered voters) in those states were excluded altogether.

## A NOTE ON COVERAGE AND COMPREHENSIVENESS

A constant challenge in any effort to survey the field for election costs is the lack of any common "chart of accounts" that makes comparisons difficult. Consequently, many of the respondents informed us either that they did not track registration costs at all or that there was no way to break out the categories included in the survey response.

In addition, the wide variation in data policies across the nation made obtaining data difficult in some jurisdictions.

A few localities treated our survey as a request for public records requiring a formal application and/or a fee.<sup>3</sup> Any such request was treated as "declined to respond."

For that reason, one cannot treat the following figures as a reliable estimate of costs in all jurisdictions but rather as a snapshot of certain jurisdictions that can provide background for discussions about the costs and benefits of registration reforms.

## SUMMARY OF COSTS - OVERALL

OVERALL	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	2	564,232	564,230	8,492	65,321.3	109,755.0
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$857,524.41	\$857,524.41	\$26,995.75	\$113,445.64	\$196,615.79
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$31.3391</b>	<b>\$31.3391</b>	<b>\$1.9103</b>	<b>\$3.5378</b>	<b>\$5.7436</b>
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$0.00	\$93,000.00	\$93,000.00	\$1,000.00	\$10,076.84	\$22,475.08
<b>Per unit cost</b>	<b>\$0.00</b>	<b>\$5.00</b>	<b>\$5.00</b>	<b>\$0.06</b>	<b>\$0.51</b>	<b>\$1.09</b>
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$55,500.00	\$55,500.00	\$0.00	\$1,432.11	\$8,043.70
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$1.1100</b>	<b>\$1.1100</b>	<b>\$0.0000</b>	<b>\$0.0604</b>	<b>\$0.1922</b>
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$263,000.00	\$263,000.00	\$2,000.00	\$33,514.62	\$60,345.00
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$8.0000</b>	<b>\$8.0000</b>	<b>\$0.0763</b>	<b>\$0.6709</b>	<b>\$1.4282</b>
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$450,137.00	\$450,137.00	\$0.00	\$12,740.55	\$71,953.83
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$20,520.00	\$20,520.00	\$0.00	\$1,182.71	\$4,052.94
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$88,916.00	\$88,916.00	\$20.00	\$3,113.84	\$14,783.69

<sup>3</sup> One jurisdiction even estimated that the request would take 8 hours to fulfill at a total cost of over \$100.

## "LARGEST 3" JURISDICTIONS IN EACH STATE

"LARGEST 3" JURISDICTIONS (25)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	6,063	564,232	558,169	95,412	150,287.0	131,146.1
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$857,524.41	\$857,524.41	\$140,000.00	\$229,783.26	\$252,826.32
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$9.2374</b>	<b>\$9.2374</b>	<b>\$0.7696</b>	<b>\$2.3577</b>	<b>\$2.8086</b>
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$296.00	\$93,000.00	\$92,704.00	\$10,000.00	\$26,893.91	\$32,084.30
<b>Per unit cost</b>	<b>\$0.0065</b>	<b>\$1.2690</b>	<b>\$1.2624</b>	<b>\$0.0736</b>	<b>\$0.3193</b>	<b>\$0.4309</b>
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$55,500.00	\$55,500.00	\$0.00	\$3,777.03	\$13,426.47
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$1.1100</b>	<b>\$1.1100</b>	<b>\$0.0000</b>	<b>\$0.0760</b>	<b>\$0.2765</b>
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$263,000.00	\$263,000.00	\$63,000.00	\$82,259.85	\$75,611.43
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$4.6667</b>	<b>\$4.6667</b>	<b>\$0.4899</b>	<b>\$0.7758</b>	<b>\$1.0425</b>
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$450,137.00	\$450,137.00	\$359.00	\$27,173.41	\$105,649.33
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$20,520.00	\$20,520.00	\$0.00	\$3,073.10	\$6,412.28
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$88,916.00	\$88,916.00	\$800.00	\$7,370.15	\$22,650.66



## "MEDIAN 3" JURISDICTIONS IN EACH STATE

"MEDIAN 3" JURISDICTIONS (19)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	2	41,876	41,874	5,018	10,678.4	14,252.2
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$57,742.00	\$57,742.00	\$15,958.00	\$23,153.80	\$22,230.76
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$31.3391</b>	<b>\$31.3391</b>	<b>\$1.5943</b>	<b>\$5.1325</b>	<b>\$9.2353</b>
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$0.00	\$5,000.00	\$5,000.00	\$95.47	\$1,303.11	\$1,778.49
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$0.4710</b>	<b>\$0.4710</b>	<b>\$0.0394</b>	<b>\$0.1049</b>	<b>\$0.1492</b>
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$3,500.00	\$3,500.00	\$0.00	\$278.07	\$899.31
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$0.2157</b>	<b>\$0.2157</b>	<b>\$0.0000</b>	<b>\$0.0261</b>	<b>\$0.0610</b>
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$85,000.00	\$85,000.00	\$0.00	\$9,218.89	\$21,682.81
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$4.0236</b>	<b>\$4.0236</b>	<b>\$0.0000</b>	<b>\$0.6992</b>	<b>\$1.1957</b>
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$5,000.00	\$5,000.00	\$0.00	\$687.50	\$1,751.28
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$500.00	\$500.00	\$0.00	\$102.86	\$189.89
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdiction etc.)?	\$0.00	\$1,000.00	\$1,000.00	\$25.00	\$152.22	\$321.97

### "SMALLEST 3" JURISDICTIONS IN EACH STATE<sup>4</sup>

"SMALLEST 3" JURISDICTIONS (22)	Minimum	Maximum	Range	Median	Mean	Standard Deviation
How many registrations did you process in 2016?	10	15,604	15,594	307	2,415.3	4,159.9
What were your costs for (full-time) staff related to data entry of paper registration forms?	\$0.00	\$120,000.00	\$120,000.00	\$300.00	\$19,463.88	\$42,278.29
<b>Per unit cost</b>	<b>\$0.2545</b>	<b>\$7.6903</b>	<b>\$7.4359</b>	<b>\$3.3113</b>	<b>\$3.5606</b>	<b>\$2.6913</b>
What were your costs for staff time postage and paper needed to follow up on missing information or errors on registration forms?	\$10.00	\$1,000.00	\$990.00	\$200.00	\$246.10	\$298.70
<b>Per unit cost</b>	<b>\$0.0192</b>	<b>\$5.0000</b>	<b>\$4.9808</b>	<b>\$0.5263</b>	<b>\$1.2540</b>	<b>\$1.8130</b>
What were your costs for paper registration forms (layout printing etc.)?	\$0.00	\$250.00	\$250.00	\$0.00	\$22.56	\$65.55
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$0.5263</b>	<b>\$0.5263</b>	<b>\$0.0000</b>	<b>\$0.0809</b>	<b>\$0.1738</b>
What were your costs for temporary workers and overtime pay for additional voter registration data entry and other duties close to Election Day?	\$0.00	\$4,900.00	\$4,900.00	\$0.00	\$472.06	\$1,262.13
<b>Per unit cost</b>	<b>\$0.0000</b>	<b>\$8.0000</b>	<b>\$8.0000</b>	<b>\$0.0000</b>	<b>\$0.5196</b>	<b>\$1.9963</b>
What were your costs related to issuing counting and notifying voters about provisional ballots necessitated by registration issues?	\$0.00	\$1,800.00	\$1,800.00	\$0.00	\$173.84	\$496.98
What were your costs for duplicate mailings related to duplicate registration entries?	\$0.00	\$199.00	\$199.00	\$10.00	\$48.23	\$69.99
What were your postage costs associated with forwarding registration forms to proper recipient (Secretary of State neighboring jurisdictions etc.)?	\$0.00	\$100.00	\$100.00	\$0.00	\$14.67	\$29.61

<sup>4</sup> This includes target Smallest 3 and Smallest 3 with at least 1k or 2k voter jurisdictions.

## TAKEAWAYS FROM THE DATA

Based on this data, it is possible to draw some general conclusions:

1. **The biggest potential cost saving involved in a move away from paper-based registration is the savings in staff time necessary to handle such registrations.**

This makes sense given how labor-intensive reading, keying and processing these registrations can be – but it is worth noting that some jurisdictions report most if not all of their costs under labor because they don't break out other costs separately. Whatever the reason, however, the results here suggest localities can save an

average of about \$3.54 in labor costs per registration by moving away from paper to another registration method. This carries forward to those localities reporting costs for temporary staff to process registrations close to Election Day; the data suggests that the jurisdictions spent about \$0.67 on average per registration to cover such costs.

2. **Some cost savings may not amount to much because localities are only incurring a little cost (or none at all) in some categories under the current system.**

A good example of this is the costs associated with printing and layout of registration forms; most respondents reported little or no associated costs because those forms are provided to them for free by the

state. Thus, while there may be some state-level savings resulting from reducing or eliminating such forms, those savings do not seem to flow to the local level.

3. **Because of smaller volume, median-sized and smaller jurisdictions are seeing higher per-piece costs and thus might benefit disproportionately from a reduction in such costs.**

One clear trend in the data is that smaller jurisdictions are seeing higher per-registration costs, which usually results from reported costs being divided across a small number of registrations. For example, median-sized jurisdictions reported costs of over \$5.00 and smaller jurisdictions reported a cost of over \$3.50 per registration (compared

to about \$2.25 apiece in larger jurisdictions). As a result, while the total cost savings associated with moving away from paper-based registration might be lower in these median-sized and smaller jurisdictions, the relative “bite” of such spending is likely to be disproportionately higher.

4. **Even modest per-piece costs add up given the number of registrations involved.**

If you total all the costs reported by the 66 respondents to this survey, you get over \$6.58 million – suggesting that there are significant cost savings to be realized by moving away from traditional paper-based registration

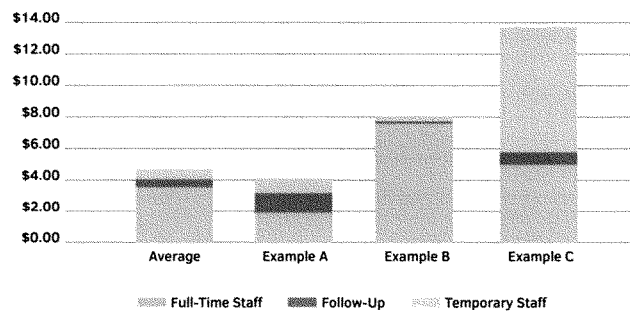
in more than 3,000 localities nationwide. Some of these savings are as small as pennies (or fractions thereof) per piece – but given the registration volume involved these numbers can add up quickly.

### COSTS PER REGISTRANT FOR PROCESSING REGISTRATION FORMS

The most promising area for realizing cost savings by transitioning away from paper-based voter registration appears to be in reducing the staff time needed to process the paper forms. Our survey collected data on how much election offices spent per registrant on full-time and temporary staff to process forms, as well as following up on forms with missing information or errors. The table and chart below show how much surveyed jurisdictions reported spending per registrant in 2016 on average in these areas and provides three anonymized jurisdictions as examples to show how these costs can affect different jurisdictions.<sup>5</sup> Registrations processed online or automatically by the DMV or other government agency should be expected to reduce the number of paper-based registration forms processed and introduce savings to local election offices on a per registrant basis.

	Full-Time Staff	Follow-Up	Temporary Staff	Total
<b>Average</b>	<b>\$3.54</b>	<b>\$0.51</b>	<b>\$0.67</b>	<b>\$4.72</b>
Example Jurisdiction A (~500k registered voters; ~75k registrations processed in 2016; urban; South)	\$1.91	\$1.27	\$0.89	\$4.07
Example Jurisdiction B (~70k registered voters; ~15k registrations processed in 2016; sub-urban/rural; Northeast)	\$7.69	\$0.02	\$0.31	\$8.02
Example Jurisdiction C (~2k registered voters; ~250 registrations processed in 2016; rural; Midwest)	\$5.00	\$0.80	\$8.00	\$13.80

### COSTS PER REGISTRANT FOR PROCESSING REGISTRATION FORMS



<sup>5</sup> The data provided represents real jurisdictions' responses to our survey. The jurisdictions' names and other identifying information have been excluded, as we told respondents that their data would not be published to encourage responses.

### COSTS FOR REGISTRATION-RELATED MAILINGS

Many local election offices incur mailing costs related to voter registration that could be reduced by transitioning away from paper-based systems and improved accuracy of the voter rolls. Our survey collected data on how much election offices spent in 2016 on mailings related to duplicate entries in the voter rolls, as well as forwarding registration forms to the proper recipient (e.g. the state election office or neighboring jurisdiction). The table below shows how much surveyed jurisdictions reported spending in 2016 in total in these areas and provides four anonymized jurisdictions as examples to show how these costs can affect different jurisdictions. Registrations processed online or automatically by the DMV or other government agency should be expected to reduce duplicate mailing costs due to improved accuracy and reduce forwarding costs by decreasing the number of paper registrations submitted.

	Duplicate Mailings	Forwarding	Total
<b>Average</b>	<b>\$1,182</b>	<b>\$3,114</b>	<b>\$4,296</b>
Example Jurisdiction D (~800k registered voters; ~95k registrations processed in 2016; urban; Midwest)	\$0	\$5,692	\$5,692
Example Jurisdiction E (~250k registered voters; ~80k registrations processed in 2016; urban/sub-urban; Midwest)	\$4,565	\$6,362	\$10,927
Example Jurisdiction F (~85k registered voters; ~35k registrations processed in 2016; mostly rural; West)	\$200	\$150	\$350
Example Jurisdiction G (~1k registered voters; ~150 registrations processed in 2016; rural; Northeast)	\$130	\$0	\$130

## CONCLUSION

While arriving at a specific cost associated with any election activity – including voter registration – is difficult given wide variation in accounting and data collection across localities, the data here validates the common-sense notion that a move away from paper-based registration could eliminate or reduce registration-related costs all the way down to the local level.

Further research is required to determine the total cost savings of a transition away from paper-based registration towards greater computerization of voter registration, whether through OVR, AVR or other approaches – but the preliminary data here suggests localities should see relief – both per-registration and overall – in the level of financial effort required to manage voter registration.<sup>6</sup>

<sup>6</sup> The authors wish to acknowledge the support for this project from Tova Wang, Director of Research and Policy for the Center for Future and Modern Elections.

## APPENDIX

## GUIDE FOR STATE-BASED ORGANIZATIONS DOING THIS ANALYSIS

## Step-by-step on state-specific cost analyses

1. Determine what research questions you seek to answer
  - a. Total costs?
  - b. Costs by category (e.g. labor, printing, follow-on effects like provisional ballots)?
  - c. Other?
2. Based on #1, decide on "chart of accounts" – what data items do you seek
  - a. Craft queries so separate categories are cumulative and mutually exclusive
  - b. Think about how to address data not collected
    - i. Give guidance on how to break down salary and other overhead costs
    - ii. Alternate: Ask for estimates or percentages spent on various election tasks
3. Obtain contact info for local election officials –
  - a. State election official may have detailed contact info
  - b. If not available at state, excellent resource is US Vote Foundation Election Official Directory
4. Link localities to demographics from census data, Election Administration and Voting Survey (EAVS)
  - a. County- and locality-level data is usually easy to match
    - i. Population data
    - ii. Ethnoracial data
    - iii. Basic election data from EAVS
  - b. Augment data to see if other factors affect cost
    - i. Section 203 minority language coverage (or state equivalent)
    - ii. Pull reports from EAVS to "reality check" reported data
5. Build questionnaire – experience suggests less than 10 questions is optimal
  - a. Keep response time minimal [Online forms are best and preferable to written responses]
  - b. If possible, provide data for them to verify
  - c. Keep requests short and factual
  - d. Open long-form requests are useful if you want unstructured feedback, but should be bonus
6. Field questionnaire – and provide deadline for response
  - a. If you are going to publish responses, say so
  - b. Even if you are not, get contact info for follow up/ensure accountability
7. Determine how to handle responses seeking fees for data
  - a. Some counties view data requests as voter record requests
  - b. Your survey may not be subject to such costs if legal obligation to respond exists
  - c. If available, you may want to consider incentives for response – \$\$\$, recognition, etc.
8. Typical response rate
  - a. 10-15% immediately
  - b. another 15-25% with reminders
  - c. NOTE: response rate will be higher if there are legal obligations or other incentives to reply
9. Be prepared for lack of comparability between localities – not all collect this data and those that do often don't do it the same way
  - a. Issue often isn't "apples to apples" as much as "fruit salad" – this is nationwide issue
  - b. Getting data that's comparable across jurisdictions is difficult
  - c. Think about how to identify common themes/trends even when comparability < 100%
10. Don't outrun the data – unless you have substantial coverage and comparability, be careful about drawing firm conclusions about average costs/savings
  - a. If categories aren't exclusive and cumulative, you can't say  $A+B=C$
  - b. Look at responses to ensure that you have representative data
    - i. Often, larger jurisdictions are overrepresented in data
    - ii. Median/smaller jurisdictions may need more followup
  - c. Conclusions will likely focus more on the data collected vs. what the data represents
  - d. In particular, don't assume data is representative unless you have substantial coverage



**Written Testimony of Common Cause Illinois  
Before the Illinois Advisory Committee  
to the United States Commission on Civil Rights**

*Hearing On  
Civil Rights and Voting in Illinois  
Thursday, March 9, 2017*

**Submitted By:**  
Brian Gladstein, Executive Director  
[bgladstein@commoncause.org](mailto:bgladstein@commoncause.org)

## Appendix B.5: Gladstein

Good afternoon Committee Chair Lineras and Members of the Illinois Advisory Committee to the United States Commission on Civil Rights. My name is Brian Gladstein and I am the Executive Director of Common Cause Illinois (CCIL). On behalf of Common Cause's 27,000 Illinois members and its 700,000 members nationwide, I want to thank the Committee for holding this critical hearing on the status of voting rights in this state, and for allowing us to submit this written testimony. Common Cause is a national nonpartisan advocacy organization founded in 1970 to enable citizens to make their voices heard in the political process. In Illinois and across the country, we are leading the fight to ensure that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles – a principle that we believe to be fundamental to a democracy that aims for and professes representation of all.

**A Democracy in Peril**

As one of the organizations that is out on the front lines, we are sad to report that our democracy is under assault. On the national level, we have seen states move to gut the preclearance protections offered by Section 5 of the National Voting Rights Act, following the United States Supreme Court's shameful decision in *Shelby County, Alabama v. Holder*<sup>1</sup>. From Ohio to Texas to North Carolina, many states and local governments have been implementing abhorrent voting practices that had previously been barred for their racially discriminatory impact. Meanwhile, after *Citizens United*<sup>2</sup>, our political systems have become flooded by oversized campaign contributions from a handful of wealthy individual donors and special interest groups. In an interview last spring, NAACP President Cornell William Brooks described the confluence of these two cases as being two sides of the same ugly coin, with "folks who are suppressing and stealing votes before and during an election in collusion with the people buying and selling legislative votes after the election."<sup>3</sup>

It goes, perhaps, without saying that legal opinions and policy decisions that disenfranchise entire classes of citizens or tend to favor the interests of one group over another shake the confidence in our political system. Indeed, a January 2017 report by a team of researchers from the University of Sydney and Harvard's Kennedy School of Government found that United States citizens have lower levels of faith in the integrity of their elections than any other Western nation.<sup>4</sup> According to their findings, after the last election, the United States ranked 46<sup>th</sup> out of 161 countries in believing that their elections were free and fair.<sup>5</sup> The primary drivers of concern during the 2016 election cycle included (a) gerrymandered district boundaries; (b) discriminatory election laws that make it harder to vote or register; (c) media coverage, including the myths and realities of "fake news;" and (d) the

<sup>1</sup> *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013).

<sup>2</sup> *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

<sup>3</sup> Kathy Kiely, "Why the NAACP Cares About Campaign Cash" (Apr. 13, 2016), available at <http://billmovers.com/story/why-the-naacp-cares-about-campaign-cash/>.

<sup>4</sup> Pippa Norris, Alessandro Nai, Holly Ann Garnett & Max Grömping, "Perceptions of Electoral Integrity: The 2016 American Presidential Election" (Jan. 2017), available at <https://www.dropbox.com/s/v59olqllbdv62yrv/PEI-US-2016%20Report.pdf?dl=0>.

<sup>5</sup> *Id.* at 7.



## Appendix B.5: Gladstein

corrosive impact of big money in politics.<sup>6</sup> As a result, the United States, once again, had lower voter turnout rate (56.9%) than virtually every other wealthy nation.<sup>7</sup>

Here in Illinois, we see a complex mix of challenges and opportunities for voters. On the one hand, we have witnessed the cost of our elections skyrocket and the influence and concentration of the political donor class rise exponentially. The 2016 election cycle was the most expensive that this state has ever witnessed – by far – with more than \$134 million having been spent on state legislative races alone.<sup>8</sup> Given that Governor Rauner has seen fit to make a \$50 million deposit into his campaign fund as a “first installment” two years before the next gubernatorial election and some of the names being raised as his potential opponents are either billionaires themselves or have access to substantial political action committee money, one can only assume that the cost of our elections isn’t decreasing anytime soon.

Researchers have generally noted that individuals that make large political donations tend to be older<sup>9</sup> and whiter<sup>10</sup> than the average American, and, by and large, they tend to be men<sup>11</sup>. Studies have further shown that the policy preferences of this particular subset of the populace tend to be sharply different than the preferences that are expressed by other more marginalized groups, including women and people of color.<sup>12</sup> These trends appear to hold true in Illinois. In April 2016, CCIL helped to produce an analysis of the Chicago’s 2015 mayoral race. That report showed that over 90% of the money that the two candidates raised came from donors who gave more than \$1,000 apiece, and that 52% of the money came from outside the City’s borders.<sup>13</sup> Roughly 80% of the donations to Mayor Emanuel’s campaign came from donors that earned more than \$100,000 per year, even though only 15% of Chicagoans actually earn that much each year.<sup>14</sup> 94% of the Mayor’s donors were white, whereas only 39% of his constituents identify as white.<sup>15</sup> While these figures are disturbing in the abstract, we are extremely concerned that this imbalance has and will force governmental officials to favor the wishes

<sup>6</sup> *Id.* at 11-12.

<sup>7</sup> Adam Taylor, “American voter turnout is still lower than most other wealthy nations” (Nov. 10, 2016), available at <https://www.washingtonpost.com/news/worldviews/wp/2016/11/10/even-in-a-historic-election-americans-dont-vote-as-much-as-those-from-other-nations/>

<sup>8</sup> Scott Kennedy, “2016 Cycle: \$134 Million Spent on State Legislative Races, Plus Another \$39 Million Could Have Been” (Jan. 19, 2017), available at <http://illinoiselectiondata.com/> (also noting that another \$11 million was spent on the Comptroller race).

<sup>9</sup> Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 11, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-i/>.

<sup>10</sup> Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 30, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-ii/>.

<sup>11</sup> Andrew Mayersohn and Anya Gelernt, “Donor demographics: old white guys edition, part I” (June 23, 2015), available at <https://www.opensecrets.org/news/2015/06/donor-demographics-old-white-guys-edition-part-ii/>.

<sup>12</sup> *See generally*, Benjamin I. Page, Larry M. Bartels, and Jason Seawright, “Democracy and the Policy Preferences of Wealthy Americans” (March 2013), available at <http://faculty.wcas.northwestern.edu/~jnd260/cab/CAB2012%20-%20Page1.pdf>

<sup>13</sup> Sean McElwee, “How Chicago’s White Donor Class Distorts City Policy” (Apr. 28, 2016), available at <http://www.demos.org/publication/how-chicagos-white-donor-class-distorts-city-policy> (finding comparable results in the aldermanic races as well).

<sup>14</sup> *Id.* at 2-4.

<sup>15</sup> *Id.* at 4.

#### Appendix B.5: Gladstein

of a small number of wealthy donors over the needs of the citizens who elected them into office in the first place.<sup>16</sup>

Despite these serious concerns, we are pleased to be able to report to the Committee that Illinois has recently adopted a number of sensible political reforms that are helping to level the playing field for Illinois voters and to ensure that they have the chance to meaningfully participate in the electoral system.

#### Towards a Model of Universal Voter Registration

If we want to ensure that every eligible Illinois citizen has an equal opportunity to be heard, we must first ensure that they are all participating in their democracy. CCIL and its partners in the Just Democracy Coalition believe that every citizen has a fundamental right to have their vote counted, regardless of whether they are a Democrat, Republican or independent. That is why our coalition has advocated for and celebrated legislation that makes it easier to register to vote. In 2013, Governor Quinn signed legislation allowing Illinois citizens to vote online. Two years later, the State adopted provisions expanding early voting and allowing voters to register to vote at the polling place on Election Day<sup>17</sup>. While these provisions go a long way towards strengthening our democracy, there is still more that should be done.

CCIL and its partners are currently working with legislators on both sides of the aisle in the General Assembly, representatives from the Governor's office and key agencies to enact an automatic voter registration (AVR) model in the state that would automatically register eligible Illinois voters (unless they opt out) whenever they interacted with certain state agencies, like Driver Services. A recent national study determined that this proposal would not only modernize our registration system by using accurate and secure electronic voter lists, but it could add over a million eligible Illinois voters to our rolls.

Last year, Illinois passed an AVR bill with broad bipartisan support, but, unfortunately, it was vetoed by Governor Rauner at the eleventh hour. CCIL and the other advocates are working with all of the relevant stake holders to ensure that the measure passes during this legislative session.

#### Towards a Model of Public Financing for Elections

Although the *Citizens United* case has resolved the question of whether it is possible for wealthy corporate interests to fund the candidate that they believe will best serve their interests, there are alternative models for financing political campaigns that will provide an opportunity for smaller donors to continue to hold politicians accountable. In places like New York City and Los Angeles, communities have used a voluntary public financing model for decades that provides for a six to one public match for qualifying donations up to a defined cap. To be eligible to receive these funds,

<sup>16</sup> See, e.g. David Sirota, "Rahm Emanuel Donors Were Far Richer And Whiter Than Chicago: Study" (Apr. 28, 2016), available at <http://www.jbtimes.com/political-capital/rahm-emanuel-donors-were-far-richer-whiter-chicago-study-2360812> (cataloguing a series of complaints lodged against the Mayor for policies that purportedly favored the donor class).

<sup>17</sup> Unfortunately, the Election Day Registration provisions of the statute are being challenged in a lawsuit which is currently pending before the United States District Court for the Northern District of Illinois. CCIL is optimistic that that litigation can be resolved without limiting the access to the registration process that Illinois citizens currently enjoy.

**Appendix B.5: Gladstein**

politicians must first demonstrate that they have met with the electorate by raising a requisite number of small donations. Candidates must also agree to not accept any donations from corporate interests or to violate restrictions on self-funding. These programs help to contain campaign expenditures; ensure that politicians remain in close contact with the people that voted them into office; and provide a pathway for citizens with limited access to capital to support the candidate of their choosing or run for office themselves.

Over the last several years, CCIL has been working closely with its partners in the Fair Elections Illinois (FEI) coalition to bring a small donor matching program to the state of Illinois. A little over two years ago, the FEI coalition was responsible for ballot question that found that eight out of every ten Chicago residents supported the public financing model akin to the model that has been successfully used in New York for years. Building upon that support, the FEI partners have been working to draft and support legislation at the state, county, and local levels that would bring a small donor matching model to Illinois.

Our democracy has not yet been secured; however, we have every reason to look towards a day when every Illinois resident can feel that their voice will be heard, regardless of party affiliation or their access to resources. Once again, we thank the Committee for providing us with a forum to raise our concerns, and we look forward to answering any questions that you might have.

Appendix C-1 Gandhi

# Chicago Lawyers' Committee for Civil Rights

U.S. Commission on Civil Rights Public Meeting | March 9, 2017

**Ami Gandhi**

Director of Voting Rights and Civic Empowerment

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# Election Protection Hotline

The nation's largest non-partisan voter protection program

**As the nation's largest non-partisan voter protection program, hotline and poll watcher volunteers have answered thousands of voter questions and resolved numerous problems at the polls for the 2016 general election.**

 **24-hour non-partisan hotline**

English Language  
**866-OUR-VOTE\***

Spanish Language Assistance  
**888-VE-Y-VOTA**

Asian Language Assistance  
**888-API-VOTE**

Locations  
**Call Center**  
**On-site at polls**

*\*The source of data for this presentation*

# Volunteers and Training

Volunteer attorneys and individuals staffed the Election Protection Hotline



## Hotline & poll watcher volunteers

### Partnerships

#### Common Cause Illinois

The Illinois Coalition for Immigrant and Refugee Rights

The Mexican American Legal Defense and Educational Fund

Equip for Equality

The Chicago Urban League

Chicago Votes

Black Youth Project 100

Asian Americans Advancing Justice Chicago

The League of Women Voters



## Reported issues

### Trained to

Understand voter access barriers

Investigate and remedy problematic practices

Provide information on voting rights

Advocate for necessary reforms

### Example of issues

Voter intimidation

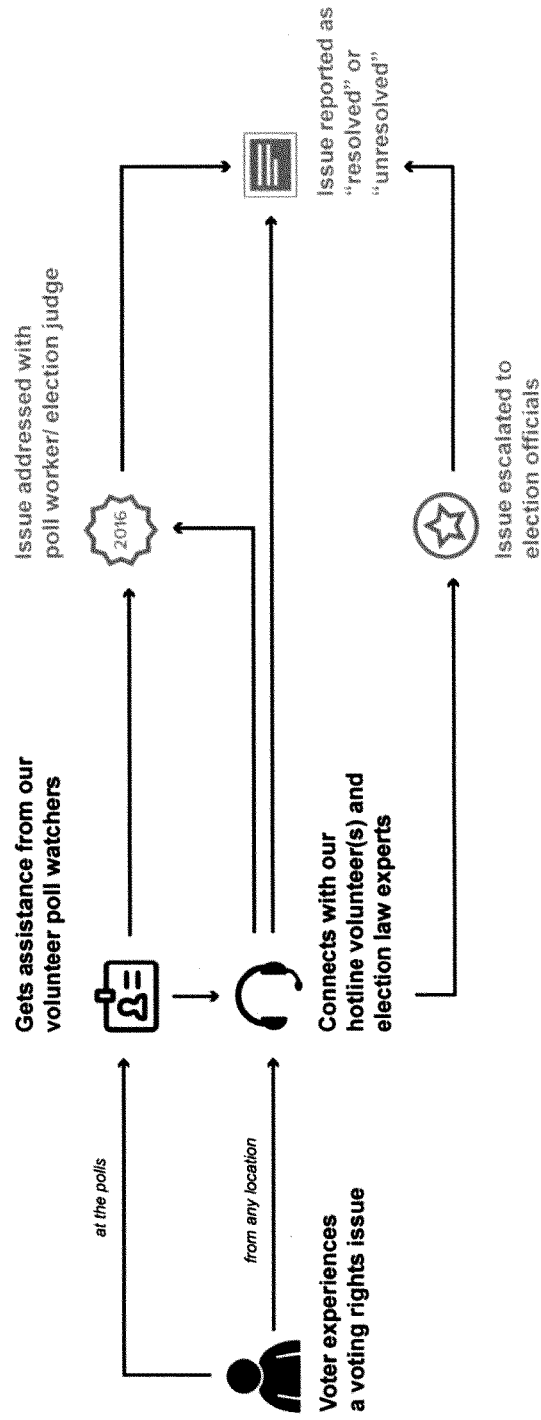
Language barriers

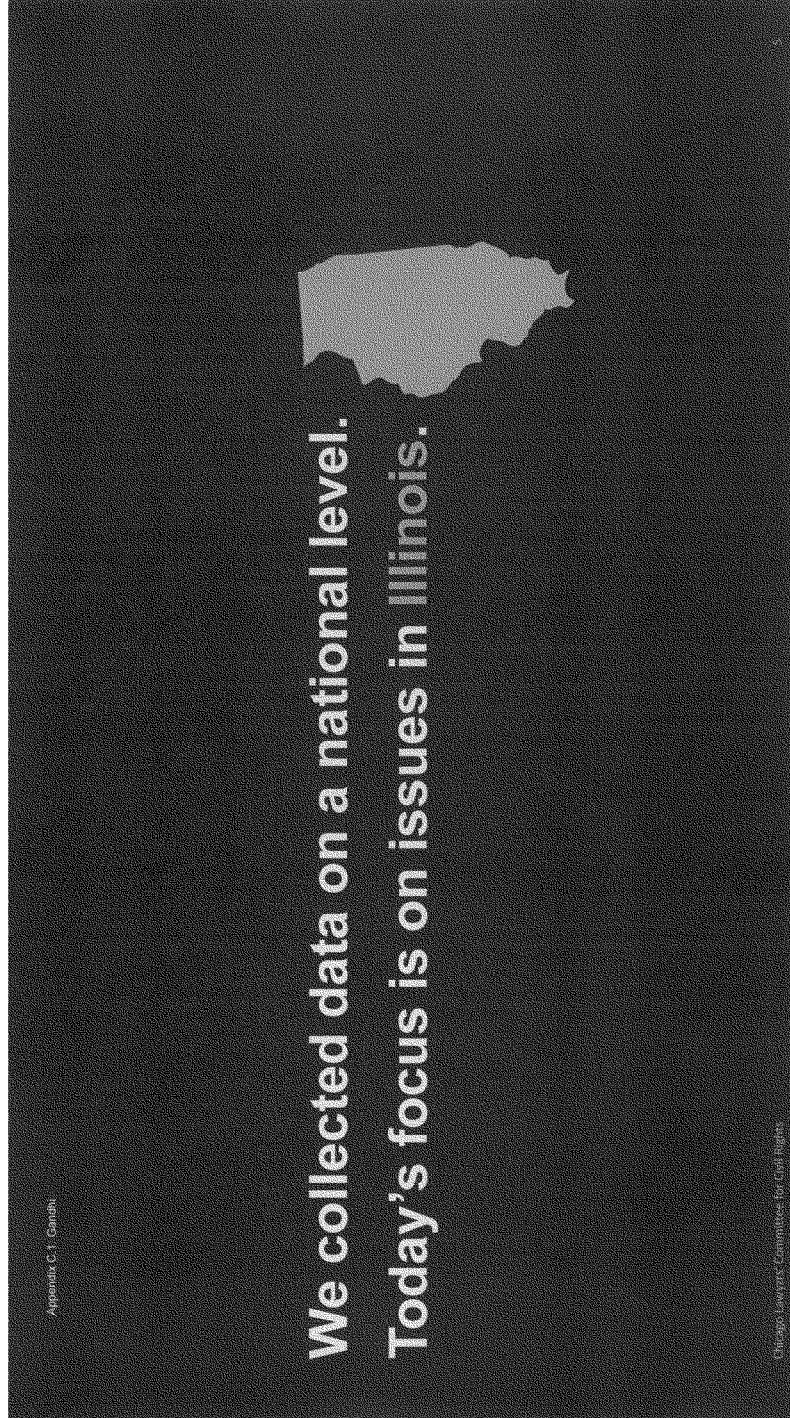
Lack of access to polling place

Incorrect and unclear voter registration status

# Hotline Process Flow

A look at how issues moved from the polling place to our database



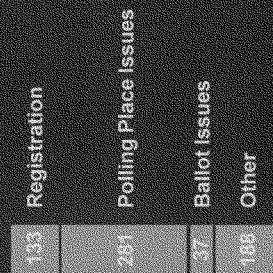




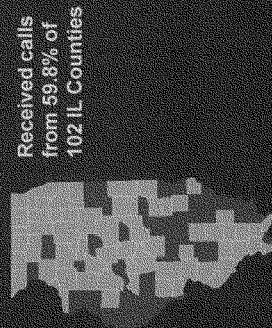
# Appendix C.1: Gender Overview

Voter hotline issues October 17 – November 11, 2016

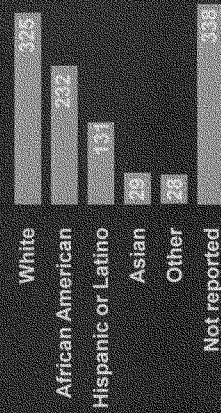
1083 Illinois Hotline issues

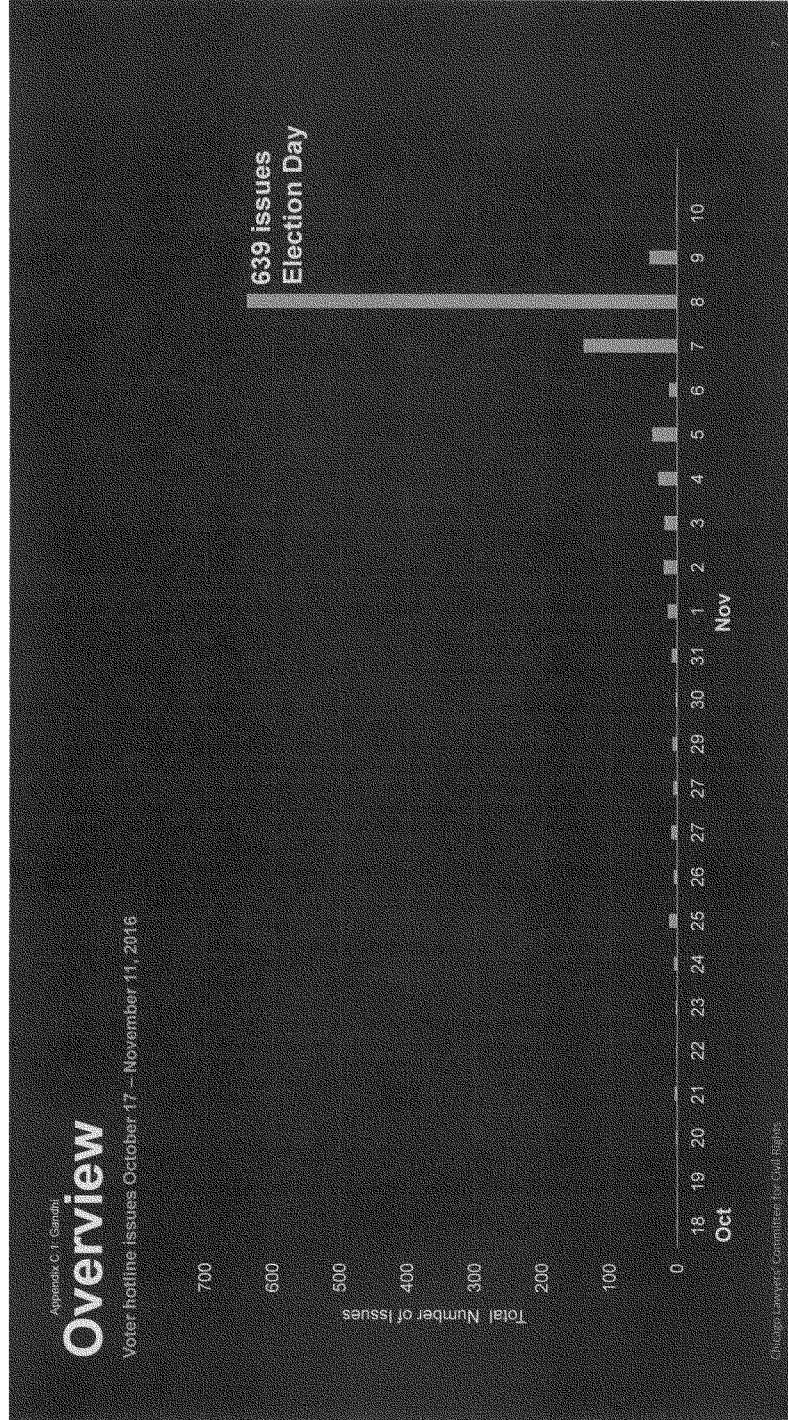


61 Illinois counties represented



392 Issues from people of color





Appendix C.1: Gordon

## 639 Election Day issues

A breakdown of issues on Election Day by category

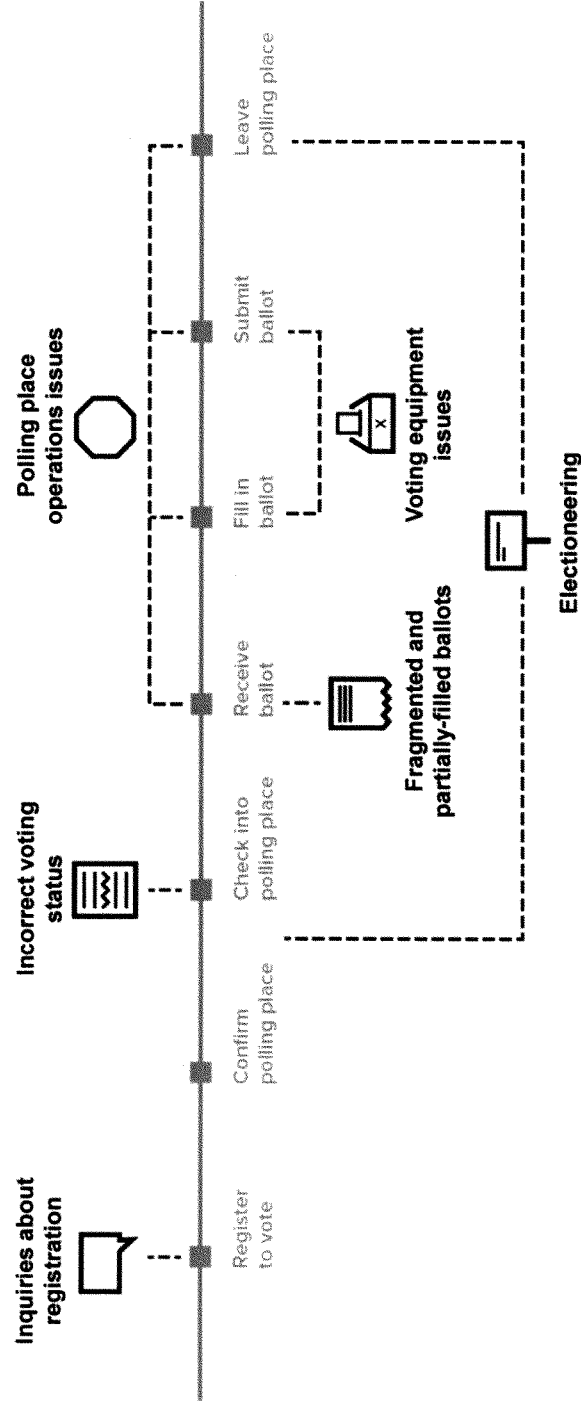
215	Polling place location & EDR information
103	Inquiries about registration
50	Voter equipment issues
42	Polling place operation issues
22	Incorrect voter status
19	Fragmented and partially-filled ballots
77	Other (includes electioneering and missing absentee/mail-in ballots)

Chicago Lawyers' Committee for Civil Rights

6

# Voting Experience

The journey to voting at the polls



**Possible barriers throughout the entire experience:**  
**Language barriers, voter intimidation, systemic barriers, and missing absentee/mail-in ballots**

Chicago Lawyers' Committee for Civil Rights

## Inquiries about registration

Database Entry 85932



“The caller lives in Illinois, but has a Virginia driver’s license and a passport containing a Michigan [address.] She asked if she could still vote in Illinois. I told her that because she lives in Cook County, the polling location in her building will permit Election Day Registration. She will bring her passport, as well as the rental agreement for her apartment.



# Inquiries about registration

Lack of clarity in registration procedures and available resources

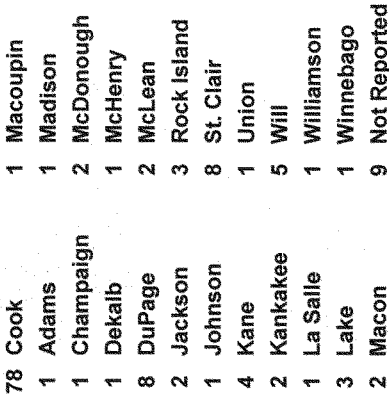
148 Total issues

23 Counties Had This Issue

Number of issues reported by race



Number of issues per IL county





# Electioneering

Database Entry 109886

“ There are two gentlemen who claim to be outside the 100-foot radius and they are campaigning for three judges but they were not outside that radius... I told someone but they did not seem concerned. They were trying to catch as many people as they could. They were just campaigning and using postcards.

661

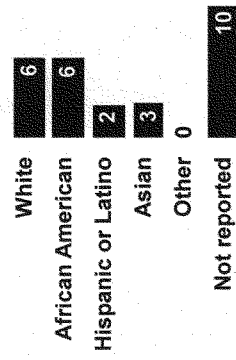
# Incorrect voter status

Instances when voter's registration or voting status was incorrect on the rolls



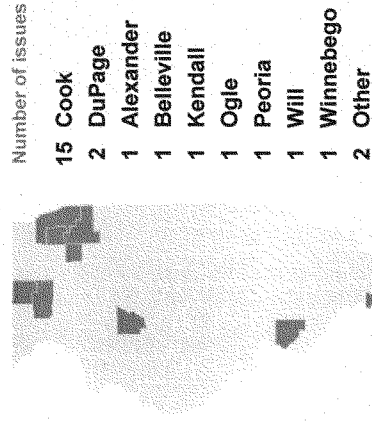
27 Total issues

Number of issues reported by race



9 Counties Had This Issue

Number of issues per IL county





## Polling place operation issues

Database Entry 95137



“ Did not get to vote because 6:00 AM the poll was [not open] yet. Waited until 6:35 AM, but had to leave to vote. Employees were inside but did not come out and tell anyone why they could not go in to vote.

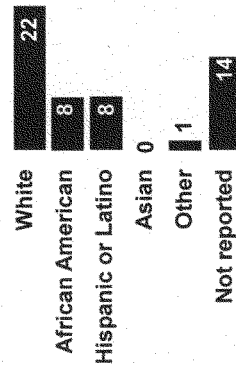


# Polling place operation issues

Non-Equipment issues that hinder the voting process.

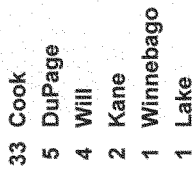
53 Total issues

Number of issues reported by race



6 Counties Had This Issue

Number of issues per IL county





## Fragmented and partially-filled ballots

Database Entries 85634 and 106177

- “ Had to let the judges know that they were supposed to give both [pages of the ballot] to voters. For the first 6 voters, the judges only gave the candidate ballot.
- “ Voter pulled up her sleeve and half of ballot was already completed. Another voter was given a provisional ballot even though they were registered to vote. Only after voter resisted that they were given a regular ballot.

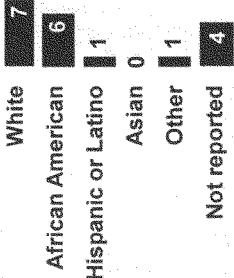


# Fragmented and partially-filled ballots

Distributed ballots were missing sections or had filled in entries

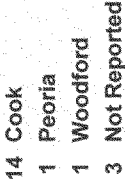
19 Total issues

Number of issues reported by race



3 Counties Had This Issue

Number of issues per IL county





## Voting equipment issues

Database Entry 109464

“ Electronic voting will not allow voter to review the first page of the ballot. She is being told that the ballot was cast, but cannot tell and is unable to review the first page. Many people now looking at the ballot and caller is worried that her vote is not being counted. When the paper printed out it said "voided" but she is told the vote has cast. Voter gone but concerned that the machine is not working for anyone.

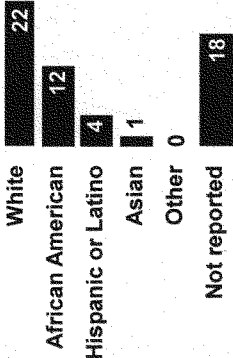
# Voting equipment issues

Issues with voting equipment that hinder the voting process



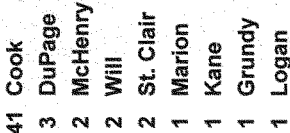
57 Total issues

Number of issues reported by race



9 Counties Had This Issue

Number of issues per IL county



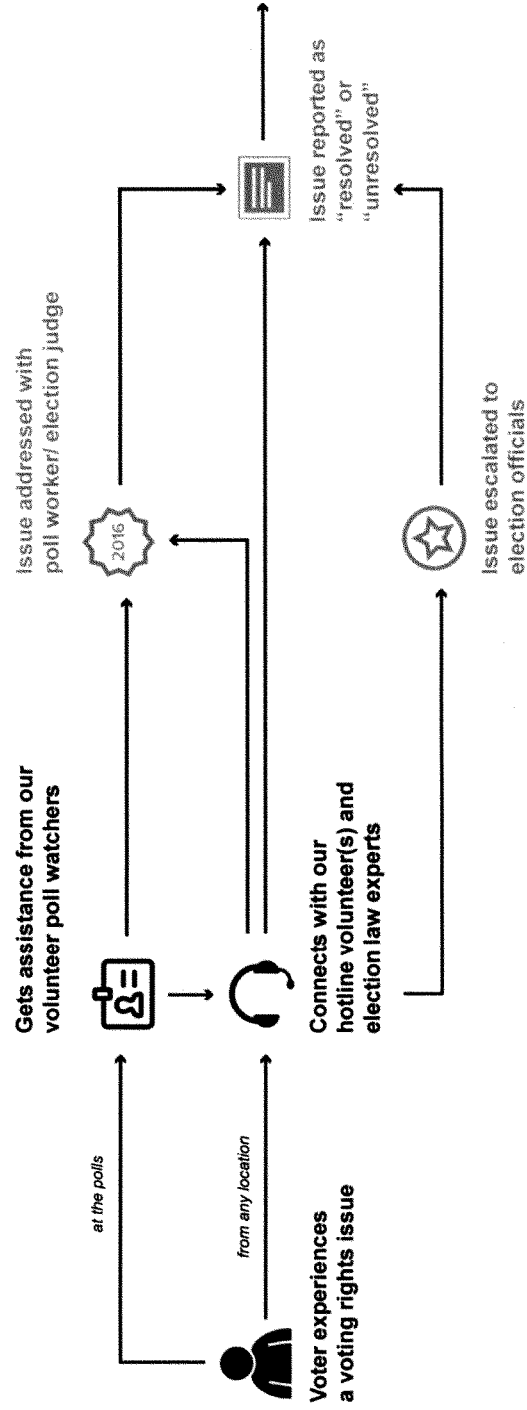
## Other Barriers



- Voter intimidation and barriers for voters interfacing with criminal justice system
- Barriers for voters with disabilities
- Barriers for homeless voters
- Language barriers

# From issues to reform

A look at how issues moved from the polling place to reform

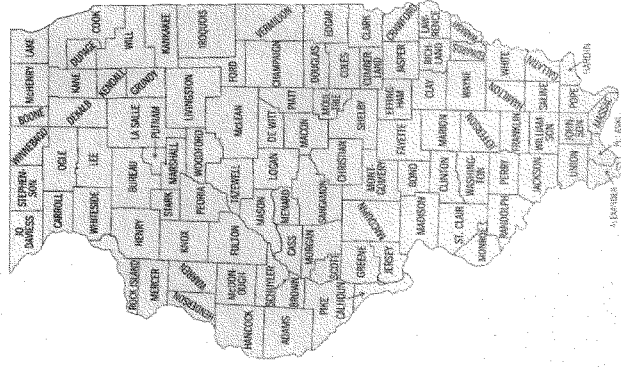




# Election Day Registration

We received hundreds of calls from voters asking about their voter registration status in general and about Election Day Registration requirements specifically. Voters in every county used this tool. 120,838 voters used Election Day Registration statewide. We saw the alternative in past elections and in neighboring states—voters were turned away from the polls.

# Automatic Voter Registration



# Chicago Lawyers' Committee for Civil Rights

**Ami Gandhi**

Director of Voting Rights and Civic Empowerment

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(312) 888-4193

Appendix C Z: Orr

# U.S. Commission on Civil Rights – Voting Rights Hearing 3/9/17



David Orr  
Cook County Clerk

National Voter Registration Act - 1993

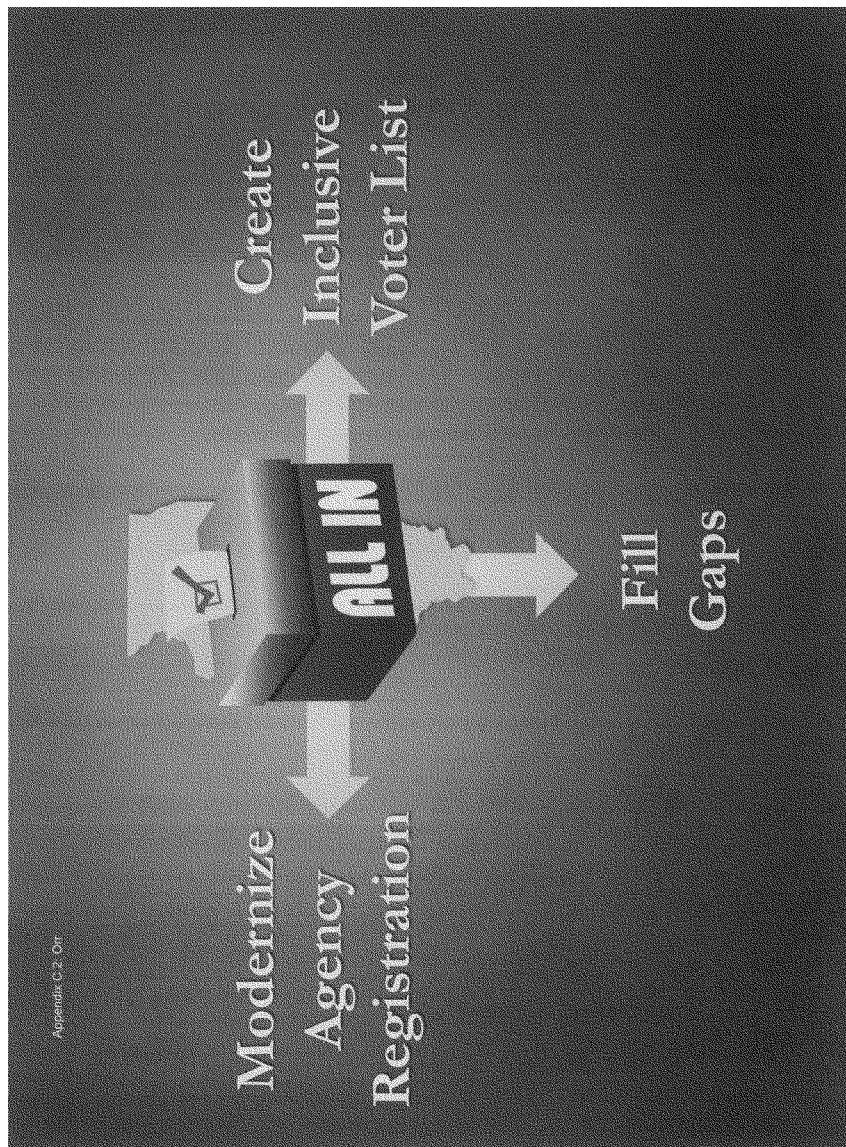
Appendix C: Orr





## Illinois Refused to Implement National Voter Registration Act ("Motor Voter")

- National Voter Registration Act ("Motor Voter") passed in 1993, increasing access to voter registration to millions of people each year
- In Illinois, Gov. Jim Edgar refused to align the state's voter registration standards with federal election law.
- Along with the League of Women Voters and the City of Chicago, we sued Edgar and state officials to force implementation.
- In 1996, the IL governor, attorney general, secretary of state and election board director dropped an appeal to the Illinois Supreme Court.





Appendix C.2. Orr

## Modernize Agency Registration

- Every time someone interacts with government, they should have a chance to register to vote
- Harness government transactions into voter registrations



Appendix C.2 - Orr

## Create Inclusive Voter List

- Share voter data across state lines
  - ERIC, Interstate Crosscheck
- Register the unregistered
- Improve the accuracy of the voter rolls (moved, deceased, name changes)



Appendix C.2: Or



## Fill Gaps

- Make sure no voter falls through
- Election Day Registration
- National Change Of Address
- Pre-registering students

## ERIC: Electronic Registration Information Center

- IL successfully joined ERIC which allows states to share data like voter registrations, driver's licenses and deaths
- Clean lists are a critical part of protecting the integrity of the vote and they save money
- Pew Charitable Trusts, Illinois Study:
  - 700,000 people registered at addresses where they no longer live
  - 34,000 deceased individuals to be removed from the voter databases
  - 60,000 voters lived in other states
  - 90,000 duplicate records

## Election Day Registration

### Main Benefits:

- Encourages participation & reduce barriers
- Provides a safety net to correct registration errors
- Streamlines electronic data and registration operations

Appendix C.2. Or

## Automatic Voter Registration

- In 2015, more than 13 percent of Illinoisans (1,679,582 people) moved
  - 1,081,549 (64%) moved within Illinois and within the same county
  - 318,103 (19%) moved to a different county within Illinois
  - 216,310 (13%) moved to Illinois from another state
  - 63,621 (4%) moved to Illinois from abroad

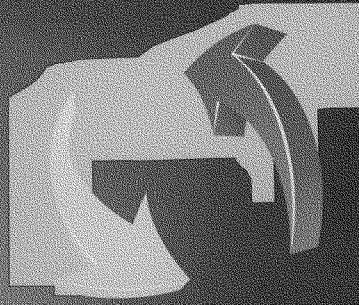




## Mobile Society

In a mobile society, people are constantly moving in and out of the voter pool. People who move each year are largely:

- Low-income (21% move each year)
- African-American (15%)
- Hispanic (13.9%)



Appendix C.2 Orr

## Additional threats to our democracy...

Money in Politics

Voter Suppression

## Money In Politics

- Supreme Court ruling moved us from one person – one vote to a new reality where money grossly amplifies your speech and influence.
- Potential Reforms:
  - Seattle – Democracy Vouchers
  - California – Limits on Dark Money
  - New York City – Small Donor Matching
  - IL Sen. Daniel Bill proposed small donor matching legislation – SB1424

Appendix C.2, Orr

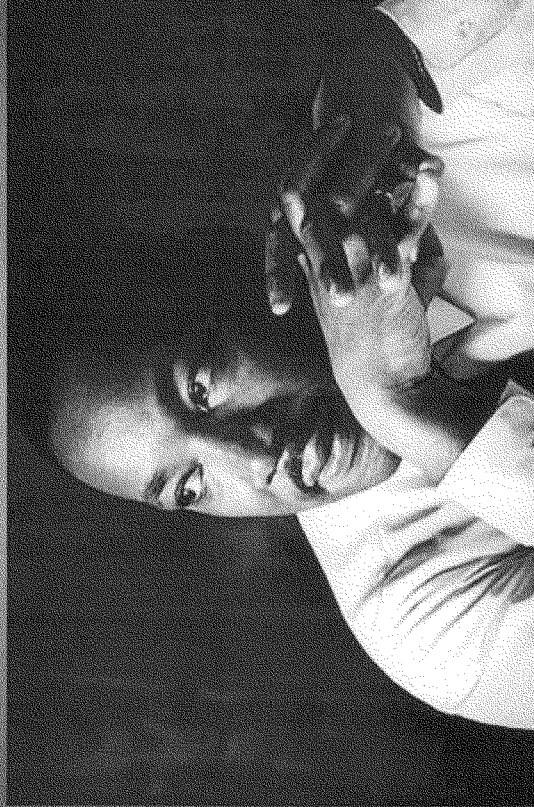
## Voter Suppression

- Voter ID Requirements
- Limit Early Voting
- Gerrymandering –
- Intimidating/threatening opposition



Appendix C: Orr

“The arc of the moral universe is long,  
but it bends toward justice...”



"The stakes... are too high for  
government to be a spectator sport." -  
Barbara Jordan



Appendix C.3: Cortazar

# Chicago Lawyers' Committee for Civil Rights

U.S. Commission on Civil Rights Public Meeting | March 9, 2017

**Ryan Cortazar**  
Voting Rights and Civic Empowerment

[clccr.org](http://clccr.org)  
(312) 630-9744



## History of Language Discrimination & Access

“ More precious even than the forms of government are the mental qualities of our race. . . . They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the . . . infusion of Southern and Eastern European races . . .

—III N.Y. State Constitutional Convention 3012 (Rev. Record 1916).

“ § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

—*Katzenbach v. Morgan*

Chicago Lawyers' Committee for Civil Rights



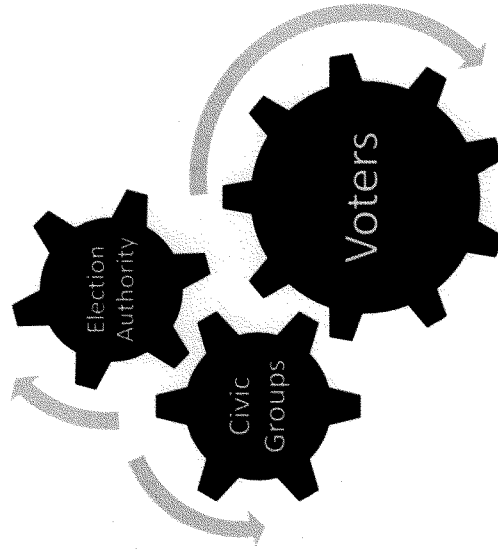
## Voting Rights Act

“ A State or political subdivision is a covered State or political subdivision . . . if . . . more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient; . . . more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; . . . and the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

— Section 203



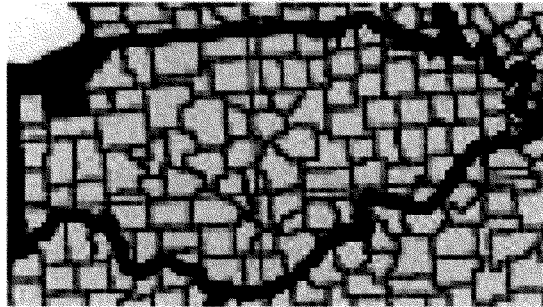
# Implementation



## Recent Developments



2002



2011



2016



# Paths Forward

Appendix C.3. Continues



# Acting Locally & Thinking Globally: Keys to Successful Language Assistance in Elections

695



# Shobhana Johri-Verma

## South-Asian Community Liaison

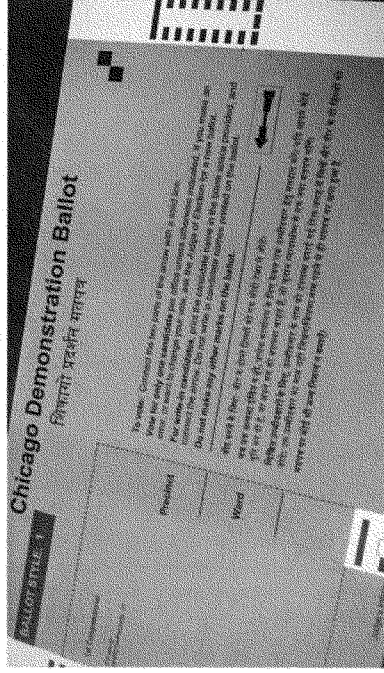
### Chicago Board of Election Commissioners

#### Since 2014

# 1. Language Assistance

- Language Liaisons placed at Operational Core
- In Chicago: Part of Community Services
  - Poll Workers
  - Trainers
  - Voter Registration
- Language Liaisons know all facets of operation

Include every item that needs to be translated for a voter...



... It's not just about a few forms.

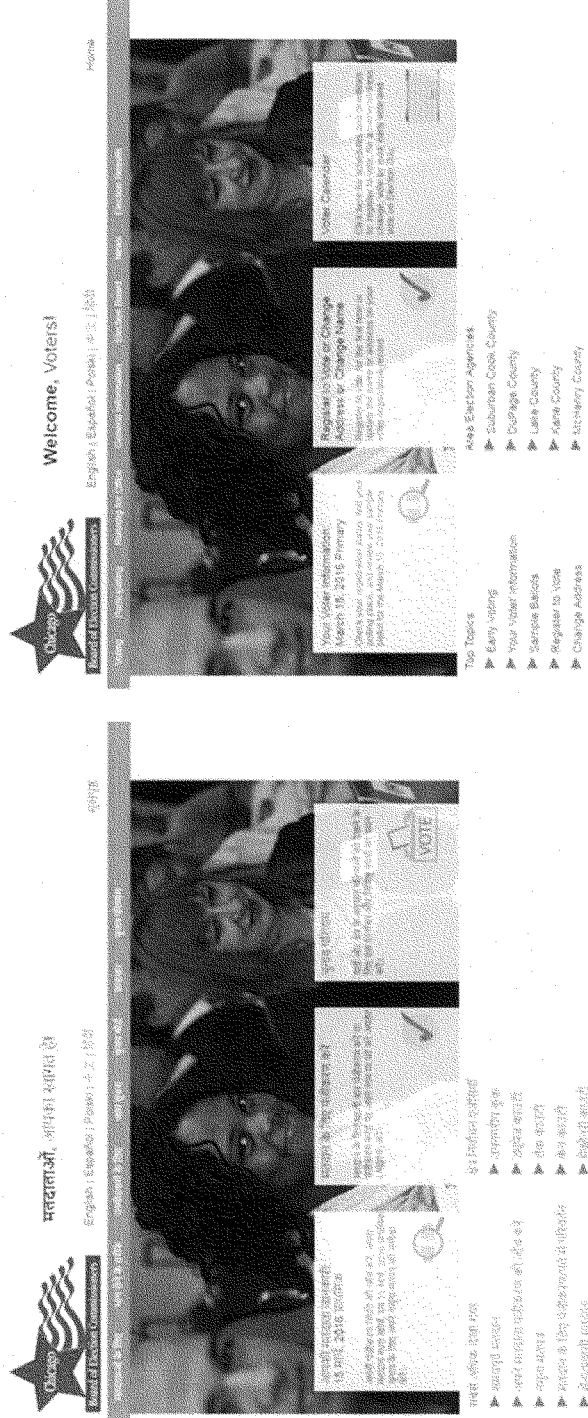
## For Translations: Think Globally

Never make web users search in English to find a translation.



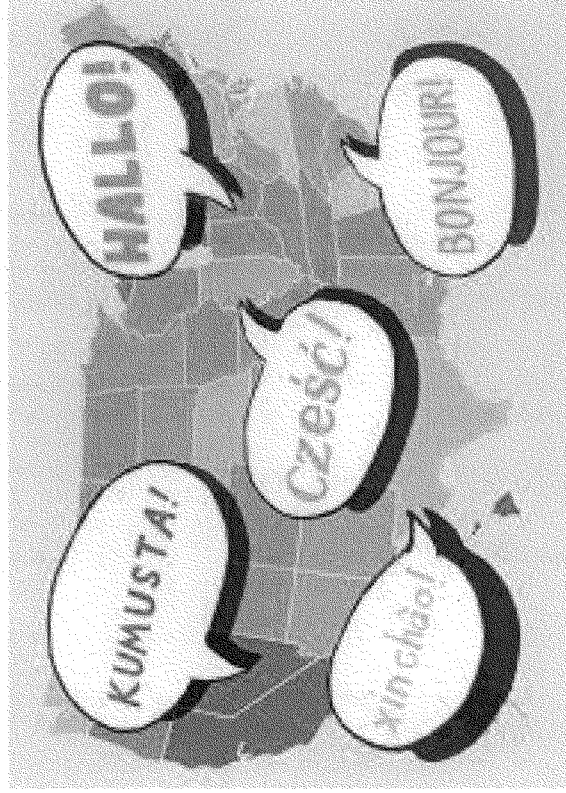
# For Translations: Think Globally

Make your web site fully navigable for every language user.



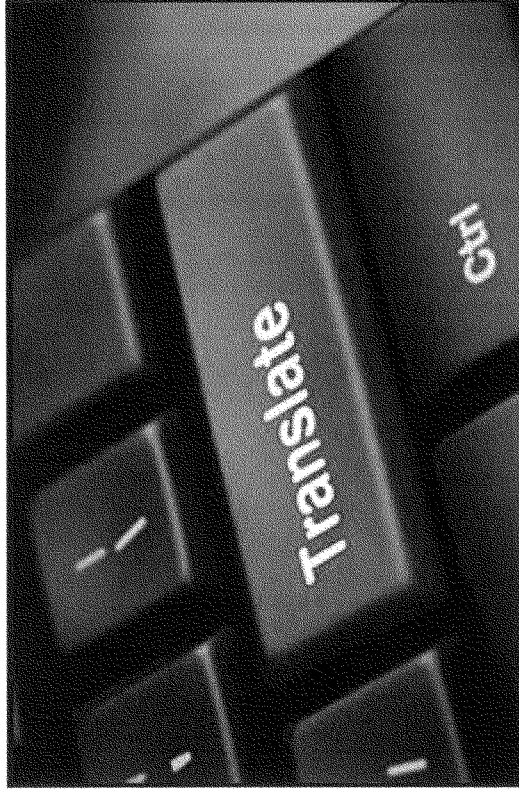
### 3. Use Authentic Translations

Authentic translations are best prepared by in-house staff.



## Use Authentic Translations

Authentic translations are never made by pressing a button.





## Use Authentic Translations

- When in doubt, check the US Election Assistance Commission glossary.
- In the absence of a glossary or definition, use a translation service.
- Have your community partners review the translation service's work.
- When the EAC lacked a glossary, Chicago built one that local organizations reviewed.

## 4. Fully Partner With Community Groups

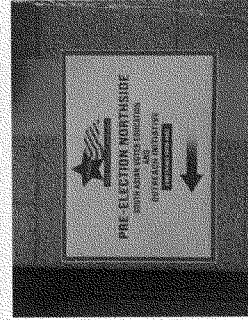
- Attend and organize events year-round, not just around elections.
- Include all community groups in formulating policy and recruiting poll workers.
- Be ready to hear and respond effectively to all grievances.
- Build on relations beyond what's required.



## Outreach Is a Year-Round Activity



## Outreach is a Year-Round Activity



## Outreach is a Year-Round Activity



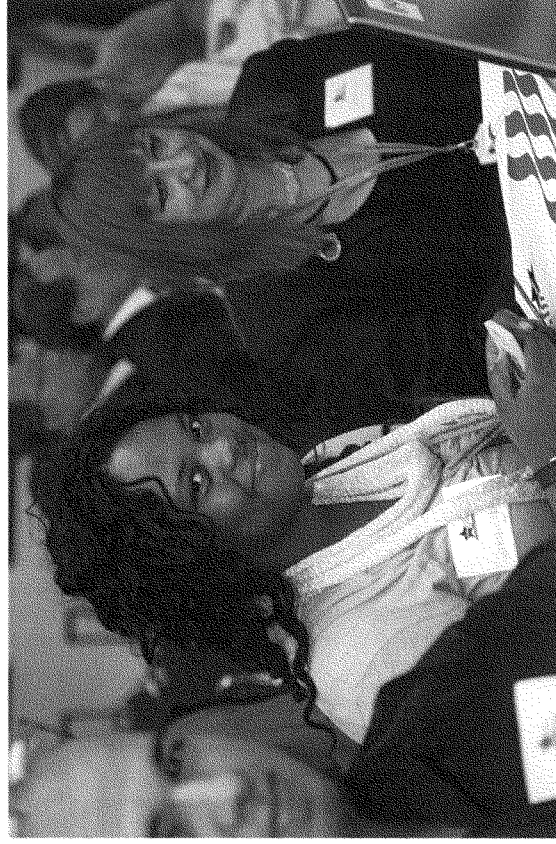
## Outreach is a Year-Round Activity



## Case Study in the Value of Year-Round Outreach – Part I

Chicago's Voter Engagement Community Forum: Many ideas emerged from the dozen tables. Regardless of age, ethnicity, race, neighborhood or other demographics, participants in the forum picked the same top reforms:

- On-Line Voter Registration
- Election Day Registration
- Civics Education
- Universal Vote Centers



## Case Study in the Value of Year-Round Outreach – Part II

With this broad spectrum of support, the Chicago Election Board since then has helped to secure legislation that allowed for:

- On-Line Voter Registration,
- Election Day Registration, and
- Civics Education

... Additionally laws are being developed for the introduction of vote centers.





# Acting Locally & Thinking Globally: Keys to Successful Language Assistance in Elections

711



**Voting Integrity in California**  
**Issues and Concerns in the 21<sup>st</sup> Century**

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**A Report of the California Advisory Committee to the  
United States Commission on Civil Rights**

**June 2017**

This report is the work of the California Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and generally reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. **Neither an editorial nor legal sufficiency review was completed on this report. This report may or (may not) comply with the Commission's standards for form, legal citations, or methodology.** Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

### State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

#### California Advisory Committee to the U.S. Commission on Civil Rights\*

Percy Duran, <i>Chair</i> Los Angeles	Velma Montoya, <i>Vice-Chair**</i> Hollywood
James Bolton Altadena	Nancy Eisenhart ** Woodland Hills
Debra Fong Pasadena	Javier Gonzalez San Jose
Susan Jester San Diego	Jonathan Melrod Sebastopol
Brian Moriguchi Stevenson Ranch	Ralph Rossum Claremont
Rachel Sigman South Lake Tahoe	Robin Toma Los Angeles
Betty Wilson ** Los Angeles	

\*\* Members of the voting rights sub-committee

## Letter of Transmittal

### California Advisory Committee to the U.S. Commission on Civil Rights

The California Advisory Committee to the U.S. Commission on Civil Rights submits this report, *Voting Integrity in California: Issues and Concerns in the 21<sup>st</sup> Century*, as part of its responsibility to examine and report on civil rights issues in the state under the jurisdiction of the Commission.

On July 23, 2002, Congress passed the Help America Vote Act (HAVA) of 2002<sup>1</sup> to reform the nation's voting process. Under HAVA, states are required to implement programs and procedures in the following areas: (1) provisional voting; (2) voter information; (3) statewide voter registration databases; (4) updated and upgraded voting equipment; (5) voter registration identification procedures; and (6) administrative complaint procedures.<sup>2</sup> To help meet these requirements, HAVA provides the states with funds—a portion of which are to be disseminated to specific counties to assist local entities meet the provisions of the Act. HAVA has provided more than \$380 million in federal funding to California to help improve the state's administration of elections.<sup>3</sup>

An assessment of all 50 states' election performances in 2012 and 2014 by an independent non-profit organization reported that California performed well below the national average. California's low performance prompted the California Advisory Committee to undertake an examination questioning the implementation of HAVA, and the integrity of the voting process in California.

A public hearing was held on August 28, 2015, at the Central Library of the City of Los Angeles. The scope of the hearing was the general compliance by the State with HAVA. Invited presenters included, among others, the California Secretary of State, the California State Auditor, election officials in Los Angeles and San Diego Counties, representatives from the Pew Charitable Trust, Everyone Counts, the Election Integrity Project, and the public.<sup>4</sup>

Based upon its research and public hearing, the California State Advisory Committee concludes and recommends the following:

## Conclusions

1. Insufficient training in election laws for poll workers and on-site election officials pursuant to witnesses Linda Paine and Ruth Weiss of the Election Integrity Project<sup>5</sup>;

<sup>1</sup> Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 et seq., available at [http://www.eac.gov/assets/1/workflow\\_staging/Page/41.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF).

<sup>2</sup> Ibid.

<sup>3</sup> California Office of the Secretary of State, Audit of the administration of the federal Help America Vote Act of 2002 at <https://www.bsa.ca.gov/reports/summary/2012-112.pdf>, August 2013 (last accessed Nov. 22, 2014).

<sup>4</sup> A listing of all presenters at the August 28, 2015, public hearing is in Appendix 1, and the complete transcript of the proceedings is posted on the Commission's website at [www.usccr.gov](http://www.usccr.gov).

<sup>5</sup> Linda Paine and Ruth Weiss, Election Integrity Project, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 158-191 (hereafter referred to as Help America Vote Act (HAVA) Transcript), available at <https://www.justice.gov/crt/text-proposed-regulations>.

Training materials<sup>6</sup> fail to provide for the implementation of California Election Code §14216, voter self-identification, which states:

“Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address . . . ”.

2. Disabled voters face unnecessary obstacles, according to testimony by Lillibeth Navarro, representative of Communities Actively Living Independent and Free;
3. VoteCal, the mandated statewide voter database, is not ready (SOS testimony);
4. Explanations about the decision-making process of the Secretary of State for potential voting system developers are required after doubts raised from materials provided by State Auditor Elaine Howle, which state:

“The Office paid \$4.6 million to develop a replacement database – Vote Cal - but terminated a critical contract because the vendor failed to provide key deliverables. In its second attempt to hire a new vendor to complete the VoteCal project, the Office appears to have limited the bidder competition to only one bidder, raising concerns for future success.”<sup>7</sup>

5. The methodology used to report HAVA expenditures in California’s spending plan has not been explained, according to the testimony of State Auditor Elaine Howle;
6. Deceased, inactive and ineligible voters remain on voter lists;
7. The delayed and multi-stage human handling of vote-by-mail ballots creates openings for tampering or mishandling, according to Ruth Weiss’s testimony and EIP’s written testimony;
8. In 2012, California cast forty percent of the provisional ballots in the nation.<sup>8</sup> Though the official intent is to allow for convenient voting and options that support participation, inadequate poll worker training in following the law likely contributes to the indiscriminate use of provisional ballots;
9. Prohibitive costs to citizens to purchase voter roll data;

---

<sup>6</sup> Ibid., p. 177.

<sup>7</sup> Ibid., p. 46

<sup>8</sup> See *supra* note 5 p. 171.

10. Indiscriminate use of Permanent Absentee Voting;
11. Statewide voting and election irregularities in many counties, both large and small, require further investigation;<sup>9</sup>
12. Antiquated election laws prohibit the introduction of modern voting technology, according to testimonies of SOS and Everyone Counts;
13. Inadequate utilization of online voting with military-grade encryption for military and overseas voters, according to Pew testimony;
14. Citizens have concerns about the new "Motor Voter Law" "AB 1461, its implementation and confidentiality. A good third of the eighty-plus Post-Hearing written testimonies were about this bill.

**Recommendations:**

1. Training for Election Officials and Poll Workers
  - a. Include awareness and knowledge of applicable election laws (HAVA, NVRA, California Election codes, and the U.S. Constitution) and of the poll workers' authorities;
  - b. Increase length of training time of election workers;
  - c. Verify that an election official or poll worker completed recommended online training instruction;
  - d. Establish citizen oversight ensure training materials correspond to the law;
  - e. Train poll workers to follow California Election Code §14215, asking voters to state their names and addresses - in their own words -to avoid voter impersonation.
2. Citizen Oversight
  - a. Provide expert citizen election integrity oversight for the pending VoteCal statewide voter registration database;
  - b. To ensure instructions to poll workers and election officials correspond to election laws, provide expert citizen oversight of training procedures and materials, and voting and election materials.
3. The Disabled Voter
  - a. Legislation required to assure that current and future digital or computerized voting systems are accessible and will accommodate voters with disabilities;
  - b. Poll workers shall be provided training, communication, and accommodations for voters with disabilities;
  - c. All polling sites shall be accessible to voters with disabilities.

---

<sup>9</sup> Testimony of Mark Sonnenklar, Business Attorney, HAVA Transcript, p. 109.

## 4. Office of the Secretary of State

- a. Appoint a non-partisan citizen election integrity and oversight organization with authority to assess VoteCal, its methods, and test results;
- b. Clarify the state's current standards for voting, election processes, voting equipment and systems and assure procedures and equipment are in compliance with state and federal disability laws;
- c. Clarify the process by which the Secretary of State verifies that the person applying to vote, whether through online registration, DMV registration, or in-person registration, is eligible to vote;
- d. Inform public agencies that only those agencies mandated to examine and verify proof of citizenship shall process voter registration applications;
- e. Create and advertise the complaint procedure by which citizen complaints about the administration of elections are addressed and rectified;
- f. Recommend to the California legislature an upgrade of all coded obstacles to the modernization of California's election process and voting systems (Election Code Article 4, Sections §19217, §9217, §19250 (a), §14223 (b));
- g. Recommend each California county standardize its forms and costs for citizen organizational purchases of voter data;
- h. Verify that every poll location is accessible to voters with disabilities;
- i. Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan.

## 5. County Registrars of Voters

- a. To prevent inaccurate voter turnout statistics and possible election results, follow HAVA and California Election Code procedures for the distribution of provisional ballots;
- b. To ensure voters' privacy and ballot integrity during handling, redesign absentee ballot forms and improve current processing procedures for security;
- c. To prevent impersonation and fraud, timely remove deceased, inactive and ineligible voters from voter lists according to HAVA's suggestions;
- d. Establish standard fee schedules for citizen groups requesting public documents and lists;
- e. Verify that every poll location is accessible for voters with disabilities;
- f. In accord with election laws, train election officials and poll workers in the handling of provisional, absentee, and in-person ballots;
- g. Clarify the procedures by which registrars of voters process and rectify election complaints;
- h. Provide citizen oversight of training manuals and materials, poll worker training, and at election polls and voting centers;
- i. Train poll workers and election officials in the proper use of California Election Code §14216, which, without a voter ID requirement, provides for self-identification.

## 6. Upgrade Outdated Election Laws (Legislation Required)



- a. Modernization requirements -
    - 1. Upgrade outdated California Election Codes (Article 4, Sections §19217, §19250 (a), and §14223 (b)):
      - i. Permit digital and telephone access for voter systems;
      - ii. Allow connectivity to the internet;
      - iii. Allow electronic transmission of election data through exterior communication networks;
      - iv. Allow wireless communications or wireless data transfers;
      - v. Allow a remote server to store any voter's identifiable selections and tabulate votes using military grade encryption;
    - 2. Reconsider the requirements of federal qualification and accessible voter verified paper audit trails for voting systems;
  - b. Upgrade and revise the Military and Overseas Voter Empowerment Act of 2009 (MOVE) to incorporate military grade encryption for secure online voting;
  - c. Allow poll workers to redact voters' street addresses when posting precinct voter lists near poll entrances to prevent harvesting of data used for voter impersonation.
7. California's "Motor Voter" Law – AB1461
- a. Pass AB 2067 amending AB 1461 to -
    - 1. Create a clear, mandated procedure by which the citizenship status of all potential registrants will be verified prior to uploading information to the Secretary of State;
    - 2. Establish oversight provisions;
    - 3. Authorize ongoing education and/ training for Department of Motor Vehicles (DMV) personnel

This report was approved as amended by the members of the California Advisory Committee by a vote of 6- yes, and 0 - no with no abstentions on Wednesday, June 1, 2016.

Respectfully,  
 Percy Duran, *Chair*  
 California Advisory Committee

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## I. Introduction

### A. California Advisory Committee to U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to denial of the right to vote because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.<sup>10</sup> The Civil Rights Act of 1957<sup>11</sup> created the U.S. Commission on Civil Rights. Since then, Congress has reauthorized or extended the legislation creating the Commission several times; the last reauthorization was in 1994 pursuant to the Civil Rights Commission Amendments Act of 1994.<sup>12</sup>

Established as an independent, bipartisan, fact-finding federal agency, its mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. The Commission pursues this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission plays a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.<sup>13</sup>

The Commission has established an advisory committee in each of the 50 states and the District of Columbia. These state advisory committees are composed of state citizens who serve without compensation and advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin and other matters under the jurisdiction of the Commission.

### B. Help America Vote Act of 2002

On July 23, 2002, a bipartisan Congress passed the Help America Vote Act (HAVA) of 2002<sup>14</sup> to assess compliance and suggest reforms to the nation's voting process. HAVA made recommendations for improvements to voting systems and voter access<sup>15</sup> and established:

- 1) new mandatory minimum standards for states to follow in several key areas of election administration;<sup>16</sup>
- 2) funding to help states meet these new standards, replace voting systems and improve election administration;<sup>17</sup>

<sup>10</sup> Civil Rights Act of 1957, Pub.L. 85-315, 71 Stat. 634, *et seq.*, (1957).

<sup>11</sup> Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d, *et seq.*

<sup>12</sup> Civil Rights Commission Amendment Acts of 1994, as amended, 42 U.S.C. 1975, *et seq.*

<sup>13</sup> U.S. Commission on Civil Rights at [www.usccr.gov](http://www.usccr.gov).

<sup>14</sup> Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 *et seq.*, *available at* [http://www.eac.gov/assets/1/workflow\\_staging/Page/41.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF).

<sup>15</sup> United States Election Assistance Commission at [http://www.eac.gov/about\\_the\\_eac/help\\_america\\_vote\\_act.aspx](http://www.eac.gov/about_the_eac/help_america_vote_act.aspx) (last accessed Nov. 22, 2014). <http://doodle.com/poll/947m69wbxmgers8uz>

<sup>16</sup> *Ibid.*, HAVA, §§ 101-906 (2002), *available at* [http://www.eac.gov/assets/1/workflow\\_staging/Page/41.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF).

<sup>17</sup> *Ibid.*

- 3) the Election Assistance Commission (EAC) to assist the states regarding HAVA compliance and to distribute HAVA funds to the states.<sup>18</sup> EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.<sup>19</sup>

Under HAVA, states are required to implement programs and procedures in the following areas: (1) provisional voting; (2) voter information; (3) statewide voter registration databases; (4) updated and upgraded voting equipment (5) voter registration identification procedures; and (6) administrative complaint procedures.<sup>20</sup> To help meet these requirements, HAVA provides the states with funds—a portion of which are to be disseminated to specific counties to assist local entities meet the provisions of the Act. HAVA has provided more than \$380 million in federal funding to California to help improve the state's administration of elections

An assessment of election performances between states in 2012 and 2014 by an independent non-profit organization reported that California performed well below the national average. The effectiveness and implementation of HAVA and the integrity of the voting process is of particular concern in California because of the growth and reported difficulty of voter access of various potential voter populations, including Latinos, Asian-Americans, and the voters with disabilities.

**Table 1: California Population by Percent by Race/Ethnicity, 2000 and 2014**

	Percent of population	
	2000	2014
<b>White</b>	46.6	38.8
<b>African American</b>	6.4	5.8
<b>Asian</b>	11.1	13.0
<b>American Indian</b>	1.0	0.8
<b>Latino</b>	32.3	39.0
<b>Two or more races</b>	2.6	2.6

Source: California Advisory Committee from Census data.

With respect to provisional voting, many eligible citizens in the United States are denied the right to cast ballots and have them counted on Election Day. Many voters are turned away from polls because their names do not appear on a list of registered voters for varied reasons—at times the responsibility of the individual voter. To correct this problem, the “fail-safe” provisional voting requirements in the HAVA require election officials to first provide aid to those individuals who are not listed on the official list of registered voters by helping them locate their proper polling place, and, if not resolved, then to provide provisional ballots. After an election, once in-person and absentee ballots are counted, and the appropriate election officials determine that the individual is eligible to vote, the provisional ballot is counted.

<sup>18</sup> HAVA, § 201, available at [http://www.eac.gov/assets/1/workflow\\_staging/Page/41.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF).

<sup>19</sup> United States Election Assistance Commission at [http://www.eac.gov/about\\_the\\_eac/help\\_america\\_vote\\_act.aspx](http://www.eac.gov/about_the_eac/help_america_vote_act.aspx) (last accessed Nov. 22, 2014).

<sup>20</sup> Ibid.

A key component of HAVA regarding statewide voter registration databases is that each state must establish a statewide voter registration database.<sup>21</sup> This database must include the name, address, birthdate and other registration information for every legally registered voter within each state. The state is also to assign a “unique identifier” to each applicant. The list is to be coordinated with other agency databases within each state, and accessible electronically to local election officials and individual voters. HAVA also regulates the maintenance of these lists, requiring states to ensure that the name of each voter appears on the list, and that the names of voters who are not registered, inactive (including the deceased), or ineligible, and duplicate names, be eliminated.

This section of HAVA further requires that voters provide either their driver's license number or social security number or the last four numbers of their Social Security number. In the case of applicants lacking any of the three items, the state is to assign a unique identifying numbers for each applicant.<sup>22</sup> States are required to establish agreements with their state motor vehicle agencies and the Commissioner of Social Security, through which identification numbers can be “matched” to verify accuracy and legitimacy of the voter registration application information.<sup>23</sup>

The effective date of HAVA's statewide registration database requirement was January 1, 2004, but was extended for good cause to January 1, 2006. California planned to implement a “bottom-up” system, with the counties maintaining the voter file and precinct and district boundaries, and transmitting this information to the state. The statewide system was not in place by the January 1, 2006, deadline nor implemented for another decade. During a state audit, the California Deputy Secretary of State for HAVA activities explained that in addition to its agreement with Justice, the Secretary of State (SOS) pursued VoteCal because its previous system—CalVote—was a failure.<sup>24</sup> With so many years of failing to create the mandated state-wide voter database (California is the only state without that compliance with HAVA), there were concerns about any state-wide system meeting the HAVA requirements of interactivity to allow local election official immediate electronic access to voter information as well as electronic transmission of voter registration data into the single system.

All 58 counties are now engaged in the process of VoteCal implementation prior to its expected June 2016 certification as the State's system of record. Even though all counties are actively engaged, many tasks must be completed before VoteCal can be certified. These include a mock election, on-going performance testing, and analyzing and monitoring the data in VoteCal. The VoteCal project team, with assistance from county election officials, intends to focus on these activities in the coming weeks.<sup>25</sup>

The current SOS is committed to the implementation of Vote Cal; the expectation is for June 2016 after VoteCal is successfully deployed to all counties and the SOS and the Election Audit

<sup>21</sup> HAVA, § 303(a).

<sup>22</sup> Ibid.

<sup>23</sup> Daniel Tokaji, Moritz College of Law, available at [http://moritzlaw.osu.edu/electionlaw/ebook/part5/hava.html#\\_edn11](http://moritzlaw.osu.edu/electionlaw/ebook/part5/hava.html#_edn11) (last accessed Nov. 22, 2014).

<sup>24</sup> California Office of the Secretary of State, Audit of the Administration of the Federal Help America Vote Act of 2002 at <https://www.bsa.ca.gov/reports/summary/2012-112> (last accessed Nov. 22, 2014).

<sup>25</sup> Testimony of Alex Padilla, California Secretary of State, *VoteCal News*, available at <http://www.sos.ca.gov/elections/voter-registration/votecal-project/news/> (last accessed May 27, 2016).

Committee (EAC) test and validate that VoteCal is fully and accurately functional, VoteCal will be declared certified as the official system of record for voter registration in California, almost 11 years after the passing of HAVA.<sup>26</sup>

Other issues raised by HAVA mandates reflect that the 21<sup>st</sup> century is experiencing a new era in voting. Electronic voting systems are being scrutinized for integrity and reliability. Expensive, antiquated purpose-built hardware-based systems and manual and paper processes are being transformed with systems designed to result in increased accessibility and improved accuracy for all elections, as well as enhanced security, increased auditability, and significant cost savings.

Apart from HAVA, it is important to understand the legislation with respect to other Federal voting rights legislation, such as the Voting Rights Act of 1965 (VRA);<sup>27</sup> the National Voting Registration Act of 1993 (NVRA) that requires state governments to offer voter registration opportunity to eligible citizens who apply for or renew a driver's license or seek public assistance;<sup>28</sup> and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) that requires states and U.S. territories to allow certain U.S. citizens to register and vote by absentee ballot in federal elections.<sup>29</sup> Along with HAVA, these respective Federal Acts need to be understood in context with the California Election Code<sup>30</sup> and the California Code of Regulations, such as Title 24, which is the building code section. So, although it is an important piece of legislation in its own right, focusing solely on HAVA may not provide the full breadth and extent of what election officials at the state and local level confront in their obligations to conducting fair and impartial elections.

### C. Non-Government Reports on Election Integrity

#### 1. Pew Charitable Trusts' Election Performance Index Report

The Pew Charitable Trusts' (Pew) Elections Performance Index, or EPI, reports comparisons between all states regarding election effectiveness. The Pew EPI profile analyzes 17 key indicators of election administration and scores each state's performance by indicator.

The EPI is based on a snapshot in time and on data that is not always commonly collected or comparable across state lines. The intent of the EPI is to draw policy level attention to election administration at the state level. By its nature the EPI is set up to more favorably reflect states with centralized election administration and states that have adopted policy changes advanced by Pew research, i.e. same day registration and participation in interstate data matching for file maintenance. The application of election laws are not indicators used in Pew analyses.

Pew reported that California's EPI average increased slightly from 2008 to 2012, but at a rate well below the national average. In 2008, 2010, 2012, and 2014, the state was the 49th lowest-performing states, and one of only six states in the bottom 25 percent in all four years. California

<sup>26</sup> Ibid.

<sup>27</sup> Pub. L. 89-110, codified at 42 U.S.C. §§ 1973 to 1973aa-6.

<sup>28</sup> Pub. L. 103-31, (52 U.S.C. § 20501 - 52 U.S.C. § 20511) (formerly 42 U.S.C. §§ 1973gg-1973gg-10),

<sup>29</sup> Pub. L. 99-410, codified at 42 U.S.C. § 1973ff.

<sup>30</sup> California Elections Code, Stats. 1994, Ch. 920, Sec. 2.

improved its average wait time to vote, which fell from nearly 14 minutes in 2008 to less than six minutes in 2012. The state also added online voter registration before the 2012 election, and by the end of that year, more than 900,000 Californians used the system to register or update their information.<sup>31</sup>

Decreases in other indicators, however, overwhelmed these improvements. The increase in California's rate of provisional ballots cast was the second-highest in the nation. In 2008, the rate was already the country's fourth-highest at 5.8 percent, and in 2012, when the state issued more than 1 million provisional ballots, the rate was 8.1 percent, the second-highest.

Pew measured California as the 49<sup>th</sup> worse election performing state of 50 using criteria such as:

- 1) Low turnout statistics
- 2) Mail Ballots unreturned
- 3) Mail ballots rejected
- 4) Military and Overseas Ballots rejected
- 5) Military and Overseas Ballots unreturned
- 6) Provisional ballots cast
- 7) Provisional ballots rejected
- 8) Registration or Absentee Ballot problems
- 9) Voter Information Lookup Tools Available (49<sup>th</sup>)
- 10) Disability or illness-related problems

Pew reports that California issues provisional ballots for many reasons.

- Almost 30 percent of the requested vote-by-mail ballots in California are not cast—the highest rate in the nation. Any voter who requests a mail ballot but then shows up at the polls on Election Day without it is required to cast a provisional ballot. This number contributes to the statistics regarding low turnout.
- When California voters have a registration problem (e.g., if they moved within the same county and did not update their address or if their eligibility is called into question), they are issued a provisional ballot.
- The state also had the greatest number and percent of rejected provisional ballots amongst all states. In 2012, more than 175,000 provisional ballots were rejected, equivalent to almost 1.4 percent of all ballots cast in the state.<sup>32</sup>

As noted above, the state's rate of unreturned mail ballots was the highest among all states in 2012, when it jumped to 29.4 percent from 16.2 percent in 2008, the fourth-largest increase in the country. California has permanent mail voting: Any registered voter can choose to automatically receive mail ballots for all future elections.<sup>33</sup>

<sup>31</sup> Pew Charitable Trusts, California Elections Performance Index, April 2014, at [http://www.pewtrusts.org/~media/Assets/2014/04/07/2012\\_Election\\_Performance\\_Index\\_California.pdf?la=en](http://www.pewtrusts.org/~media/Assets/2014/04/07/2012_Election_Performance_Index_California.pdf?la=en) (last accessed Nov. 22, 2014).

<sup>32</sup> Pew Charitable Trusts, California Elections Performance Index, April 2014, *available at* [http://www.pewtrusts.org/~media/Assets/2014/04/07/2012\\_Election\\_Performance\\_Index\\_California.pdf?la=en](http://www.pewtrusts.org/~media/Assets/2014/04/07/2012_Election_Performance_Index_California.pdf?la=en) (last accessed April 18, 2016).

<sup>33</sup> *Ibid.*



Another statistic in the Pew report concerned the voter with disabilities. In 2012, California showed 13.6 percent of those responding to a census survey did not cast ballots due to an “illness or disability (own or family’s).”<sup>34</sup> The national average is 15.8 percent. The PEW Report found the following regarding the 2010 Census:

Disabled and permanently ill voters face unique challenges, such as inaccessible polling places and voting technology that is difficult to use. Federal law mandates that all polling places must generally be accessible to physically disabled voters. The Help America Vote Act of 2002 requires that at least one voting machine in each precinct be equipped for physically disabled individuals.<sup>35</sup>

## 2. Election Integrity Project Report

The Election Integrity Project (EIP) identified over 60,000 irregularities in California’s 2013 voter roll data provided by the counties. Statistics for the deceased are based on 50 years of records. In addition to the Pew report on elections in California, the EIP emphasized the well-known fact that California is the only state without a federally-required single, uniform, official, centralized, interactive, computerized statewide voter registration list. The state entered into a Memorandum of Agreement (MOA) with the Department of Justice in 2005, which required it to expedite the development of a fully compliant database.<sup>36</sup>

The Election Integrity Project operates in three major capacities: As a citizen training organization in election integrity, an election integrity research organization, and a non-partisan election oversight company.

Meanwhile, according to the EIP report, in a high tech state with 55 electoral college votes and 53 U.S. House seats, California’s official state list was an agglomeration of 58 county lists and used 1993 technology. List maintenance deficiencies are illustrated in a chart which showed over 81,000 list irregularities (duplicate registrations, deceased, double voting) in just nine counties reported by EIP to election officials in 2013.

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> U.S. Department of Justice Memorandum of Understanding with the State of California (Nov. 2, 2005), available at <https://www.justice.gov/crt/text-proposed-regulations>.

Table 2: Rate of Irregularities by County

California County	# Registrants On Active List	# In-County Dups	# Deceased	# Cross-County Dups	# Unlawful Votes	Total Irregularities/ % Of Registrations
Fresno	405,888	659	1,264	607	83	2,613/0.6%
Kern	331,510	209	389	163	22	783/0.2%
Kings	47,853	139	45	271	8	463/1.0%
Los Angeles	4,818,730	37,675	14,958	5,330	2,389	60,352/1.3%
Nevada	61,717	45	40	NA	3	88/0.1%
Riverside*	932,892	2,877	214	1,251	120	4,462/0.5%
San Bernardino*	862,237	3,349	418	1,251	329	5,347/0.6%
San Diego	1,562,447	1,112	164	5,330	214	6,820/0.4%
Tulare	145,738	178	51	451	15	695/0.5%
Total/Straight Average						81,623/0.6%

Source: Election Integrity Project Report, 2014

Based in Los Angeles County, which is the nation's largest county, Election Integrity Project (EIP) reported a disturbingly high percent of irregularities – more than twice the rate of other large counties. EIP also submitted over 3,200 suspected unlawful voters (suspected double voters, deceased voters) to election officials.<sup>37</sup> In a state with no voter ID, inaccurate voter lists can result in voting fraud since duplicated and deceased persons are easy to impersonate.<sup>38</sup>

In California, however, obstacles to the most up-to-date, modern and secure election and voting systems exist in the very codes created to protect the voter. The best updated and upgraded election systems can only occur with an updating and upgrading of the election laws and codes concerning them.

#### D. Public Hearing on Election Administration in California

A public hearing was held on August 28, 2015, at the Central Library of the City of Los Angeles. The scope of the hearing was the general compliance by the state with HAVA. Invited presenters included, among others, the California Secretary of State, the California State Auditor, election officials in Los Angeles and San Diego Counties, representatives from the Pew Charitable Trust, Everyone Counts, and the Election Integrity Project, and the public.<sup>39</sup>

<sup>37</sup> Testimony of Linda Paine and Ruth Weiss, HAVA Transcript, pp. 158-191.

<sup>38</sup> Ibid.

<sup>39</sup> A listing of all presenters at the August 28, 2015, public hearing is in Appendix 1, and the complete transcript of the proceedings is posted on the Commission's website at [www.usccr.gov](http://www.usccr.gov).

## II. Background

### *Federal Commission on Election Reform Report*

The issues of concern before the California Advisory Committee with respect to the conduct of elections are also nationwide concerns. Ten years ago, the Commission on Federal Election Reform (CFER) was constituted to recommend ways to raise confidence in the electoral system. The prefatory comments by the Co-Chairs in the Commission's report on election integrity and growing lack of public confidence in the fairness of elections was sobering for the future of democracy in the nation.<sup>40</sup>

Elections are the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable. At the same time, elections are a core principal function upon which all other government responsibilities depend. If elections are defective, the entire democratic process is at risk.

Americans are losing confidence in the fairness of elections. And while we do not face a crisis today, we need to address the problems of our electoral system. First, there appears to be a growing lack of confidence in the integrity and fairness of the election system. Second, certain identifiable segments of the population may face barriers in their right to vote.<sup>41</sup>

Of particular concern to the California Advisory Committee in its project on voting integrity in California, the CFER examined and commented on: (1) ballot integrity and voter registration, (2) election administration, and (3) expanding access to elections.

### **1. Ballot Integrity and Voter Registration**

Undermining the integrity of the ballot, fraud can occur in several ways. Ineligible persons can vote. Eligible voters can vote multiple times and/or in multiple locations. Persons can cast votes on behalf of others or persons who are dead. But among the possible election frauds, "absentee ballots remain the largest source of potential voter fraud."<sup>42</sup>

Regarding voter registration, the CFER noted that "election systems cannot inspire public confidence if safeguards do not exist to deter or detect fraud or to confirm the identity of voters."<sup>43</sup> While there is no evidence of extensive fraud in U.S. elections or of multiple voting, as the Commission on Federal Election Reform reported, one potential source of fraud arises from inactive or ineligible voters left on voter registration lists.

A good registration list (accurate and up-to-date) ensures that citizens are only registered in one place—and is maintained in a manner that persons who move or die or who are inactive are

<sup>40</sup> Commission on Federal Election Reform, *Federal Election Commission report*, Letter from the Co-Chairs.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*, p. 46.

<sup>43</sup> *Ibid.*, pp. 4 and 18.

systematically removed from the voter registration list. A good registration list also identifies the same person being registered in two different locations. However, election officials still need to make sure that the person voting—whether in person or by mail ballot— is the same one as that voting.

## 2. Election Administration

The Commission on Federal Election Reform stated that a major source of public mistrust in the election process is the perception of partisanship in actions taken by election officials.<sup>44</sup> In California, similar to a majority of states, election administration comes under the authority of the Secretary of State. In recent years, both Republican and Democratic Secretaries of State have been accused of bias because of their discretionary actions.

For example, in Kansas legal action has been taken against the Secretary of State, Kris Kobach (R), for alleged voter suppression. The lawsuit challenged the state's dual voter registration system crafted by the Secretary of State that requires voters to provide proof-of-citizenship documents when they register to vote for the first time or after moving to Kansas.<sup>45</sup> In Oregon, citizen groups such as True the Vote have challenged the actions of Secretary of State Jeanne Atkins (D) regarding the accurate maintenance of voter registration lists.<sup>46</sup>

Poll workers are essential to effective election administration. Effective administration of elections requires that poll workers have the capability and training to carry out complex voting systems correctly, which often change with each election. As CFER reported, poll workers must administer an array of voting procedures in compliance with HAVA and other election laws, to include provisional ballots, checking voter identification, correctly counting votes, setting up voting machines, instructing voters on the use of voting equipment, and providing helpful and accurate service to a diversity of voters including persons with disabilities and non-English speakers.<sup>47</sup>

## 3. Expanding Access to Elections

This nation has a long and unfortunate history of denying the right to vote to certain groups of citizens. Despite ratification of the 15<sup>th</sup> Amendment to enfranchise former slaves, in the century following the Civil War Americans in many parts of the country were systematically denied the right to vote. State and local registration boards used poll taxes, literacy tests, felon disenfranchisement laws, and other impediments to deny minorities their legal right to vote. In the Voting Rights Act<sup>48</sup> was enacted after Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the 15th Amendment.

<sup>44</sup> Ibid., p. 49.

<sup>45</sup> Kira Lerner, *Judge shuts down Kris Kobach's attempt to disenfranchise voters in Kansas elections*, accessible at <http://thinkprogress.org/politics/2015/08/27/3695987/kris-kobach-ruling-kansas>.

<sup>46</sup> Shelby Sebens, *Too Nice for Fraud: Some Say OR Election System Vulnerable Despite Few Cases*, Wachdog.org, May 16, 2013, available at <http://watchdog.org/85032/too-nice-for-voter-fraud-some-say-or-election-system-vulnerable-despite-few-cases/>.

<sup>47</sup> Ibid., p. 52.

<sup>48</sup> Pub. L. 89-110, codified at 42 U.S.C. §§ 1973 to 1973aa-6.

Concerns about ballot integrity, voter registration, and the administration of election systems must not be co-opted into denying the right to vote to eligible citizens. CFER noted this challenge in building confidence in elections. While many states allow the representatives of candidates or political parties to challenge a person's right to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to voter integrity, but it can have the effect of intimidating eligible voters, prevent them from casting their ballots, or otherwise disrupting the voting process.<sup>49</sup>

## **B. State Differences in Accessibility to the Right to Vote**

It is more and more a reality that there exists a great deal of diversity across the country with respect to voter registration and accessibility to the voting process. Where one lives affects the ease or difficulty in voting. And the Nation's federal structure encourages this as states are afforded latitude within the confines of adherence to the Constitution to institute voter policies in their states to include voter registration, voter identification and mail ballots, as well as ex-felon voting.

### **1. State Variance in Voter Identification Laws**

In the 2000s, voter ID as an issue began to take center stage. The Commission on Federal Election Reform (aka the Carter-Baker Commission), in 2005 made a bipartisan recommendation for voter identification at the polls.<sup>50</sup>

In recent years, 34 states have introduced laws requiring voters to show photo identification at the polls.<sup>51</sup> And photo identification bills have been enacted in eight states—Alabama, Kansas, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin—and passed by referendum in Mississippi.<sup>52</sup>

Independent studies reviewed by the Government Accountability Office (GAO) showed mixed effects of various forms of state voter ID requirements on turnout. All 10 studies examined general elections before 2008, and 1 of the 10 studies also included the 2004 through 2012 general elections. Five of these 10 studies found that ID requirements had no statistically significant effect on turnout; in contrast 4 studies found decreases in turnout and 1 found an increase in turnout that were statistically significant.

<sup>49</sup> Commission on Federal Election Reform, *Federal Election Commission report*, p. 47.

<sup>50</sup> Center for Democracy and Election Management, *Building Confidence in U.S. Elections: Report on the Commission on Federal Election Reform*, September 2005, p. 21, available at <http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF>.

<sup>51</sup> U.S. Government Accountability Office, *Issues Related to State-Issued Voter Identification Laws*, GAO-14-634; Published: Sep 19, 2014. Publicly Released: Oct 8, 2014 and re-issued February 27, 2015. The 34 states with introduced and/or enacted voter identification laws are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

<sup>52</sup> Ibid.

## 2. Ex-Felon Voting Rights

In 41 of the 50 states ex-felons may vote, but there is wide variance among the states on this allowance. In two states, Maine and Vermont, even incarcerated felons may vote. In thirteen other states, former felons are allowed to vote soon as they are released from prison. The most common restriction on ex-felon voting rights withholds the right to vote until parole and/or all other terms of the sentence have been completed. Thirty-one (31) states have such provisions.

In 13 states, ex-felons may vote upon release as long as they are not on parole. In 18 states there is a similar restriction, and the restriction extends until all terms of the sentence including parole have been completed, e.g., restitution, community service. In three states, the right to vote for an ex-felon is withheld until a specified amount of time has elapsed. In Nebraska that period of time is 2 years; in Delaware and Wyoming the time period is 5 years.

Nine states have lifetime bans on ex-felons voting. In all nine of these states, however, it is possible for a person to obtain a form of clemency and have their voting rights restored. The process of clemency varies among the states. For example, in Mississippi, ex-felons are banned for life from voting, but under the state's Constitution may have their voting rights restored by a vote of two-thirds of both legislative houses. In seven other states with lifetime bans on ex-felon voting rights the clemency process is an executive decision. In four of these states, the Governor possesses the sole power to grant clemency. In Alabama, Arizona, and Nevada, executive clemency is under the authority of the state's correctional system. Florida is unique among the nine states with lifetime bans for ex-felons in that its clemency procedure resides with the state's cabinet.<sup>53</sup>

In California, citizens convicted of a felony are ineligible to vote while incarcerated and on parole. Voting rights are automatically restored upon completion of parole, and citizens on probation can vote. Ex-offenders should re-register to vote.

## 3. Mail Ballots and Provisional Voting

Different states have established alternatives for voters to cast a ballot other than at the polls on Election Day. Most states—35 and the District of Columbia—currently provide an opportunity for voters to cast a ballot prior to the election without an excuse, either by no-excuse absentee voting by mail or in-person early voting, or both. States vary in terms of the number of days and locations provided for early voting. In addition, states, as well as whether voting is available on a weekend, and whether the state allows voters who cast an absentee ballot without an excuse to be on a list to permanently receive a ballot by mail without an excuse.<sup>54</sup>

Under federal law, if a person comes to the polls and declares that he/she is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list

<sup>53</sup> Tennessee Advisory Committee to the U.S. Commission on Civil Rights, *The Right to Vote and Ex-Felon Disenfranchisement in Tennessee*, December 2013, pp. 14-5.

<sup>54</sup> U.S. Government Accountability Office, *Elections: State Laws Addressing Voter Registration and Voting on or before Election Day*, GAO-13-90R: Oct 4, 2012.

of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place.<sup>55</sup>

### III. State Compliance with HAVA

#### A. 2005 Memorandum of Agreement with Department of Justice

Following the enactment of HAVA, in 2005 California's initial statewide voter registration database was upgraded to the CalVoter system. CalVoter was implemented to comply with HAVA's requirement for a statewide voter registration system.

After CalVoter was online, the Secretary of State contacted the U.S. Department of Justice (Justice), which is the entity responsible for overseeing and enforcing HAVA, to determine the state's compliance under HAVA regarding a statewide voter registration database. Justice was notified that the state had in place a single list of all registered voters.

Justice, however, countered that the installed statewide system was not compliant with HAVA. Under HAVA, the statewide database of all registered voters must be accessible and connected to the state's 58 county election officials. The database also needed to be interconnected with other sources of voter information, such as state entities responsible for death notices and state correctional offices.<sup>56</sup> As a result, Justice determined that the state was in non-compliance with HAVA's voter database requirement.<sup>57</sup>

The Secretary of State then entered into discussions with Justice to learn what was necessary by the state for compliance. The result of those discussions was a Memorandum of Agreement (MOA) between Justice and the State of California.<sup>58</sup> Under the MOA, Justice agreed to not initiate legal action to comply and the State agreed to install "bridges" between the statewide database and required reporting entities. The State also agreed to report to Justice on a monthly basis with updates regarding the status of the project.<sup>59</sup>

<sup>55</sup> 52 U.S. Code § - Provisional voting and voting information requirements.

<sup>56</sup> Testimony of Susan Lapsley, Deputy Secretary of State, Office of the California Secretary of State, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 36-38 (hereafter referred to as Transcript on Help America Vote Act), available at <https://www.justice.gov/crt/text-proposed-regulations>.

<sup>57</sup> Ibid., p.37.

<sup>58</sup> An "interim solution" to meet the requirements of Section 303 of HAVA for a statewide voter registration system was implemented pursuant to a Memorandum of Agreement (MOA) executed with the U.S. Department of Justice (US DOJ) – the enforcement authority for HAVA – on November 2, 2005.

<sup>59</sup> Ibid.

In 2013, the State Auditor completed its examination of the Secretary of State's compliance with HAVA. One recommendation from the examination was that the Secretary of State re-negotiate the MOA. The reasoning for the recommendation was that the MOA had been in effect for over six years, and the state was now close to implementing a compliant statewide voter database system.<sup>60</sup>

According to Agency officials, the Secretary of State did act on the recommendation and reach out to Justice and held conversations with the department about re-negotiating the MOA. Justice, however, declined to re-negotiate the MOA. The position of Justice was that the agency had deferred any sort of enforcement action against the state, so the state needed to comply and implement a statewide voter database compliant with HAVA.<sup>61</sup>

Subsequent to the discussions with Justice, the Secretary of State initiated procurement for a new statewide voter database called Vote-Cal. In July 2015, the new system did test pilot programs with two counties and followed with three additional test pilot programs in October 2015.<sup>62</sup> In 2016, the state gradually deployed to all 58 counties in a series of six "waves."<sup>63</sup>

### **B. State Auditor Report on State Compliance with HAVA**

The Bureau of State Audits investigates the financial management and effectiveness of state government agencies. This investigation includes audits that examine whether state agencies and programs are accomplishing what they were created to do; whether they are obeying the law; and whether state resources are being used properly. The California State Auditor's staff conducts their reviews in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of their audits and investigations.<sup>64</sup>

In 2013, the State Auditor released a report on the state's compliance with HAVA.<sup>65</sup> As reported by the Auditor, HAVA provided more than \$380 million in federal funding to California to help improve the state's administration of elections by complying with requirements that are set out in three different sections of the Act. These three sections provide funding for activities such as educating voters, training election officials and poll workers, replacing punch card voting systems, and complying with HAVA Title III (Title III) requirements to include the development and deployment of a statewide computerized voter registration list.<sup>66</sup>

A significant problem noted in the audit was that the state had not effectively spent HAVA funds for new voting systems. Specifically, over \$22 million in HAVA funds have been spent on

<sup>60</sup> California Auditor's Report 2011-2012, Aug. 2013, p.36, available at <http://www.bsa.ca.gov/pdfs/reports/2012-112.pdf>.

<sup>61</sup> Testimony of Susan Lapsley, Transcript on Help America Vote Act, pp. 37-38.

<sup>62</sup> California Secretary of State, Elections Division, at <http://www.sos.ca.gov/elections/voter-registration/votecal-deployment-status>.

<sup>63</sup> Ibid.

<sup>64</sup> AllGov California [http://www.allgov.com/usa/ca/departments/independent-agencies/bureau\\_of\\_state\\_audits?agencyid=212](http://www.allgov.com/usa/ca/departments/independent-agencies/bureau_of_state_audits?agencyid=212)

<sup>65</sup> California State Auditor, *Secretary of State: It Must Do More to Ensure Funds Provided Under the Federal Help America Vote Act Are Spent Effectively*, Report 2012-112, August 2013 (hereafter Auditor HAVA report).

<sup>66</sup> Ibid., Executive Summary.



replacing voting systems with new systems that counties and voters cannot fully use.<sup>67</sup> Speaking to this concern, Elaine Howle, California State Auditor, said:

As of June 30 of 2012, the State of California still had \$130 million in HAVA money available, but it was tied up because ... the State had not deemed itself compliant with Title III. Again, that is money the Legislature could have engaged in the process and provided some of those funds at the local level for training, for improving (voting) systems, those sorts of things. So we really felt that that was something the Secretary of State's Office needed to be pro-active about and reach out of to the Department of Justice and try to work with them to modify the agreement that they had entered into a few years before. The status of that, the Secretary of State's Office listened to us.<sup>68</sup>

The audit also noted that there appeared to be a lack of clarity by the state regarding buying voting systems and the manufacture of them, and what standards are applied by the Secretary of State for voting system approval. State law has required the Office to develop regulations that define this process since 1994. A survey of all 58 California counties found that a number of counties needed additional funding to replace their voting systems, and some county officials expressed concern about the process for voting system approval, highlighting both the conflicting guidance regarding which systems can be used and the lack of vendors developing new voting systems.<sup>69</sup> Addressing this issue, Howle said:

One of the things we asked the Secretary of State's Office and...the County Registrar's was: "Is it clear what the expectations are?" What we found was the answer to that was "No," even though there was a statutory requirement in California State Law that there be specific voting standards and standards for the elections process and voting equipment and systems.... There needs to be very specific expectations laid out in regulation, and do that through a public process so the County Registrar's, the public can be engaged in that process. So once those regulations are established, everyone across the state -- vendors, citizens, county registrars -- understand what is expected as far as what a voting system should look like, what kind of capacity, functionality that system should have....

What the Secretary of State's Office was required to do (dates) back to when this statute was enacted in 1994. So it had been a long time to establish (such) regulations. And the Secretary of State's Office took this recommendation very seriously and ...started the rule-making process not long after our audit report went public in August of 2013. I am happy to announce, and I have to give the Secretary of State's Office credit, they completed the regulatory process, went through the appropriate state agency in Sacramento, and those recommendations became effective this year, April 1st of 2015.<sup>70</sup>

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<sup>67</sup> Ibid.

<sup>68</sup> Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 13.

<sup>69</sup> Auditor HAVA report, Executive Summary.

<sup>70</sup> Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 7.

A third issue raised by the Auditor concerned the state's implementation of the National Voter Registration Act of 1993 (NVRA).<sup>71</sup> A key component of this law—sometimes referred to as the “Motor Voter” law—is the requirement that an application submitted for a driver's license simultaneously serve as an application to register to vote for an eligible citizen. However, visits by the Auditor to some California Department of Motor Vehicles (DMV) offices found that the driver's license application did not act as a simultaneous application for voter registration as required by law.<sup>72</sup> Howle noted for the Committee that the State of California must address this issue.

The Secretary of State's Office needs to engage with the Department of Motor Vehicles and...figure out what we need to do to be able to accomplish this and allow it to be simultaneous. Because the intent of NVRA is to allow people (some ease) to register to vote. If you're going to register your car, you're going in to get a driver's license or ID card, you should be able register to vote very easily. And actually, it should be something that you do not even realize. It is a simultaneous process. So the recommendation that we made in the audit report to the Secretary of State's Office was to work with the Department of Motor Vehicles and develop a new process that would allow Californians to go into their local DMV, conduct business, and then, if they so choose, register to vote simultaneously with whatever transaction they were engaging in. In the response to our initial report and as they have provided status updates, the Secretary of State's Office, has reiterated that they really do not have a lot of control over the DMV.<sup>73</sup>

On October 10, 2015, the Governor signed into law a measure that will register citizen voters through the DMV. Under the program, after the Secretary of State certifies that certain enumerated conditions are satisfied, the DMV is required to electronically provide to the Secretary of State the records of each person issued an original or renewal of a driver's license or state identification card or who provides the department with a change of address, as specified. The person's motor vehicle records would then constitute a completed affidavit of registration and the person would be registered to vote, unless the person affirmatively declined to be registered to vote during a transaction with the Department or the Secretary of State determines that the person is ineligible to vote.<sup>74</sup>

California joins Oregon as the second state in the nation opting to register voters through its Department of Motor Vehicles. The California New Motor Voter Act, AB 1461, was sponsored by Secretary of State Alex Padilla and jointly authored by Assembly members Lorena Gonzalez (D-San Diego), Luis Alejo (D-Salinas), and Kevin McCarty (D-Sacramento).

Howle concluded by telling the Committee that many of the Audit's recommendations have been fully implemented by the Secretary of State. And with respect to voter registration, she said the audit found that although the state may have met the minimum requirements for designating voter registration agencies under the NVRA, it should designate more agencies:

<sup>71</sup> 52 U.S.C. § 20501 - 52 U.S.C. § 20511) (formerly 42 U.S.C. §§ 1973gg-1973gg-10).

<sup>72</sup> Auditor HAVA report, Executive Summary.

<sup>73</sup> Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 15.

<sup>74</sup> Assembly Bill No. 1461 at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160).

The last issue in the audit report that we talk about is designating additional agencies (in addition to the DMV) that can assist people who may want to register to vote. Back in 1994, Governor Wilson issued an Executive Order, identifying specific state agencies....One we identified specifically was unemployment offices. We felt that would be a location where there would be a lot of interaction with the public. The only agency that I know that, subsequent to our audit, has been identified as an agency to assist is Covered California. There are millions of people who have gone to the website who have enrolled in (health) insurance coverage through the exchange. So that was a good decision, by the Secretary of State's Office and has been a positive result for the state.<sup>75</sup>

### **C. California Secretary of State Comment on Election Administration**

The Elections Division of the Secretary of State oversees all federal and state elections within California. In every statewide election, California prepares voter information pamphlets in 10 languages for nearly 18 million registered voters. As the Chief Elections Officer for the largest state in the nation, the California Secretary of State tests and approves all voting equipment for security, accuracy, reliability and accessibility in order to ensure that every vote is counted as it was cast.<sup>76</sup>

The Secretary also ensures election laws and campaign disclosure requirements are enforced, certifies the official lists of candidates for elections, tracks and certifies ballot initiatives, compiles election returns and certifies election results, educates California citizens about their voting rights, and promotes voter registration and participation. HAVA was signed into law by President Bush to address irregularities in voting systems that came to light in 2000, and under HAVA, as previously noted, the office is pursuing the development of a statewide database of all registered voters that is connected and accessible to local election officials and the voter.<sup>77</sup>

#### **1. Statewide Voter Registration Improvement Efforts: Database**

The Secretary of State is pursuing the new VoteCal system to replace the older CalVoter system. When finalized in 2016, VoteCal will replace the current California voter registration database and provide a single, uniform, centralized voter registration database connecting the Secretary of State and all 58 county elections offices together. The new system intends to improve the voter registration process, provide a publicly available website which will allow voters to register online, and provide a single, official statewide database of voter registration information.<sup>78</sup> Susan Lapsley representing the California Secretary of State, told the Committee:

HAVA requires in Section C, that the state set up and maintained a computerized statewide voter registration list, including the name and registration information of every legally registered voter in the state. The statewide list must be the official list of all registered voters for said elections, and must be connected with other state

<sup>75</sup> Testimony of Elaine Howle, Transcript on Help America Vote Act, p. 18.

<sup>76</sup> Secretary of State, Elections Division, at <http://www.sos.ca.gov/administration/about-agency>.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

agency databases to assist state and local officials in keeping them accurate and up to date. The state system must also provide a functional interface for counties because counties in California are the ones who administer elections.<sup>79</sup>

While the Secretary of State is responsible for the oversight of elections, it is really the 58 counties that administer elections. So in order to have a functional statewide system, we need to connect in with each of the 58 counties. So California has actually had a statewide system since 1995. Secretary Bill Jones established a statewide system at the time to look for duplicates and act as a tool for counties to be able to look at a comprehensive list. It was very rudimentary. Secretary Jones got no money to do it hardly. So it was kind of done in-house, and it was not a very robust system. Since 1995, that system was upgraded at times. However, it was done in 1995, so at this point, that was old technology. So Cal-Voter is currently the statewide system of record. We're moving towards Vote-Cal, and we anticipate having that in place and becoming the system of record by June of 2016.<sup>80</sup>

We are very close as of this speaking. There are currently seven counties that are live on Vote-Cal and five more, hopefully going live (shortly). The Vote-Cal project itself has seven phases. There's a planning, design, development, testing, pilot, and then deployment and maintenance operation. We have completed 3 of the phases. We're also done with the fourth phase, which is the testing phase. We just have one piece. I anticipate with that phase 4, we will be done with it, hopefully, in the next two weeks.<sup>81</sup>

We are also in the pilot phase. Counties I talk to that are live on this system are part of this pilot phase. We actually have started the deployment. Deploying these counties takes a lot of training, changes to their databases, changes to ours, productivity. So it's taken --like L.A. County, they're scheduled to go live in March of 2016. We've already started the process of bringing them aboard two weeks ago. So it's underway. And then the last phase is maintenance and operation of the system. So that's just the ongoing maintenance and continuing operation of the system. So that's where we're at with the statewide voter registration system.<sup>82</sup>

California is taking steps to advance such policy positions with same day registration which take effect once the statewide VoteCal database is fully implemented and certified as the official record of voters in the state. Provisional Ballot elements reflect a policy decision in California to allow for convenience voting and options that support voter participation that are administratively burdensome, but that compensate for the technical and regulatory inadequacies that are being addressed with the statewide database.

## 2. Improvements to Voter Registration

<sup>79</sup> Testimony of Susan Lapsley, Transcript on Help America Vote Act, pp. 36-37.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

The California Advisory Committee also heard about the commitment of the Secretary of State to increasing opportunities for California to participate in our democratic process. In recent years, there has been low voter turnout. The Secretary of State is seeking to identify remedies to that issue insofar as California has the opportunity to think differently about the election process. Steve Reyes, General Counsel, Secretary of State, discussed some of the initiatives by the Secretary of State to improve citizen access to voting.

In 2012, we went online with the California Online Voter Registration Website. For those who are not familiar with it, it's a new powerful tool to allow people, from their homes to their phone. To date, 1.8 million people have availed themselves of that choice. You can register for the first time. You can change background. You can change voter preferences, language preferences, political party preferences. Anything that is on that registration form can be changed.. In one month, I add that 800,000 people registered to vote for the first time, and a third of them were under 25. So that's providing an ongoing tool that exists.<sup>83</sup>

With respect to voter registration, the Secretary has sponsored legislation that is designed to modernize our registration system when Californians interact in person or online or by mail with our Department of Motor Vehicles. That was the legislation that the state auditor was referencing, AB1461, which she described, and is true, has been moving very smoothly and quickly through the legislative process.<sup>84</sup>

In addition to voter registration reforms, Reyes discussed other voting administration improvements that were under consideration by the Secretary of State. These improvements included the establishment of voting centers and upgrading old and obsolete voting machines.

Secretary of State Padilla has announced that he and his staff are working with the governor and our legislative leaders to help identify additional funding for new, modernized voting systems. As you may have heard, there have been a number of systems that are now reaching their end-of-life term. So they are at the final stages of usefulness. We want to make sure that we can provide a means for counties and folks to pay for and implement new voting systems in the State of California. Of course, that depends on funding to allow us to work with our counties to make sure they can identify systems that are appropriate and work for their particular needs. So Californians, we're heading toward a big election year.<sup>85</sup>

Secretary Padilla has also been working closely with our county election officials and partners to introduce legislation on vote centers, which is a concept that would help modernize and think differently a little about the way we cast ballots. The idea behind vote centers is that you would have these community vote centers in various parts of a jurisdiction to allow folks, perhaps two weeks before an election, to cast ballots anywhere within the county. So no longer are you going to be tied

<sup>83</sup> Testimony of Steve Reyes, General Counsel, California Secretary of State, Transcript on Help America Vote Act, pp. 29-30.

<sup>84</sup> Ibid., p. 30.

<sup>85</sup> Ibid., p. 73.

necessarily to that polling place in your neighborhood. But you can go somewhere that is convenient to your work, where you drop your kids to school, and where you run your errands. These type of systems will allow folks to cast ballots there, vote by mail, drop off their ballots, drive up and drop off their ballots in vote drop-off locations as well.<sup>86</sup>

#### **IV. Election Administration in Los Angeles County California**

##### **A. Voter Responsibility of Los Angeles County Clerk and Registrar**

The Los Angeles County Registrar's Office is responsible for the registration of voters, maintenance of voter files, conduct of federal, state, local and special elections and the verification of initiative, referendum and recall petitions. In January 1968, the Departments of Registrar of Voters and County Recorder were merged by the Board of Supervisors and further merged with the County Clerk in January 1991.<sup>87</sup>

Los Angeles County is the largest electoral jurisdiction in the country, with a population of nearly 10 million residents. The county spans 4,083 square miles, and includes 88 cities, as well as hundreds of municipal school and special districts. Each year, the office participates in approximately 200 elections for schools, cities and special districts. There are approximately 4.8 million registered voters, as well as 5,000 voting precincts established for countywide elections.

To place the immensity of the county in context, Dean Logan, Registrar-Recorder County Clerk for Los Angeles County, told the Committee that the county's electorate is larger than that of 42 of the 50 states in the country and reflects a greater cultural, economic, and demographic diversity than in any other electoral jurisdiction in the country. Additionally, the community served by the Los Angeles County registrar is highly mobile and current registration processes necessitate an individual having to complete a new registration form each time they have a change in residency.<sup>88</sup>

The Census reports that in 2014, the population of persons 18 and over—that is the number of persons of voting age—was 7,810,096. Of those, 4,544,455 million (58.2 percent) are registered voters. The actual voter participation rate in the county has not been high in recent years. In the 2014 mid-term elections, 1,518,835 persons voted. This is a participation rate of 33.4 percent.<sup>89</sup>

The 2014 mid-term election also prompted a media report of persons voting multiple times. In response to the report, an audit of voter registration records in Los Angeles County following the 2014 election found a few dozen voters with duplicate registration records, but did not find any cases where people had actually voted twice in the same election. County supervisors had asked for a review of voter records after KNBC News reported in November that at least 442 people—

<sup>86</sup> Ibid.

<sup>87</sup> Los Angeles County Recorder-Registrar/County Clerk, at <http://www.lavote.net/about-us/background>.

<sup>88</sup> Testimony of Dean Logan, Transcript on Help America Vote Act, p. 51.

<sup>89</sup> Table 2.

and possibly as many as 52,000—were registered to vote more than once in the county registrar’s system.<sup>90</sup>

The Los Angeles County Auditor-Controller office reviewed a sampling of 100 voters with possible duplicate registrations. Many of the duplicate registrations were found to have been in the system for three or four years. Records from the registrar initially showed that three people had voted twice in a recent election, but a further review showed that there was not duplicate voting but rather registrar staff mistakes in entering voter information.<sup>91</sup>

**Table 3: Los Angeles County, California—Adult Population, Registered Voters, Number of Voters in 2014 Elections, 2014 Voter Participation**

	Number/percent
Adult population--persons 18+ years of age	7,810,096
Number of 18+ population registered to vote	4,544,455
Number of voters in 2014 mid-term election	1,518,835
Voter participation in 2014 mid-term elections	33.4

Source: California Advisory Committee from Census data and Los Angeles County Recorder-Registrar data.

## **B. Comment on Election Administration by Los Angeles County Registrar**

Dean Logan told the Committee that he came prepared to discuss with the Committee issues regarding: (1) the establishment of a voter registration database, (2) duplicate voter registration and voting, (3) provisional voting, and (4) election official training.<sup>92</sup> With respect to the establishment of a voter registration database, a system should be in place for testing by the end of 2015. As to voter rolls, identifying duplicate records in a database of 4.8 million records is one of the more challenging processes for the county registrar office. Regarding provisional voting, it is to allow an unverified registered to vote. And the County’s election training section works to deliver effective election training to election day workers.

### **1. Establishment of a Statewide Voter Registration Database**

A requirement of HAVA is that each state must establish a statewide voter registration database to include the name and registration information for every registered voter within each states, and to assign a “unique identifier” to each voter.<sup>93</sup> The list is to be coordinated with other agency databases within each state, and accessible electronically to local election officials. Logan told the Committee:

<sup>90</sup> Abby Sewell, Los Angeles Times, *County audit finds duplicate voter records but no one who voted twice*, Feb. 9, 2015 at <http://www.latimes.com/local/lanow/la-me-ln-voting-record-audit-20150209-story.html>.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> HAVA, § 303(a).

Los Angeles County, through its legislative advocacy, and my department, through its participation in national and statewide associations, is actively involved promoting the completion and implementation of (a) functional and robust statewide database.... Los Angeles County is slated for testing and implementation of the new system following the November 2015 local election. We already have a cross functional team from my office and the Secretary of State's Office, working on data readiness and preparing for that transition.<sup>94</sup>

In addition to working in partnership with the Secretary and other counties in California, L.A. County continues to advocate California's participation in interstate data exchanges to both improve voter list maintenance and to better identify eligible unregistered citizens for outreach and education. In anticipation of the completion of the new statewide database and further enhancement to update and modernize the voter registration process, L.A. County is continuing our efforts to enhance, improve and expand voter filing and maintenance and promote access to voter registration services through community outreach and education programs.<sup>95</sup>

## **2. Duplicate Voter Registration in Los Angeles County**

The custody and maintenance of the county's 4.8 million voter records is the core function of the Registrar-Recorder County Clerk, and involves myriad processes and activities associated with ensuring that eligible citizens who have registered to vote are properly assigned to the appropriate jurisdiction and are provided information essential to their ability to exercise the voting franchise. Logan first told the Committee:

Our voter compilation is of numerous records from households that including members who have the same name as well as records with common names and birth dates, but different addresses and state identification numbers. It can be quite difficult to determine with certainty whether two records are associated with the same person. Additionally, the community we serve is highly mobile and current registration processes necessitate an individual having to complete a new registration form each time they have a change in residency. And that gets further complicated with the frequency of elections, and we have a proliferation of elections in Los Angeles County.<sup>96</sup>

He later noted:

To address these challenges, the county conducts routine list maintenance activities that identify and update invalid or inactive records while also assuring a high degree of confidence in avoiding false/positive matches that could impinge on voter's rights. That said, the county has made significant strides in enhancing and

<sup>94</sup> Testimony of Dean Logan, Transcript on Help America Vote Act, pp. 51-52.

<sup>95</sup> Ibid., p. 52-53.

<sup>96</sup> Ibid., pp. 53-54.



improving our voter file maintenance. This includes the development of a number of customized data-matching algorithms to identify potential duplicate records.<sup>97</sup>

Logan described the importance of the official voter file as well:

The official voter file, however, is not merely a mailing list or marketing file. There is nothing more threatening to the integrity of our democratic process than administrator disenfranchisement. And we've seen examples of incomplete data matching and purges in other states that have demonstrated that such attempts negatively impact the sense of fairness and equality that is so critical to elections.<sup>98</sup>

He also stated that the Department took additional steps to ensure voter data integrity:

Demonstrating our commitment to these efforts, the Department established a full-time unit within our Voter Records Research and Integrity Section to review the reports from the queries, and to perform regular and consistent voter file activities. As a result of these enhanced and customized queries, over 82,000 records were identified for review, resulting in the cancellation of more than 37,000 records as a result of those records.<sup>99</sup>

Finally, Logan detailed the process for identifying and handling potentially duplicative records:

In all of these queries and list maintenance activities, records were identified in every category that looked very much to be a match. But after further research, turned out not to be duplicate records. It is a very tedious process, but we have to be careful that we are not removing records of people who are active and have the legal ability to cast a vote. The same thing is true with duplicate records. As one example, (the query showed) two voters at the same address with the same exact date of birth. Same first name; different last name. This certainly would be a record that you would flag that looks like a duplicate. However, when we looked further, these voters had different social security numbers and different DMV records. So they are not, in fact, the same.<sup>100</sup>

### 3. Provisional Voting in Los Angeles County

In general, provisional ballots serve two broad purposes in California. The first—consistent with HAVA—is that it serves as a failsafe mechanism to ensure that an individual whose status as a registered voter cannot be verified is still able to cast a ballot, that is then held pending verification. The second is the use of provisional ballots to allow voters to vote at sites other than their assigned polling place. Logan told the Committee:

Provisional ballots ensure that an individual who appears to vote and their status as a registered voter cannot be verified on the spot is still able to cast a ballot that is

<sup>97</sup> Ibid., p. 54.

<sup>98</sup> Ibid., pp. 58-59.

<sup>99</sup> Ibid., p. 56.

<sup>100</sup> Ibid., p. 57.

then held for processing, pending verification of their eligibility and confirmation of their registration status as part of a post-election canvass. The second, which is more unique to California or the western part of the United States, is using provisional ballots in a manner that's characterized as 'convenience voting', where registered voters appear to vote at a location other than their assigned polling place or where they've been issued a vote-by-mail ballot. They choose to go to the polling place, but then they do not have their vote-by-mail ballot. In those cases, the voters were issued provisional ballots. The latter category has resulted in a trend of increased numbers of provisional ballots in recent elections, in some cases trending at or around 10 percent of the ballots cast in the election.<sup>101</sup>

Logan also addressed the positive impact that changes to conditional election-day voter registration could bring for voters:

California is positioned to see improvement in this area through the authorization and implementation of conditional election day voter registration. Those services will be available to voters in the first election cycle following the implementation of the statewide database. Once that is in place, voter will have the ability to update their registration records or complete the registration process at the time of voting, thus decreasing the likelihood of casting personal ballots.<sup>102</sup>

#### 4. Election Official Training in Los Angeles County

Training is conducted for election day workers to prepare them for the critical functions they conduct on election day. Such training must meet the needs of voters with respect to information about ballots and voting equipment, Federal and state law with respect to ensuring eligibility to vote, and equal access to voting for persons with disabilities and limited English speaking ability. Logan told the Committee:

Los Angeles County is committed to delivering effective election training to election day workers for federal, state, local and special elections. The County's training section conducts more than 500 classes at various facilities and locations throughout the county leading up to each election. Training is conducted for over 23,000 election day workers to prepare to perform the critical functions that we rely upon them for on election day.<sup>103</sup>

He also provided additional information about the types of training that are available:

There are several different types of training that are offered. These trainings consist of hands-on training, by presentations, scenario-based videos, written training, manuals, handouts, and job cards. And this training begins one month prior to and continues through the weekend prior to the election.<sup>104</sup>

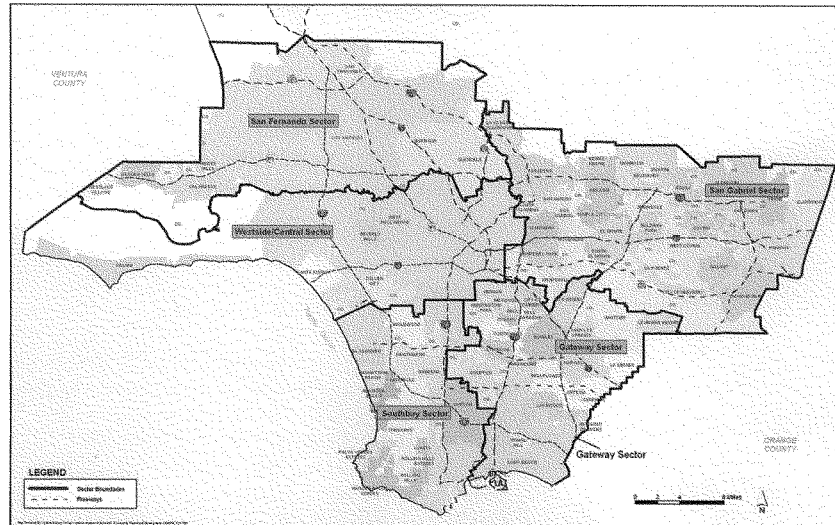
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<sup>101</sup> Ibid., pp. 58-59.

<sup>102</sup> Ibid., pp. 60-61.

<sup>103</sup> Ibid., p. 62.

<sup>104</sup> Ibid.

**Figure 1: Map of Los Angeles County California**

Source: Google maps

(With respect to limited English voters), according to the 2010 U.S. Census Data, 57 percent of Los Angeles County residents speak a primary language other than English, and 26.4 percent assess their own speaking ability in English at less than very well. Under provisions of the Federal Voting Rights Act, Minority Language requirement, the county must provide written election material in 10 languages, including English and provide bilingual poller systems in at least four additional dialects.<sup>105</sup>

Logan also discussed the growing demographics of persons with disabilities in L.A. County:

Additionally, based on the 2007 Los Angeles Health Surveys, 19.6 percent or 14.6 million voting-aged adults in the county reported having a disability. And residents over the age of 65 are among the fastest growing demographics in the country. Given these demographics in our jurisdiction, L.A. County in 2013 produced comprehensive reports describing the numerous services provided to voters with primary language other than English and for voters with disabilities and specific needs.<sup>106</sup>

<sup>105</sup> Ibid., p. 64.

<sup>106</sup> Ibid.

In addition, Los Angeles County hired IDEO to create a voting system that offers contemporary experiences and equal access for all. The County hopes to switch to the new machines in time for the 2020 presidential election. After the 2008 election drew record numbers to the polls, county election officials decided it was time to replace the county's obsolete machines. IDEO has developed a touch screen system that incorporates features familiar to voters used to scrolling and tapping.<sup>107</sup>

## **V. Election Administration in San Diego County California**

### **A. Voter Responsibility of San Diego County Clerk and Registrar**

The San Diego County Registrar of Voters (ROV) is entrusted with providing the means for all eligible citizens of San Diego County to exercise their right to actively participate in the democratic process. The Department works to ensure widespread, ongoing opportunities to register and vote in fair and accurate elections for all federal, state and local offices and measures. The ROV is also responsible for providing access to the information needed for citizens to engage in the initiative, referendum and recall petition processes and is the main repository for all County, school district, and special district campaign finance disclosure statements.<sup>108</sup>

The Census reports that in 2014, the population of persons 18 and over in the County—that is the number of persons of voting age—was 2,535,686. Of those, 1,546,924 million (61 percent) are registered voters. The actual voter participation rate in the county has been high in recent years. In the 2014 mid-term elections, 692,434 persons voted for a participation rate of 44.9 percent.<sup>109</sup> This was a noticeably higher rate than observed in the three nearby counties of Los Angeles (33.4 percent), Orange (Riverside) (40.1 percent), and San Bernardino (34.4 percent).<sup>110</sup>

The County Registrar-Recorder is responsible for the conduct of federal, state, and local elections, as well as for the verification of initiative, referendum and recall petitions and the receipt of county, school and special district campaign financial disclosure statement. To illustrate the challenges facing the County Registrar-Recorder, in the 2014 mid-term election, the office was responsible for 1,432 voting precincts on election day and processed 91 voter petitions (2 statewide petitions, 2 local petitions, and 87 candidate petitions) and 24 ballot propositions (6 state and 18 local).<sup>111</sup>

Although generally holding problem-free elections, similar to many other jurisdictions, San Diego County has reported voting machine problems. In many parts of the country, voting machines in use today were purchased with HAVA funds. Inspectors and regulators have subsequently discovered dozens of security flaws in different types of machines. For example, in 2008, a Princeton University group found that it only took about seven minutes to hack into an

<sup>107</sup> Bloomberg Businessweek, L.A. tackles a national disaster: voting machines, July 13-July 19, 2015, pp. 22-3.

<sup>108</sup> San Diego County Registrar of Voters, <http://www.sandiegocounty.gov/content/sdc/info/bythenumbers/rov.html>.

<sup>109</sup> See Table 2.

<sup>110</sup> Ibid. Orange County, directly north of San Diego County had a similar participation rate of 44.9 percent.

<sup>111</sup> San Diego County Registrar of Voters, <http://www.sandiegocounty.gov/content/sdc/info/bythenumbers/rov.html>.

AVC Advantage voting machine—currently used in over 90 counties, and plant malware to steal votes from one party and give them to another.<sup>112</sup>

In 2007, a comprehensive California review uncovered serious weaknesses in the software architecture of a number of voting machines. One machine was the Diebold AccuVote TSX, which is currently in use in over 400 counties nationwide. San Diego County was one jurisdiction that felt the effects of that decision. Roughly 10,000 AccuVote TSX touchscreen machines were purchased by San Diego County for \$25 million dollars. They are now sitting shrink-wrapped in a warehouse, and the County has since switched to optical scan ballots and has had to make the system work with a limited supply of such ballots.<sup>113</sup>

**Table 4: San Diego County, California—Adult Population, Registered Voters, Percent Registered Voters, Voters in 2014 Elections, 2014 Voter Participation**

	Number/percent
Adult population--persons 18+ years of age	2,535,686
Number of 18+ population registered to vote	1,546,924
Number of voters in 2014 mid-term election	692,434
Voter participation in 2014 mid-term elections	44.9%

Source: California Advisory Committee from Census data and San Diego County Recorder-Registrar data

## **B. Comment on Election Administration by San Diego County Registrar**

Michael Vu, Registrar-Recorder for San Diego County, told the Committee that his office, like other counties, is working with the Secretary of State to develop a reliable and efficient statewide voter database. In the meantime, the public expects the county's voter database to be accurate and up-to-date. With respect to provisional voting, state law initiated the voting provision to allow a person registered within the County the right to cast a provisional ballot anywhere within the County, which is not the case in all states. San Diego County recruits up to 7,000 volunteers to serve as poll workers for statewide elections, and the County engages in a train-the-trainer model to provide expert and consistent training across the County.

### **1. Establishment of a Statewide Voter Registration Database**

When completed in 2016, VoteCal will replace the current Cal-Vote California voter registration database and provide a single, uniform, centralized voter registration database that meets HAVA requirements. It is anticipated that the new system will connect the Secretary of State's office and all 58 county election offices together providing a single, official statewide database of voter registration information.<sup>114</sup>

<sup>112</sup> Michael Keller, Aljazeera America, *Voting's Impending Crisis—with US voting machines aging, states have few funds to replace them*, at <http://america.aljazeera.com/multimedia/2014/9/voting-s-impendingcrisis.html>.

<sup>113</sup> Ibid.

<sup>114</sup> California Secretary of State Alex Padilla, VoteCal Project, at <http://www.sos.ca.gov/elections/voter-registration/votecal-project>.

VoteCal was to begin implementation in 2015 with five pilot counties (El Dorado, Mendocino, Orange, Sacramento, and Solano). The remaining counties are grouped into a series of “waves”, and monthly wave deployments will occur from October 2015 to March 2016. After VoteCal is deployed to all counties and VoteCal is working correctly, VoteCal will be declared the official system of record for voter registration in the State, which is expected to occur in June 2016. Regarding VoteCal, Michael Vu told the Committee:

The Secretary of State’s team and our local election management are working in concert with San Diego County to provide the necessary support to migrate into our new Vote-Cal system. This includes ensuring the necessary hardware and software are in place and that it is well-tested to actively interact and reflect the status of every registered voter in the state. For those who are currently in the middle of their deployment, inasmuch as it is important to comply with this section of HAVA, it is equally as important that its implementation is right. So there should be caution in exercising it. The Secretary of State Padilla and his team have demonstrated that they are moving with character to achieve both goals.<sup>115</sup>

## 2. Duplicate Voter Registrants in San Diego County

The San Diego County Registrar-Recorder is responsible for maintaining a database of 1.4 million voter records. The number of persons in the County’s database is larger than the total population of 11 states. Most of the legal obligation for list maintenance activity is covered by NVRA, not HAVA. Michael Vu told the Committee:

The San Diego County database of 1.4 million registered voters is... highly regulated by Federal and State laws. In fact, the majority of the list maintenance activity is covered by the National Voter Registration Act, not HAVA. And (in accordance with that act election officials are) to err on the side of keeping voters on the list of registered voters. So we are extra careful not to inadvertently disenfranchise the voter because of being overly aggressive and removing voters without going through channels spelled out in NVRA.<sup>116</sup>

On the other hand, the public and ourselves expect that our database is as up to date as possible. And so, again, we have an extensive program in place to ensure proper maintenance list efforts. These include the Secretary of State’s Office sending us monthly duplicate records and deceased records for us to verify. To give you an idea of the number of records we are processing in San Diego, we analyzed a nine month window of maintenance and registration activity and over 515,000 records were received from government entities and voters during this time frame.<sup>117</sup>

Our local County Health Department sends monthly and electronic lists of those that have passed away in the county for us to view and take action as appropriate. We run duplicate checks on the registration file on a quarterly basis. On a daily basis we receive information of county voters who have registered in another

<sup>115</sup> Testimony of Michael Vu, Transcript on Help America Vote Act, pp. 73-74.

<sup>116</sup> Ibid., p. 80.

<sup>117</sup> Ibid., pp. 82-83.

jurisdiction. We receive information from family members notifying us that a person is no longer a registered voter within the county.<sup>118</sup>

We run national change-of-address comparisons before each election in order to have the most updated information. And pursuant to NVRA, any mailed ballot or sample ballot or voter information pamphlet triggers affordable confirmation card process to be sent to the voter. And the voter is then placed on inactive status. Should the voter have no activity for two general elections, we are able to cancel them from the voter rolls. Finally, we receive daily Department of Motor Vehicle registration updates, and these are supplied on a weekly basis.<sup>119</sup>

As I have mentioned before, when a person registration to vote, there is a feedback to safeguard their right to be registered to vote and our ability to maintain the files. And this happens in every single county, across all 58 counties, when a person re-registers to vote that triggers a process of that record. We automatically provide feedback known as that voter notification card. We send it to the registered voter at their address. If that card comes back undeliverable, then we have the ability to act on it and put them on inactive status. If we do not receive that card back, they will remain on the active status.<sup>120</sup>

### 3. Provisional Voting in San Diego County

California was the first state in the nation to introduce the safeguard whereby a person registered within the county has the ability to cast a provisional ballot anywhere within the county and have his/her vote on count. Michael Vu told the Committee:

To give you some idea as to the numbers in San Diego County in the 2012 presidential general election, 103,004 individuals voted a provisional ballot and 87 percent or 89,686 of the ballots were partially or fully counted. In last November's 2014 gubernatorial general election 35,651 provisional ballots were cast and 93 percent or 32,967 were partially or fully counted. In both elections, the main reason for not counting the ballot was the result of individuals not being registered to vote within the county.<sup>121</sup>

Although provisional balloting is a safety net instituted across the country, it should be seen and used as a measure of last resort, an exception rather than the rule for a number of reasons. We highly encourage vote within their assigned precincts so they are assured they will be able to vote on all contents in which they are eligible. As Mr. Logan had mentioned, we share the same things. We want all voters to be able to cast all the content that they are eligible to. As an example, due to the number of contested political jurisdictions that overlap San Diego County, there are 569 different versions of the official ballot during the November 2014 electoral general election. The Voter who visits an unassigned voting place will most likely

<sup>118</sup> Ibid., p. 81.

<sup>119</sup> Ibid., p. 82.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid., p. 70.

vote on a difference set of content that had she or he gone to their assigned polling place.<sup>122</sup>

We encourage voters to vote in their voting precincts so that they will have a good voting experience. When a voter is not voting at their assigned voting precinct, it takes more time for them to issue the ballots, and more time get their ballots counted. Additional time by coworkers to serve a voter may, in turn, contribute to longer lines at a polling place, particularly during IT voting. Finally, voters are encouraged to vote at their assigned voting place. This reduces the amount of time and cost associated with verifying and validating provisional ballot.<sup>123</sup>

#### **4. Election Official Training in San Diego County**

San Diego County recruits up to 7,000 volunteers to serve as poll workers for statewide elections. Poll workers are schooled by vetted trainers, who themselves must have successfully completed a three-week intensive course to learn all aspects of election day procedures and management practices at the polls. Michael Vu told the Committee:

In order to ensure the proper administration at the polls and to ensure that every voter has the opportunity to cast, at minimum, a provisional ballot to ensure voters have a robust coworker training program. As part of their course work, coworkers are required to take a two-hour, online training course with another two-hour onsite course with our trainers. As it gets closer to election day, we open up workshops to any coworker to hone in their skills and ask questions. In addition, each coworker receives a detailed, easy to read, and reference coworker manual so they are able to study and refer to and are able to purchase should they have any questions.<sup>124</sup>

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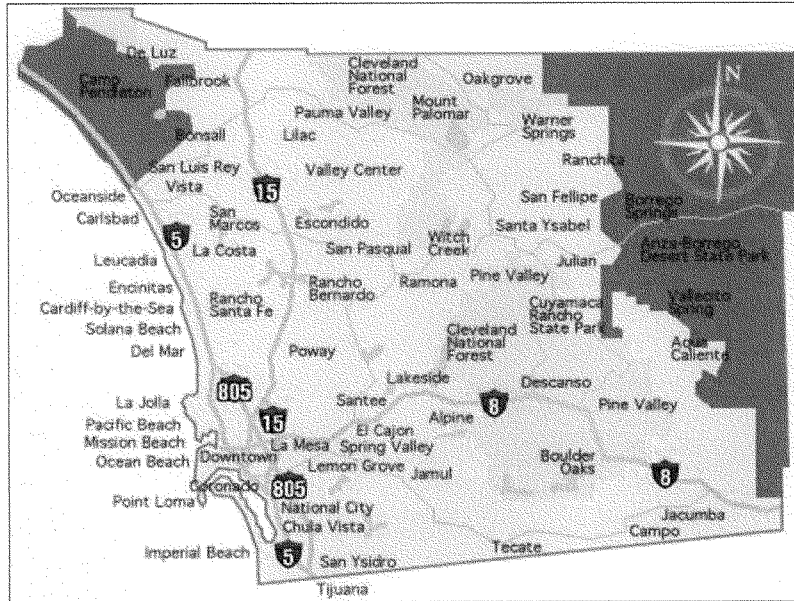
<sup>122</sup> Ibid., pp. 70-71.

<sup>123</sup> Ibid., p. 71.

<sup>124</sup> Ibid., p. 79.



Figure 2: Map of San Diego County California



Source: Google maps

Continuing about election worker training, Michael Vu told the Committee about the County's "train-the-trainer" model approach, which provides both expert and consistent training across the County.

Our office conducts a train-the-trainer model, where our trainers go through a three-week intensive course to learn all aspects of election day procedures and management practices at the polls. These individuals are highly skilled, many having training background themselves. The three-week train-the-trainer course includes coverage of all election day practices and scenarios and covers the use of the poll place supplies. In this manner, we are able to create consistent training across all the training teams. At the end of the training course, it is capped with a dress rehearsal. Should a team not perform to the standards expected, they may not train coworkers. It should be noted that, since these trainers know the procedures and all the poll place election materials by then, these trainers become our coworker hotline staff on election day, making it efficient to quickly answer election day procedures by poll workers.<sup>125</sup>

<sup>125</sup> Ibid., pp. 79-80.

## VI. Organization and Public Comment on Election Administration

Three organizations with dedicated interest in voting systems and voting integrity were invited by the California Advisory Committee to speak at the public hearing. They were the Pew Charitable Trusts, the Election Integrity Project, and Everyone Counts. The Pew Charitable Trusts publishes an *Elections Performance Index*, which analyzes 17 key indicators of election administration. The Election Integrity Project is a non-partisan election oversight organization based in California whose members observe and research election practices and report on alleged voting irregularities. Everyone Counts is an election and voting system technology company based in San Diego, California, that provides electronic election administration technology to governments and private entities.

### A. Comment on Election Administration from the Pew Charitable Trusts, Election Integrity Project, Everyone Counts, Communities Actively Living Independent and Free, and Mark Sonnenklar

#### 1. The Pew Charitable Trusts

David Becker, Director of the Election Project for Pew Charitable Trusts, was interviewed by the Committee subsequent to the public hearing. He discussed the Trusts Elections Performance Index (EPI), and the integrity of election systems generally.

The EPI is used by Pew to evaluate key indicators of election administration, and Pew scores each state's performance by indicator and overall score. The Index itself is not an absolute score, but rather a relative measure of how states perform against each other. Pew has been issuing EPIs since 2008, and an EPI for 2014 is due to come out in the Spring of 2015. Pew releases Indices in each federal election year, so to date there have been releases for 2008, 2010, and 2012. Regarding California's low relative EIP standing in election processes in comparison to other states, the biggest thing going against the state was the lack of a look-up tool of voter rolls at the precinct level. As of 2012, precinct workers in the state did not have a look-up capability. But by 2014 that had corrected, and going forward precinct workers can look-up a voter information.<sup>126</sup>

It is not possible to compare 2010 Indices with either 2008 or 2012 as 2010 measured a different election cycle, but it is appropriate to measure Indices between 2008 and 2012 to gauge changes in state performance. From that comparison, Pew concludes that California improved its election processes during that 4-year period, but still fell performance-wise compared to other states. In 2008, California ranked 47<sup>th</sup> among all states in election administration, and although in 2012 the state's EPI score increased to 54, the state's ranking fell to 49<sup>th</sup> as other states showed improvement. To that low ranking, I think California has some areas that should be further examined for inefficiencies in the administration of election processes. The classic area for attention is provisional ballots. Roughly one-half of all provisional

<sup>126</sup> David Becker, telephone interview, California Advisory Committee to U.S. Commission on Civil Rights, Sept. 17, 2015 (Record of interview on file with Western Regional Office, U.S. Commission on Civil Rights files).

ballots nationwide are cast in California. Some of that is the result of state policy, as California state law for example allows a provisional ballot to be cast if a voter comes to the wrong precinct.<sup>127</sup> California also struggles with a fairly high percentage of provisional ballots that are rejected. One likely reason for that is the high number of “mail ballot” voters in the state.

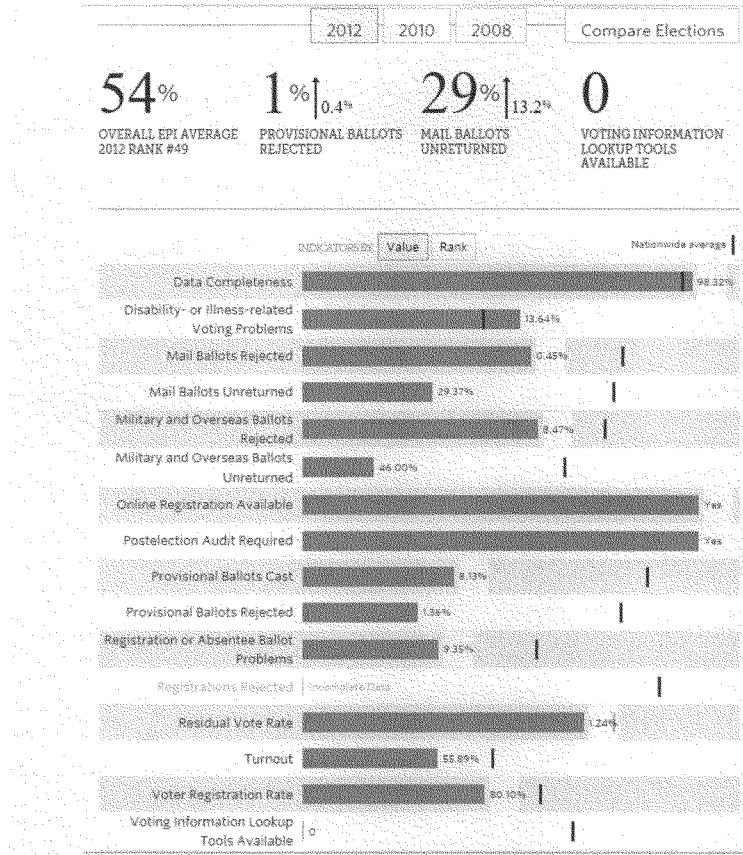
For more than a decade, the U.S. Census Bureau’s Current Population Survey has asked nonvoters why they did not submit a ballot. This indicator captures the number of people who responded that they did not cast a ballot due to an “illness or disability (own or family’s).”

Voters with disabilities and permanently ill voters face unique challenges, such as inaccessible polling places and voting technology that is difficult to use. Federal law mandates that all polling places must generally be accessible to physically disabled voters. The Help America Vote Act of 2002 requires that at least one voting machine in each precinct be equipped for those voters.

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<sup>127</sup> Ibid.

Figure 3: California EPI Index Graph



Source: CALIFORNIA EPI INDEX GRAPH FROM PEW CHARITABLE TRUST, 2014

If a person is identified as a “mail ballot” voter, on election day that person can only vote in person by delivering his or her “mail ballot” in person to the precinct. If the voter attempts to vote in person and the election officials see that the voter is a “mail ballot” voter, then his or her vote will be considered a provisional ballot. The provisional ballot will only count after the state ensures that the voter did not also cast a “mail ballot.” So mail ballots drive a lot of the provisional voting observed in the state.<sup>128</sup>

Pew is also supportive of online voter registration processes. Online voter registration saves taxpayer dollars, increases the accuracy of voter rolls, and

<sup>128</sup> Ibid.

provides a convenient option for Americans who wish to register or update their information. Pew has analyzed online voter registration and has found zero fraud as a result of this election process. Moreover, the accuracy of voter rolls is vastly improved as data entry errors are significantly reduced. That is because the voter directly inputs the information, instead of a data entry clerk.<sup>129</sup>

Low voter turnout continues to be a concern, not just in California but nationwide. Preliminary data from the Election Project indicates that national turnout for the 2014 mid-term elections was below 37 percent. There is no one simple answer for low voter turnout. It is complex situation of factors that play out differently in different years and areas. But it is nevertheless thought-provoking that in 2014, half of all California voters received a “mail ballot” yet only about one-third of those persons voted. The publicizing of the Index seems to have generated conversation about addressing voter turn-out and voter integrity. Pew would like to see that conversation continue.<sup>130</sup>

And even though California has historically performed poorly in terms of voter turn-out and election process, the state is situated to make great strides. Across the state, there is a remarkably high quality of county recorder/registrars. The new Secretary of State has demonstrated a commitment to improving the election process in the state. And given the considerable wealth in the state, there are sizeable financial resources to allow the state to make great and quick strides to improve voting integrity.<sup>131</sup>

Moreover, the issues raised in HAVA reflect that the 21<sup>st</sup> century is experiencing a new era in voting. It is becoming more common for electronic voting systems to be scrutinized for integrity and reliability. Expensive, antiquated purpose-built hardware-based systems and manual and paper processes are being transformed with systems designed to result in increased accessibility and improved accuracy for all elections, as well as enhanced security, increased auditability, and significant cost savings.

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<sup>129</sup> Ibid. In January 2014, Pew released its assessment of online voter registration in a briefing paper, *Understanding Online Voter Registration* and followed with a second brief in May 2015, *Online Voter Registration—Trends in development and implementation*.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

## 2. The Election Integrity Project

The Election Integrity Project (EIP) is a nonpartisan, citizen organization that seeks to empower “citizen volunteers, through education and training to participate actively in protecting our freedoms and way of life.”<sup>132</sup> According to their website, EIP performs the following functions:

- Research County & State Voter Rolls.
- Educate volunteer poll workers, poll observers, and ballot processing observers in the state election codes for their election process.
- Train volunteer observers to interact lawfully with elections officials to rectify perceived inconsistencies.
- Send Position Papers to the Legislative Committees on proposed bills that impact the integrity of the election process.
- Inform citizens about impending legislation, encouraging them to communicate with their own representatives and direct their voting patterns.<sup>133</sup>

Linda Paine, founder and president of EIP, spoke before the Committee regarding their work to ensure the integrity of California elections. In particular, they attested to their efforts to conduct county by county research to enhance the integrity of the state voter database, and “train citizens across the state to observe polls and document whether the laws are being followed.”<sup>134</sup> EIP established a centralized database and server, and has volunteer analysts to analyze the data collected to create a findings report that they provide to registrars.<sup>135</sup> In addition, EIP meets with registrars to discuss their findings.

As a result of EIP’s work, Paine stated that the organization has “found hundreds of thousands of duplicates across the state. The implementation of the online voter registration noted in our research found that there were thousands of voters who registered in other counties.”<sup>136</sup> Paine asserts that the causes of the duplicative voter registrations are faulty county operating procedures and technology. According to Linda Paine:

Why does this happen? Because with the memorandum of agreement, the statewide voter database that California uses is a model that makes it impossible for the counties to do cross country research and for the state database to know immediately if I have registered in multiple counties. Just for clarity, we have a compliant topdown centralized database. It functions this way: If I register in L.A. County, it immediately shows up in Sacramento. And so if I have already registered in another county, it’s flagged. If I’m duplicating or voting for a deceased person, it’s flagged. We don’t have that.<sup>137</sup>

<sup>132</sup> Election Integrity Project, 2016. “Who We are: Our Mission,” *available at* <https://www.electionintegrityproject.com/>.

<sup>133</sup> *Ibid.*

<sup>134</sup> Testimony of Linda Paine, Transcript on Help America Vote Act, p. 165

<sup>135</sup> *Ibid.*, p. 167

<sup>136</sup> *Ibid.*, p.168.

<sup>137</sup> *Ibid.*

Paine provided evidence of EIP's efforts in the form of testimony emailed by several citizens, declarations from the citizens of Nevada County where there is a civil grand jury decision regarding voter irregularities, a 2014 observation report from Trinity County and L.A. County, as well as a letter to the Secretary of State, a report from the EIP Chief Analyst, a memorandum of investigation into a city county raise in San Diego Valley in L.A. County, and 12 packets of their training materials.<sup>138</sup>

She also spoke regarding her hope that the new Vote-Cal system would make a positive difference in the state, but cautioned that a similar system in the past did not provide the needed integrity and security in the elections.<sup>139</sup> Paine suggested that citizen oversight of the Vote-Cal system and standardized pricing for purchasing voter rolls would be helpful to ensure both the continuation of EIP's work and the integrity of the voter system in California.<sup>140</sup>

Ruth Weiss, the San Diego Coordinator for EIP, spoke to the Committee regarding the issue of provisional ballots. First, she stated that California has a large number of provisional ballots compared to other states, and that "with all the difficulties with validating those and making sure that they're processed appropriately and that there isn't some sort of fraud involved in it, it's a big job and we're concerned about that."<sup>141</sup> She also cited a 2012 statistic that found that the number of provisional ballots cast in California alone was 40 percent of all the national provisional ballots cast.<sup>142</sup>

Weiss discussed the balance between providing provisional ballots as a protection for "voters who are the legitimate victims of error or someone who may not be able to make it back to his polling place in time to vote,"<sup>143</sup> but that there are also risks inherent in providing provisional ballots. As a result of these ballots, she stated that "almost every provisional voter is going to vote out of precinct,"<sup>144</sup> and that poll workers are providing incorrect information to potential voters regarding when the votes will be counted. However, she found that the large number of provisional ballots was leading to large delays in publicizing the results of the elections, which in turn eroded public confidence in the election process.<sup>145</sup>

### 3. Everyone Counts

The Committee also heard from Lori Steele, Founder and CEO of Everyone Counts, universal voting, and the way in which voting systems are mission critical in ensuring the integrity of the voting process. For Steele, it was important to have the requisite experts on voting processes and practices to design meaningful integrity and security measures for the voting system. According to Steele:

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<sup>138</sup> See *Ibid.*, p. 166.

<sup>139</sup> See *Ibid.*, 169.

<sup>140</sup> *Ibid.*

<sup>141</sup> Testimony of Ruth Weiss, Transcript on Help America Vote Act, pp. 170-171.

<sup>142</sup> *Ibid.*, p.171.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, p.172.

<sup>145</sup> *Ibid.*, p. 175

[W]e need to bring together experts in administrative process of elections, experts in security and technology and experts in accessibility. And we need to put all those things together into a platform that can give voters what they need and can give election administrators what they need. And Everyone Counts has been doing this for well over a decade.<sup>146</sup>

Steele also emphasized the links among up-to-date technology, wise spending, and integrity in the voting process:

The Help America Vote Act resulted in \$3.9 billion being spent in the United States. 3.9 billion being authorized and 3 billion being spent. There's about 800 million left somewhere in the states. Those dollars, those billions of dollars were used to buy 30- and 50-year-old technology. Those technology you read about in the newspaper that isn't that accessible and that slips votes because the screen calculated – the screen calibration is so old. And California is thinking of buying new voting systems.<sup>147</sup>

Steele stated that California prohibited the type of greater security that her system provides, and was even considering using mail in ballots. For Steele, use of the mail ballots may represent a lost opportunity for California's voters:

But what if they could have better benefits? What if they could have fully accessible absentee? What if they could have fully auditable absentee? What if they could have military grade encryption of every single ballot?<sup>148</sup>

However, Steele posits that California law prohibits the introduction of such technology into the voting process:

In California, you cannot. There are three lines in the code that prevent that. One says you can't use the Internet ever. One says you can't use wireless technology ever. The other one is also about wireless technology.<sup>149</sup>

In conclusion, she suggested that if California seeks to introduce new voting technology to the state, then the laws should be adjusted to accommodate these new measures:

So if California is going to think about ensuring every person in California who has the right to vote has the ability to do so privately, independently and with greater security than offered in any other voting system, then California needs to think about adjusting their laws, so that federally certified voting systems can be – that provide the remote opportunities to vote and in-person opportunities to vote

<sup>146</sup> Testimony of Lori Steele, Transcript on Help America Vote Act, p. 175.

<sup>147</sup> Ibid., p. 134-135

<sup>148</sup> Ibid., p.135.

<sup>149</sup> Ibid.



in a state of the art way that will never reach end of life, then California need to think differently about voting systems.

#### 4. Communities Actively Living Independent and Free

Lillibeth Navarro, Disability Rights Advocate and Executive Director of Communities Actively Living Independent and Free, spoke before the Committee. Her organization is a downtown Los Angeles-based social services advocacy organization for civil rights for the disabled in the context of the Americans with Disabilities Act (ADA). It offers the disability community with an “entire gamut of social services through Civil Rights Advocacy, from housing to benefits advocacy, peer counseling, information and referral, personal assistance services, physically change advocacy, assistive technology transition, and transportation, in the context of the Americans with Disabilities Act.”<sup>150</sup>

She provided personal testimony regarding her work as a poll worker and witnessing the lack of persons with disabilities at the polls, and the physical and electronic inaccessibility of many polling locations in California.<sup>151</sup> She noted at least twelve studies related to improving voter access for persons with disabilities, but that this information did not always manifest itself as tangible resources and funding for disability advocacy groups to work with the government to develop and implement educational programs for the community.<sup>152</sup>

Ms. Navarro challenged the current state of voting accessibility for the voter with disabilities in Los Angeles, starting with wheelchair access. Though few severely disabled voters vote in person, most choosing to vote by mail (VBM), the need to have adequate handicap access for all polls remains for those who do vote in person.

Parking and pathway situations frequently deter the voter with disabilities from access, i.e., long walks after parking, obstructions, and inadequate lighting. California Advisory Committee member Javier Gonzalez noted that all facilities selected by the Los Angeles County Registrar of Voters as polling places are required to be chosen with and tested for ADA compliance.

Additionally, Ms. Navarro asked for easier access for the voter with disabilities to election education programs and computer usage (such as for the blind,) and to online information. Current electronic devices often impose discouraging obstacles to gaining voting information. With respect to the voters with intellectual disabilities, social service workers often find that important issues, when simply explained, can be comprehended. Ms. Navarro asks for more empathy and sensitivity to and for voters with disabilities and their needs by those in industry who create modern solutions. One idea she submitted is for counties to create a form of media “get-out-the-vote” Amber Alert sound or flashing light, to alert those voters that the time to vote, to have a say in government, is here.

<sup>150</sup> Testimony of Lillibeth Navarro Transcript on Help America Vote Act, p. 137.

<sup>151</sup> Ibid., p. 138.

<sup>152</sup> Ibid., pp. 138-139.

## 5. Mark Sonnenklar

Mark Sonnenklar, a Los Angeles Resident and Business Attorney, gave testimony concerning a civil rights breach (HAVA) – the fair and equal administration of justice.<sup>153</sup> His testimony described what ultimately was a story of a civil rights breach (HAVA) – the fair and equal administration of justice. The four-month episode described centered on the Los Angeles County Registrar’s refusal to provide public data to a citizen’s request, Mark Sonnenklar’s, as legally allowed.<sup>154</sup> The particular public documents requested had previously been provided another organization (Election Integrity Project), upon which data EIP published a report concerning thousands of irregularities involving the L. A. County Registrar.<sup>155</sup> Mark Sonnenklar wished to obtain the same data provided EIP to determine if a separate analysis of the data corresponded to theirs. After a series of delays, it seemed clear the Registrar’s office hoped the request would die out. Sonnenklar persisted, and, as of August 28, the date of the hearing, four months after his original request, finally received the data, with a cover letter signed in person by Mr. Dean Logan, the Registrar of Voters, a person who normally would not have been involved with one single citizen’s request.<sup>156</sup>

Sonnenklar also testified that the prices quoted for providing the data were entirely arbitrary, and changed several times: Once the ROV agreed to provide the data, a \$600 fee was set. This was arbitrarily lowered by the registrar’s representative to \$450.<sup>157</sup> When that amount was challenged as excessive by Sonnenklar, the fee was lowered to \$146.<sup>158</sup> When Mr. Sonnenklar then asked for the statutory justification for the calculation of the fee, he was quoted L.A. County Code Section 2.32.24, which states the fee is \$54 for one CD. That was the amount eventually set, which Sonnenklar paid.<sup>159</sup> He also said the Registrar of Voters told him to delete the individual voters’ identifications.

Several members of the California Advisory Committee commented on several aspects of this revelation:

- Committee member Ms. Montoya raised the concern that providing the data to anyone who asks might be a breach of individual privacy.
- Committee member Ms. Jester recounted that the type of data requested is regularly provided to political consultants, as she was for many years, and there was no reason for such a delay by public officials.

Sonnenklar further expressed this opinion:

<sup>153</sup> Testimony of Mark Sonnenklar, Transcript on Help America Vote Act, p. 105-129.

<sup>154</sup> *Ibid.*, pp. 109-117.

<sup>155</sup> *Ibid.*, pp. 122-123.

<sup>156</sup> *Ibid.*, p. 117.

<sup>157</sup> *Ibid.*, p. 115.

<sup>158</sup> *Ibid.*, p. 115-116.

<sup>159</sup> *Ibid.*, p. 115. Linda Paine of EIP states in later testimony that she paid \$500 for the supposedly same data.

“(I)think someone in a position of authority needs to, you know, have -- have a word with Dean Logan and make sure that his staff is responding to these requests in a timely basis. I think that's the immediate thing that needs to happen.

Committee member Betty Wilson asked Sonnenklar if he had made this request to the registrar, Mr. Logan. He stated:

You know, I don't have a personal relationship with Mr. Logan. And -- so, no.

And, finally, from Sonnenklar:

There is no coincidence in politics. And I don't think it's a surprise that I received the data finally this morning in the mail, the day that I was supposed to come and testify. So there are a lot of things about this story that I don't quite understand, you know, about the Registrar Recorder's behavior during this four-month ordeal, but one thing I can say for sure is, they didn't want to provide me with those records. They violated the law by taking as long as they did to actually finally provide them and I think they expected me to get tired and go away. And that's why they dragged this on for as long as they did. So Section 6252(e) of the act defines a public record as, quote, "Any writing containing information relating to the conduct of the public's business that is prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."<sup>160</sup>

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<sup>160</sup> Ibid., p. 116.

## Committee Findings and Conclusions

### Conclusions

1. Insufficient training in election laws for poll workers and on-site election officials pursuant to witnesses Linda Paine and Ruth Weiss of the Election Integrity Project<sup>161</sup>; Training materials<sup>162</sup> fail to provide for the implementation of California Election Code §14216, voter self-identification, which states:

“Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address . . . ”.

2. Disabled voters face unnecessary obstacles, according to testimony by Lillibeth Navarro, representative of Communities Actively Living Independent and Free;
3. VoteCal, the mandated statewide voter database, is not ready (SOS testimony);
4. Explanations about the decision-making process of the Secretary of State for potential voting system developers are required after doubts raised from materials provided by State Auditor Elaine Howle, which state:

“The Office paid \$4.6 million to develop a replacement database – Vote Cal - but terminated a critical contract because the vendor failed to provide key deliverables. In its second attempt to hire a new vendor to complete the VoteCal project, the Office appears to have limited the bidder competition to only one bidder, raising concerns for future success.”<sup>163</sup>

5. The methodology used to report HAVA expenditures in California’s spending plan has not been explained, according to the testimony of State Auditor Elaine Howle;
6. Deceased, inactive and ineligible voters remain on voter lists;
7. The delayed and multi-stage human handling of vote-by-mail ballots creates openings for tampering or mishandling, according to Ruth Weiss’s testimony and EIP’s written testimony;

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<sup>161</sup> Linda Paine and Ruth Weiss, Election Integrity Project, Testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, Transcript, Hearing on Help America Vote Act, Los Angeles, CA, Aug. 28, 2015, pp. 158-191 (hereafter referred to as Help America Vote Act (HAVA) Transcript), available at <https://www.justice.gov/crt/text-proposed-regulations>.

<sup>162</sup> Ibid., p. 177.

<sup>163</sup> Ibid., p. 46

8. In 2012, California cast forty percent of the provisional ballots in the nation.<sup>164</sup> Though the official intent is to allow for convenient voting and options that support participation, inadequate poll worker training in following the law likely contributes to the indiscriminate use of provisional ballots;
9. Prohibitive costs to citizens to purchase voter roll data;
10. Indiscriminate use of Permanent Absentee Voting;
11. Statewide voting and election irregularities in many counties, both large and small, require further investigation;<sup>165</sup>
12. Antiquated election laws prohibit the introduction of modern voting technology, according to testimonies of SOS and Everyone Counts;
13. Inadequate utilization of online voting with military-grade encryption for military and overseas voters, according to Pew testimony;
14. Citizens have concerns about the new "Motor Voter Law" AB 1461, its implementation and confidentiality. A good third of the eighty-plus Post-Hearing written testimonies were about this bill.

#### **Recommendations:**

1. Training for Election Officials and Poll Workers
  - a. Include awareness and knowledge of applicable election laws (HAVA, NVRA, California Election codes, and the U.S. Constitution) and of the poll workers' authorities;
  - b. Increase length of training time of election workers;
  - c. Verify that an election official or poll worker completed recommended online training instruction;
  - d. Establish citizen oversight ensure training materials correspond to the law;
  - e. Train poll workers to follow California Election Code §14215, asking voters to state their names and addresses - in their own words -to avoid voter impersonation.
2. Citizen Oversight

<sup>164</sup> See *supra* note 5 p. 171.

<sup>165</sup> Testimony of Mark Sonnenklar, Business Attorney, HAVA Transcript, p. 109.

- a. Provide expert citizen election integrity oversight for the pending VoteCal statewide voter registration database;
- b. To ensure instructions to poll workers and election officials correspond to election laws, provide expert citizen oversight of training procedures and materials, and voting and election materials.

### 3. The Disabled Voter

- a. Legislation required to assure that current and future digital or computerized voting systems are accessible and will accommodate voters with disabilities;
- b. Poll workers shall be provided training, communication, and accommodations for voters with disabilities;
- c. All polling sites shall be accessible to voters with disabilities.

### 4. Office of the Secretary of State

- a. Appoint a non-partisan citizen election integrity and oversight organization with authority to assess VoteCal, its methods, and test results;
- b. Clarify the state's current standards for voting, election processes, voting equipment and systems and assure procedures and equipment are in compliance with state and federal disability laws;
- c. Clarify the process by which the Secretary of State verifies that the person applying to vote, whether through online registration, DMV registration, or in-person registration, is eligible to vote;
- d. Inform public agencies that only those agencies mandated to examine and verify proof of citizenship shall process voter registration applications;
- e. Create and advertise the complaint procedure by which citizen complaints about the administration of elections are addressed and rectified;
- f. Recommend to the California legislature an upgrade of all coded obstacles to the modernization of California's election process and voting systems (Election Code Article 4, Sections §19217, §9217, §19250 (a), §14223 (b));
- g. Recommend each California county standardize its forms and costs for citizen organizational purchases of voter data;
- h. Verify that every poll location is accessible to voters with disabilities;
- i. Clearly state the methodology used to report prior HAVA expenditures in the HAVA spending plan.

### 5. County Registrars of Voters

- a. To prevent inaccurate voter turnout statistics and possible election results, follow HAVA and California Election Code procedures for the distribution of provisional ballots;
- b. To ensure voters' privacy and ballot integrity during handling, redesign absentee ballot forms and improve current processing procedures for security;

- c. To prevent impersonation and fraud, timely remove deceased, inactive and ineligible voters from voter lists according to HAVA's suggestions;
  - d. Establish standard fee schedules for citizen groups requesting public documents and lists;
  - e. Verify that every poll location is accessible for voters with disabilities;
  - f. In accord with election laws, train election officials and poll workers in the handling of provisional, absentee, and in-person ballots;
  - g. Clarify the procedures by which registrars of voters process and rectify election complaints;
  - h. Provide citizen oversight of training manuals and materials, poll worker training, and at election polls and voting centers;
  - i. Train poll workers and election officials in the proper use of California Election Code §14216, which, without a voter ID requirement, provides for self-identification.
6. Upgrade Outdated Election Laws (Legislation Required)
7. Modernization requirements -
- a. Upgrade outdated California Election Codes (Article 4, Sections §19217, §9217, §19250 (a), and §14223 (b)):
    - i. Permit digital and telephone access for voter systems;
    - ii. Allow connectivity to the internet;
    - iii. Allow electronic transmission of election data through exterior communication networks;
    - iv. Allow wireless communications or wireless data transfers;
    - v. Allow a remote server to store any voter's identifiable selections and tabulate votes using military grade encryption;
  - b. Reconsider the requirements of federal qualification and accessible voter verified paper audit trails for voting systems;
8. Upgrade and revise the Military and Overseas Voter Empowerment Act of 2009 (MOVE) to incorporate military grade encryption for secure online voting;
9. Allow poll workers to redact voters' street addresses when posting precinct voter lists near poll entrances to prevent harvesting of data used for voter impersonation.
10. California's "Motor Voter" Law – AB1461
- a. Pass AB 2067 amending AB 1461 to –
  - b. Create a clear, mandated procedure by which the citizenship status of all potential registrants will be verified prior to uploading information to the Secretary of State;
  - c. Establish oversight provisions;
  - d. Authorize ongoing education and/ training for Department of Motor Vehicles (DMV) personnel

**Appendix I. Presenters at the Public Hearing on August 28, 2015, and Public Commenters**

**A. Invited Presenters (in order of presentation)**

Elaine Howle, California State Auditor

Steve Reyes, General Counsel for Secretary Alex Padilla, Secretary of State Alex Padilla

Susan Lapsley, Secretary of State Deputy Secretary of State and HAVA Director

Dean Logan, Registrar-Recorder County Clerk for Los Angeles County

Michael Vu, Registrar-Recorder for the city County of San Diego

Mark Sonnenklar, Business Lawyer and Los Angeles Resident

Lori Steele, Founder and CEO of Everyone Counts

Lillibeth Navarro, Disability Rights Advocate and Executive Director of Communities Actively

Living Independent and Free

Linda Paine, Co-Founder and President, Election Integrity Project, Inc.

Ruth Weiss, Director, Election Integrity Project; San Diego County Liaison,

**B. Citizens Making Public Comments (in order of presentation)**

Ana Cubas, Hermandad Mexicana Nacional

Robert Gray, Resident of the City of Compton

Lynn Boone, Resident of the City of Compton

Nancy Kremer, Resident of City of Los Angeles

Shoshana Egan, Resident of City of San Diego

David Gooding, Retired Public Employee and Resident of Hayfork Trinity County, California.

Drue Lawlor, Resident of Los Angeles County



Mary Dee Romney, Resident of the City of Pasadena, Los Angeles County

Yesenia Martinez, California Project Coordinator for the National Association of Latino Elected and Appointed Officials

Kim Castro, Resident of Fresno County

Margarita Canaba, Resident of Fresno County

Lance V. Woods, Resident of L.A. County

Nicolas Ochoa, Vietnam Veteran and Retired Law Enforcement Officer, Ventura County

Harry Gradi, Retired L.A. City Fireman, Ventura County

Ron Gerber, Resident of Oxnard, Ventura County

### C. Summary of Post-Hearing Public Comments

CA SAC USCCR Post-8/28/15 Hearing Testimonies: Citizens' Key Issues (approx 80 submissions)					
Categories, Testimony #	Issues Raised	Causes	Impact	Conclusions	Recommendations
CA Secretary of State (SOS) 82 and others	Multiple HAVA violations; non-citizen voting. No competitive bidding. Voter database	political will, office management, leadership	HAVA not followed. "Third World competency"	Does not follow HAVA in voter registration follow-up, other	Hold accountable to HAVA by DOJ, EIC, Reveal status/results VoteCal
Provisional Ballots 66, 67, 70, 71, 72, PEW	HAVA required, but statewide misuse prevalent. Non-Citizen voting	HAVA and election code ignorance. Poor training. Fraud	election outcomes, voter deprived, disenfranchised; Ineligible votes cast and counted	Biggest deterrent to Election Integrity. Training, observers needed	HAVA training, citizen oversight, SIGNATURE VERIFICATION system improvement needed
CA Legislature: AB 1461 "Motor Voter Law" 32 fms oppose	Non-citizen is given voter registration forms w/DMV application	Secretary of State, Legislators, partisan, people had no say	Citizen vote disenfranchised, diluted; HAVA violation, creates havoc in election results	Chaos: No prosecution for non-citizen who votes. Violates election integrity, U. S. Election codes	Constitution violation. Change forms. Change law
Vote By Mail (VBM) ballots, including Permanent VSM 48, 78	Disenfranchises the disabled, weakest link for election integrity	Vulnerable design, oversight encouraged by SOS, parties	Opens door to misuse, impersonation, ballot dumping, fraud	Current process opens door to corruption and misuse	Require Photo ID when requesting VBM ballot, re-design; use only when needed
Voter Rolls 2, 16, 66, 80	Unclear: inflated; deceased vote; misuse, VSM fraud, error; PO Box addresses	ROV omission, neglect	Series release ability, initiative process (% of required signatures inflated)	opens door to impersonation, corruption, a direct HAVA violation	ROV performance monitored with citizen oversight
Student Voting (Ineligible) 82	800 more voted than registered; students vote twice, absentee ballots	HAVA ignorance, training failures	election outcomes, voter deprived, disenfranchised	State-wide issue is colleges are not trained in issue	HAVA training, election code training, citizen oversight
Electronic Election & Voting Systems	Public concerns about safety, privacy, hackability	Vulnerable old technology	Subject to human interference, but modernizing could benefit election integrity, help disabled	Future voting systems must be certified; cannot be associated w/voter lists	CA Election laws now impede modernizing and testing; revise
Voting Machines, Ink-a-Vote 67,	Hackable, old technology	Can be manipulated, at site or in ROV	Doubt of voter, vote changed, outage	Old technology, distrust by voter	Replace with modern military-grade election system
CA Election Code (Outdated) 59	Need revision in order to modernize election systems	Obsolescence, legislative neglect	CA unable to modernize election and voting systems as other states have	Change election code in order to modernize	See below
Bilingual Issues 74	San Diego no Hispanic translator. Other, only Cantonese speaker allowed to vote	HAVA ignorance, training failures	May deny right to vote	HAVA violation	HAVA training, election code training
"Covered California" 47	Party affiliation changed w/o permission (R to D)	crime or incompetence	unknown	fraud, or data enter staff - dishonest	Accountability enforced
Voter ID Support 2, 16, 66, 80	Reduce fraud, impersonations	Parties divided, people support	Without: Chaos. With: More secure elections	Prevent impersonation at polls, reduce VBM, Prov fraud,	Voter ID Legislation for CA

## Appendix II. DISSENT FROM CALIFORNIA ADVISORY COMMITTEE MEMBER

Statement of Rachel Sigman\*

Member, California Advisory Committee to the United States Commission on Civil Rights  
May 8, 2017

*\*The contents of this memo express my personal views and do not represent the views of any institution or organization with which I am affiliated.*

In June 2016, the California Advisory Committee to the United States Civil Rights Commission produced a report entitled “Voting Integrity in California: Issues and Concerns in the 21<sup>st</sup> Century.” The report calls attention to a number of important issues, including the obstacles faced by voters with disabilities in exercising their voting rights, challenges of maintaining accurate voter lists and the high percentage of provisional ballots cast in California. I support the Committee’s efforts to shed light on these issues, and agree wholeheartedly with the specific contents of the report that advance the mission of the U.S. Commission on Civil Rights in seeking to protect voting rights for all eligible California voters.

I have asked to abstain from the vote on this report because the facts and evidence available do not support some of the report’s conclusions and recommendations. Of specific concern are the report’s conclusions related to threats to voter integrity and California compliance with the Help America Vote Act (HAVA). I am not able to fully address these issues in a single page, but I wish to raise several points that I strongly believe to undermine the credibility of the report’s conclusions and recommendations.

The report’s conclusion that “statewide voting and election irregularities...require further investigation” – and associated conclusions and recommendations – is simply unfounded. The California Secretary of State’s office already investigates many election-related complaints. A Public Records Act request by non-profit non-partisan group CALmatters showed that current cases being investigated amount to 0.001% of the more than 23 million votes cast in California’s 2016 primary and general elections. Additionally, a database that tracks instances of voter fraud maintained by researchers at Arizona State University found only 56 instances in California between 2000 and 2012.<sup>166</sup> Such statistics are consistent with a large number of academic studies that find extremely few instances of voting irregularities across the country.<sup>167</sup> Moreover, there is no evidence in this academic that duplicate registrations, poll worker training or specific vote-by mail procedures lead to voting irregularities, as is suggested in the report’s conclusions and recommendations. Instead, these issues tend to limit citizens’ ability to vote and should therefore be addressed in ways that seek to better protect voting rights equally across the eligible voting population.

It is not clear, moreover, that the report’s conclusions regarding California’s HAVA compliance reflect any serious threats to voting integrity. The only reference to non-compliance comes on p.2 from an uncited study by an unnamed independent non-profit organization. The ratings cited from the Pew Charitable Trusts Election Performance Index are not related to the application of election laws (p.4) and the information regarding HAVA drawn from the Election Integrity Project, an organization with unknown sources of support, is based largely on anecdotal information that can not be verified. Likewise, the report’s conclusion that “VoteCal, the mandated statewide voter database is not ready” is no longer true. According to the Secretary of State’s website, VoteCal has been deployed in all 58 California

<sup>166</sup> News21 “Who Can Vote: Election Fraud in America.” Available at <http://votingrights.news21.com/interactive/election-fraud-database/index.html>, accessed May 1, 2017.

<sup>167</sup> For an overview and links to these studies, see the Brennan Center’s webpage at <http://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

counties as of February 2016.<sup>168</sup>

I thank my fellow committee members, the Committee staff and all those who shared their views and expertise with the Committee. There are many important insights contained in the report as to how we can work together as Californians to protect voting rights more effectively across the state.

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<sup>168</sup> <http://www.sos.ca.gov/elections/voter-registration/votecal-project/votecal-deployment-status/>, accessed May 3, 2017.

**California Advisory Committee to the  
United States Commission on Civil Rights**



**U.S. Commission Contact**

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USCCR Contact	Ana Victoria Fortes Western Regional Office U.S. Commission on Civil Rights 300 N. Los Angeles Street, Suite 2010 Los Angeles, CA 90012
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This report can be obtained in print form or on disk in Word format from the Western Regional Office, U.S. Commission on Civil Rights, by contacting the above named Commission contact person. It is also posted on the web-site of the Commission at [www.usccr.gov](http://www.usccr.gov).

# **Voting Rights *and the* Kansas Secure and Fair Elections Act**



A Briefing Report of the  
Kansas Advisory Committee to the  
U.S. Commission on Civil Rights

March 2017

**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. These committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

**Acknowledgements**

The Kansas Advisory Committee would like to thank each of the panelists who presented to the Committee during the January 28, 2016 meeting of the Kansas Advisory Committee, and the members of the public who either submitted written testimony or who spoke during the period of public comment. The Committee would also like to thank the Topeka and Shawnee County Public Library for hosting the public event.

The Committee is also grateful to Elizabeth Kronk-Warner, former Chair of the Kansas Advisory Committee, who presided over the 2016 hearing; and former Committee members Marsha Frey, Michael Abrams, Janell Avila, Laurie Johnson, Robert Mandel, and Charles Scott who assisted in the project planning and hearing preparations.

*Letter of Transmittal*

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**Kansas Advisory Committee to the  
U.S. Commission on Civil Rights**

The Kansas Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the voting requirements outlined in the Kansas Secure and Fair Elections (S.A.F.E.) Act, and the potential disparate impact such requirements have on the basis of race, color, age, religion, or disability. The committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Kansas. The contents of this report are primarily based on testimony the Committee heard during a public hearing on January 28, 2016 in Topeka, KS.

This report details civil rights concerns relating to the SAFE Act's key requirements that: (1) voters provide documentary proof of citizenship upon registering to vote; and (2) that voters present photographic identification at the polls. Primary concerns included inconsistent training and implementation, resulting in individuals with valid identification being turned away at the polls; insufficient voter education to ensure that voters are aware of the new documentation requirements and how to fulfill them; circumstances under which individuals may be charged a fee to obtain the required documentation to vote; the potential for disparate impact on the basis of a number of federally protected classes; and the importance of weighing measures intended to prevent voter fraud against the potential for voter disenfranchisement. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

**Kansas Advisory Committee to the  
U.S. Commission on Civil Rights**

Mildred Edwards, *Chair, Kansas Advisory Committee*, Topeka

Kirk Perucca, *Vice Chair, Kansas Advisory Committee*, Prairie Village

Russell Brien, Oskaloosa

Ron Holt, Wichita

Mark Dodd, Topeka

Jennifer Ng, Lawrence

Steven Gieber, Abilene

Phyllis Nolan, Louisburg

Martha Hodgesmith, Lawrence

Ewa Unoke, Kansas City

Kristy Lambert, Prairie Village

Gabriela Vega, Manhattan

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## **I. INTRODUCTION**

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These advisory committees advise the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction.

On January 28, 2015, the Kansas Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of the civil rights impact of voting requirements in the state. Specifically, the Committee sought to examine whether the state's 2011 Secure and Fair Elections (SAFE) Act<sup>1</sup> disparately discourages or denies citizens of their right to vote on the basis of race, color, age, religion, national origin, or other federally protected category in local and/or federal elections.

On January 28, 2016, the Committee convened a public meeting in Topeka, Kansas to hear testimony regarding the implementation and civil rights impact of the Kansas SAFE Act. The following report results from the testimony provided during this meeting, as well as testimony submitted to the Committee in writing during the related period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. The focus of this report is specifically on concerns of disparate impact resulting from voting requirements in Kansas on the basis of race, color, age, religion, national origin, or other federally protected category. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. The Committee adopted this report and the recommendations included within it on February 22, 2017.

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<sup>1</sup> K.S.A. 25-208a, 25-2203, 25-2352 & 25-3203 & K.S.A. 2010 Supp. 8-1324, 25-1122, 25-1122d, 25-1123, 25-1124, 25-1128, 25-2309, 25-2320, 25-2908, 25-3002, 25-3104, 25-3107 & 65-2418. Full text available at [http://www.kslegislature.org/li\\_2012/b2011\\_12/measures/hb2067/](http://www.kslegislature.org/li_2012/b2011_12/measures/hb2067/) (last accessed June 02, 2016).

## II. BACKGROUND

### A. The United States Voting Rights Act

Following the end of the American Civil War in 1865, the U.S. Constitution was amended to abolish slavery and to grant citizenship to former slaves.<sup>2</sup> On February 3, 1870, the Fifteenth Amendment to the Constitution was ratified to guarantee that the right of [male] citizens of the U.S. to vote “shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.”<sup>3</sup> Despite this proclamation, throughout much of the subsequent American history, state and local jurisdictions resistant to extending voting rights to African American citizens utilized techniques such as gerrymandering; and instituted discretionary, often inconsistently applied requirements such as poll taxes, literacy tests, vouchers of “good character,” and disqualification for “crimes of moral turpitude” in order to suppress the African American vote.<sup>4</sup> In addition, terrorist organizations such as the Ku Klux Klan and the Knights of the White Camellia used harassment and violence to keep African American voters away from the polls. As a result, by the year 1910 nearly all black citizens in the former Confederate States were effectively excluded from voting.<sup>5</sup>

In response to such continued voter intimidation and suppression, on August 6, 1965—nearly 100 years after the ratification of the Fifteenth Amendment—President Lyndon B. Johnson signed the Voting Rights Act<sup>6</sup> (VRA) into law. Among its key provisions, the VRA prohibits public officials from “drawing election districts in ways that improperly dilute minorities’ voting power.”<sup>7</sup> It also requires states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” to secure “preclearance” — that is, the approval of the U.S. Attorney General, or a three-judge panel of the District Court of the District of Columbia —

<sup>2</sup> U.S. Const. amend. XIII – XIV.

<sup>3</sup> The Library of Congress Web Guides: Primary Documents in American History. *15<sup>th</sup> Amendment to the Constitution*, <https://www.loc.gov/rr/program/bib/ourdocs/15thamendment.html>. (last accessed June 28, 2016).

<sup>4</sup> The U.S. Dep’t. of Justice, Introduction to Federal Voting Rights Laws. *Before the Voting Rights Act*. Updated August 6, 2015. Available at: <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last accessed July 12, 2016). Hereafter cited as “DOJ: *Before the Voting Rights Act*.”

<sup>5</sup> DOJ: *Before the Voting Rights Act*. Updated Aug. 6, 2015, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last accessed July 12, 2016).

<sup>6</sup> 42 U.S.C. §§ 1973 - 1973aa-6.

<sup>7</sup> Cornell Univ. Sch. of Law: Legal Info. Inst., *Voting Rights Act*. Wex., [https://www.law.cornell.edu/wex/voting\\_rights\\_act](https://www.law.cornell.edu/wex/voting_rights_act) (last accessed July 12, 2016).

prior to implementing any changes in their current voting laws.<sup>8</sup> According to the U.S. Department of Justice Civil Rights Division, soon after the VRA was passed, “black voter registration began a sharp increase,” and as a result, the “Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress.”<sup>9</sup>

With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens.”<sup>10</sup> In 1982, the Act was again extended, and it was amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”<sup>11</sup> In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

On June 25, 2013, in a historic decision (*Shelby County v. Holder*), the U.S. Supreme Court ruled the formula used to determine which states should be subjected to “preclearance” requirements under the VRA was outdated and thus unconstitutional.<sup>12</sup> This ruling effectively nullified the preclearance requirement—a core component of the VRA—until Congress agrees upon a new formula. According to the Brennan Center for Justice at the New York University School of Law, as of March 25, 2016, at least 77 bills to restrict access to registration and voting have been introduced or carried over from the prior session in 28 states.<sup>13</sup> Though across the country state efforts to expand voter access have outpaced restrictive measures overall, in November of 2016, 17 states (including Kansas) had restrictive voting laws in effect for the first time in a

<sup>8</sup> Cornell Univ. Sch. of Law: Legal Info. Inst., *Voting Rights Act*. Wex., [https://www.law.cornell.edu/wex/voting\\_rights\\_act](https://www.law.cornell.edu/wex/voting_rights_act) (last accessed July 12, 2016).

<sup>9</sup> The U.S. Dep’t of Justice, Intro. to Fed. Voting Rights Laws. *The Effect of the Voting Rights Act*. Last Revised June 19, 2009, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0> (last accessed July 14, 2016).

<sup>10</sup> The U.S. Dep’t of Justice, History of Fed. Voting Rights Laws. *The Voting Rights Act of 1965*. Updated Aug. 8, 2015, : <https://www.justice.gov/crt/history-federal-voting-rights-laws> (last accessed July 14, 2016). Hereafter cited as “DOJ: *The Voting Rights Act of 1965*.”

<sup>11</sup> DOJ: *The Voting Rights Act of 1965*.

<sup>12</sup> *Shelby County, Ala. v. Holder*, Attorney General 679 F. 3d 848. [https://www.supremecourt.gov/opinions/12pdf/12-96\\_6k47.pdf](https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf) (last accessed July 21, 2016) See also: John Schwartz, *Between the Lines of the Voting Rights Act Opinion*. The N.Y. TIMES. June 25, 2013, [http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?\\_r=2&](http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&) (last accessed July 21, 2016).

<sup>13</sup> Brennan Center for Justice at the N.Y. Univ. Sch. of Law. *Voting Laws Roundup 2016*. April 18, 2016 <https://www.brennancenter.org/analysis/voting-laws-roundup-2016>. (last accessed July 21, 2016) Hereafter cited as “*Voting Laws Roundup 2016*.”

presidential election, and the U.S. held its first presidential election in more than 50 years without the full protections of the Voting Rights Act.<sup>14</sup>

The right to vote is one of the most fundamental components of democracy—so important, in fact, that the U.S. Constitution includes four amendments protecting it.<sup>15</sup> Established under the Civil Rights Act of 1957, as part of its core mandate, the U.S. Commission on Civil Rights is directed to “[i]nvestigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin.”<sup>16</sup> Throughout its history, the Commission and its Advisory Committees have released numerous reports on the state of voting rights in the U.S.<sup>17</sup> The Commission’s hearings on voting rights throughout the American South between 1959 and 1961 have been said to have given critical support to proponents of the VRA, aiding in its 1965 passage.<sup>18</sup> Despite these protections, leading up to and including in the 2016 election cycle, academics and advocates alike have called concern to a number of state-legislated voting restrictions that they say are likely to disproportionately disenfranchise voters of color. In this context, the Kansas Advisory Committee submits this report to the Commission detailing the present state of voting rights in Kansas, and urges the Commission to revisit this topic of national importance.

<sup>14</sup> *Voting Laws Roundup 2016*.

<sup>15</sup> U.S. Constitution, Amend. XV guarantees the right to vote “regardless of race, color, or previous condition of servitude”; Amendment XIX guarantees that the right to vote will not be denied “on account of sex”; Amend. XXIV guarantees that the right to vote will not be denied “by any reason of failure to pay poll tax or other tax”; Amend. XXVI guarantees the right to vote for all citizens aged 18 years or older.

<sup>16</sup> *Voting, 1961 Comm’n on Civil Rights Rep.*, Foreword, p. xv, <http://www.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf> (last accessed July 21, 2016).

<sup>17</sup> See Univ. of Md. Francis King Carey School of Law: Thurgood Marshall Law Library: *Historical Publications of the United States Commission on Civil Rights*, [http://www.law.umaryland.edu/marshall/usccr/subjlist\\_index.html](http://www.law.umaryland.edu/marshall/usccr/subjlist_index.html) (last accessed July 21, 2016).

<sup>18</sup> The Leadership Conf.: U.S. Comm’n on Civil Rights, <http://www.civilrights.org/enforcement/commission/?referrer=https://www.google.com/?referrer=http://www.civilrights.org/enforcement/commission/> (last accessed July 21, 2016).

## B. The Kansas Secure and Fair Elections (S.A.F.E) Act

Voter identification requirements are among the most common type of voting restriction employed by states today.<sup>19</sup> In April 2008, the U.S. Supreme Court ruled to uphold an Indiana law requiring voters to provide photographic identification at the polls (*Crawford v. Marion County Election Board*).<sup>20</sup> As of the writing of this report, 10 states have instituted voter identification requirements identified by the National Council of State Legislators as “strict,” and an additional 22 states have “non-strict” voter identification requirements.<sup>21</sup> Proponents of voter identification requirements claim they are necessary to protect against voter fraud.<sup>22</sup> Opponents argue that voter identification (ID) laws are unnecessary and disproportionately disenfranchise African American and Latino voters, who may be less likely to own a qualifying ID.<sup>23</sup>

On April 18, 2011, Kansas Governor Sam Brownback signed the Kansas SAFE Act into law.<sup>24</sup> Introduced by Kansas Secretary of State Kris Kobach, the Act combines three distinct voter identification requirements: (1) newly-registered Kansas voters must prove U.S. citizenship when registering to vote; (2) voters must show photographic identification when casting a vote in person; and (3) voters must have their signature verified and provide a full Kansas driver’s license or non-driver ID number when voting by mail.<sup>25</sup>

<sup>19</sup> *Voting Laws Roundup 2016*.

<sup>20</sup> *Crawford v. Marion County Election Board*, 128 S. Ct. 1610, 1611 (2008); see also Robert Barnes, *High Court Upholds Indiana Law on Voter ID*, THE WASH. POST., April 29, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042800968.html>.

<sup>21</sup> The Nat’l Conf. of State Legislatures: Voter Identification Requirements | Voter ID Laws. Updated July 27, 2016., <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed Aug. 4, 2016) (“Strict” ID requirements indicates that voters without acceptable ID must vote on a provisional ballot and take additional steps after election day for their votes to be counted. “Non-strict” identification requirements indicates that voters may cast a ballot and have it counted without additional action on the part of a voter. For example, a voter may sign an affidavit of identity, a poll worker may vouch for the voter’s identity, or election officials may verify the voter’s signature after the close of Election Day).

<sup>22</sup> Peter Hancock, *Kobach debates voter ID laws with KU law professor*. LAWRENCE JOURNAL WORLD, (Sept. 10, 2015), <http://www2.ljworld.com/news/2015/sep/10/kobach-debates-voter-id-laws-ku-law-professor/>.

<sup>23</sup> Sarah Childress, *Why Voter ID Laws Aren’t Really About Fraud*. FRONTLINE (Oct. 20, 2014), <http://www.pbs.org/wgbh/frontline/article/why-voter-id-laws-arent-really-about-fraud/>.

<sup>24</sup> Press Release: *Kansas Secure and Fair Elections (SAFE) Act Signed by Governor* (April 18, 2011), [https://www.kssos.org/other/news\\_releases/PR\\_2011/PR\\_2011-04-18\\_on\\_SAFE\\_Act\\_Signing.pdf](https://www.kssos.org/other/news_releases/PR_2011/PR_2011-04-18_on_SAFE_Act_Signing.pdf).

<sup>25</sup> Kobach, Kris. A Guide to Kansas Secure and Fair Elections (SAFE) Act. 2016, [https://www.sos.ks.gov/forms/elections/A\\_Guide\\_to\\_SAFE\\_Act.pdf](https://www.sos.ks.gov/forms/elections/A_Guide_to_SAFE_Act.pdf) (last accessed July 27, 2016) Hereafter cited as “Kobach SAFE Act Guide, 2016.”

Kansas' requirement that voters demonstrate U.S. citizenship in addition to producing photo ID makes Kansas law among the strictest voter identification requirements in the nation. Kansas and Arizona then requested that the Election Assistance Commission add state-specific instructions to the federal form for voter registration that would require those registering with the federal form in those States to provide documentary proof of their United States citizenship. Pursuant to the National Voter Registration Act<sup>26</sup> and Help America Vote Act,<sup>27</sup> the federal form is maintained by the Election Assistance Commission.<sup>28</sup> The Commission denied the request. Kansas and Arizona then brought suit against the Election Assistance Commission, which has resulted in the following court challenges and decisions:

- In November 2014, the 10<sup>th</sup> Circuit Court of Appeals ruled that the states (Kansas and Arizona) cannot require the Election Assistance Commission to approve the request to add citizenship documentation of voters who use the federal form to register. In June 2015, the U.S. Supreme Court declined to review the case, upholding the 10<sup>th</sup> Circuit's ruling.<sup>29</sup>
- In January 2016, Brian Newby, the newly appointed Executive Director of the Election Assistance Commission and a former county elections official in Kansas, approved the renewed requests by Kansas, Alabama, and Georgia to update their voter registration instructions on the federal registration form to include the states' requirement for documentary proof of citizenship.<sup>30</sup> This decision was widely criticized as outside Newby's authority as Executive Director.<sup>31</sup>
- The League of Women's Voters has also challenged Mr. Newby's decision in the District Court. In June 2016, the U.S. District Court for the District of Columbia denied an injunction to prevent Mr. Newby and the Election Assistance Commission from

<sup>27</sup> Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002).

<sup>29</sup> *Kobach v. U.S. Election Assistance Comm'n*, 6 F. Supp. 3d 1252 (10th Cir. 2014); see also Ken Klukowski, *SCOTUS: States Can't Require Proof of Citizenship to Vote Using Federal Form*, BREITBART, June 17, 2013, <http://www.breitbart.com/big-government/2013/06/17/states-can-t-require-proof-of-citizenship-to-vote-supreme-court-says/>. Jesse Byrnes, *Supreme Court Denies States' Request for Proof of Voter Citizenship*, THE HILL (June 29, 2015, 8:11 PM), <http://thehill.com/blogs/ballot-box/246497-supreme-court-denies-states-request-for-proof-of-voter-citizenship>.

<sup>30</sup> Declaration of Brian Dale Newby, Case No. 1:16-cv-00236-RJL, Exhibit 2, February 21, 2016, <http://www.politico.com/f?id=00000153-09c8-de04-af73-cfb7e040001> (last accessed Aug. 3, 2016).

<sup>31</sup> Statement by Vice-Chair Thomas Hicks, February 2, 2016, [http://www.eac.gov/assets/1/workflow\\_staging/Documents/7829.PDF](http://www.eac.gov/assets/1/workflow_staging/Documents/7829.PDF) (last accessed Aug. 3, 2016).

enforcing the decision to approve Kansas, Alabama, and Georgia's requirement for documentary proof of citizenship on the federal voter registration form.<sup>32</sup> The Plaintiffs then appealed this order to the D.C. Circuit Court. The D.C. Circuit reversed the District Court and entered an injunction for the course of the litigation, so the decision to implement the revised federal form in Kansas has not taken effect, and is still in litigation.<sup>33</sup>

Amid continued legal struggles to implement proof of citizenship requirements for voter registration in Kansas, in January 2013, the State began implementing a "bifurcated voting system, in which individuals who register to vote using the federally approved voter registration form are allowed to vote in federal elections, but not state elections."<sup>34</sup> However, on January 15, 2015, Shawnee County District Judge Franklin Theis struck down this bifurcated system, ruling that "a person is either registered to vote or he or she is not. By current Kansas law, registration, hence the right to vote, is not tied to the method of registration."<sup>35</sup> Secretary of State Kris Kobach said, "We don't anticipate this decision is going to be the final word on the subject."<sup>36</sup> Indeed, despite Judge Theis' 2015 ruling, on July 12, 2016, Secretary Kobach received administrative approval to enact K.A.R. 7-23-16, "a temporary regulation that seeks to formalize his two-tiered voter registration system."<sup>37</sup>

In May 2016, U.S. District Judge Julie Robinson ruled the Kansas "proof-of-citizenship requirement violates a provision of the National Voter Registration Act that requires 'only the minimum amount of information' to determine a voter's eligibility," and thus cannot be

<sup>32</sup> See Brennan Center for Justice at the N.Y.U. Sch. of Law, *League of Women Voters v. Newby*, D.D.C. July 28, 2016, <https://www.brennancenter.org/legal-work/league-women-voters-v-newby> (last accessed Aug. 4, 2016).

<sup>33</sup> *League of Women Voters of the United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

<sup>34</sup> Mark Johnson, *Developments in Kansas Election Law and Voting Rights Law*, U. of Kan. Sch. of Law, May 19, 2016, p. 04., <https://law.ku.edu/sites/law.ku.edu/files/docs/recent-developments/2016/johnson-materials.pdf> (last accessed Aug. 1, 2016) Hereafter cited as: *Developments in Kansas Election Law*. See also: Fernanda Santos, & John Eligon, *2 States Plan 2-Tier System for Balloting*, THE N.Y. TIMES, Oct. 12, 2013, at A1 <http://www.nytimes.com/2013/10/12/us/2-states-plan-2-tier-system-for-balloting.html?pagewanted=1&r=2> (last accessed Aug. 1, 2016).

<sup>35</sup> Edward Eveld, *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansa.*, THE KAN. CITY STAR, Jan. 15, 2016, <http://www.kansascity.com/news/politics-government/article54933870.html>. Hereafter cited as: *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansas*.

<sup>36</sup> *Judge Rules Kris Kobach Can't Operate Two-Tier Election System in Kansas*.

<sup>37</sup> Kan. Admin. Regs. § 7-23-16 (temporary) See also: *What's the Matter with Kansas and the National Voter Registration Form?* (Hicks 2016).

enforced.<sup>38</sup> Unless reversed by a higher court, this decision is to affect voters who register using either the Kansas registration form, or the federal voter registration form.

The legal battle regarding Kansas' voter identification and citizenship verifications requirements remains ongoing. The Committee sought through this project to gather direct testimonial evidence, and document the concerns and experiences of Kansas voters in exercising their fundamental right to freely elect their leaders.

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<sup>38</sup> Lisa Wagner, *Judge Blocks Kansas' Proof-Of-Citizenship Voting Registration Requirement*, NPR AMERICA, (May 18, 2016), <http://www.npr.org/sections/thetwo-way/2016/05/18/478496140/judge-blocks-kansas-proof-of-citizenship-voting-registration-requirement>.



### III. SUMMARY OF PANEL TESTIMONY

The panel discussion on January 28, 2016, at the Topeka and Shawnee Public Library in Topeka, Kansas included testimony from diverse academic experts; legal professionals; community advocates; state elected officials; and individual community members directly impacted by voting requirements imposed under the Kansas SAFE Act.<sup>39</sup> At the direction of the Committee's bipartisan members, panelists were selected to provide a diverse and balanced overview of the civil rights issues impacting voters in Kansas. Testimony included the perspective of both proponents and opponents of the Kansas SAFE Act, including that of Kansas Secretary of State Kris Kobach, the legislation's author, who testified in person. However, despite an active search and many outreach attempts, the Committee was unable to identify any Kansas-based community organizations or community groups to testify in support of the SAFE Act.<sup>40</sup> True the Vote, a "nonpartisan voters' rights and election integrity organization,"<sup>41</sup> was able to send a representative from its Texas office to speak about the importance of preserving election integrity more broadly. No local community organizations in Kansas were identified to speak in support of Kansas' voting requirements, and no individuals in support of these requirements presented themselves to speak during the period of public comment. Regrettably, this lack of participation from community representatives in support of Kansas' voting requirements prevented the Committee from obtaining the full range of intended perspectives.

The Committee notes that where appropriate, all invited parties who were unable to attend personally were offered the opportunity to send a delegate; or, at a minimum, to submit a written statement offering their perspective on the civil rights concerns in question. The Committee did receive a number of written statements from the public offering supplemental information on the topic, which are included in Appendix B. It is in this context that the Committee submits the findings and recommendations following in this report.

#### A. Voter Identification and Proof of Citizenship

Under the Kansas SAFE Act, voters may obtain a free, non-driver photo ID from the Kansas Division of Vehicles,<sup>42</sup> and a free, certified copy of an individual's birth certificate from the

<sup>39</sup> The complete agenda from this meeting can be found in Appendix A.

<sup>40</sup> Note: The Committee sought community input, not affiliated with any particular political party

<sup>41</sup> True the Vote, <https://truethevote.org/aboutus> (last accessed July 29, 2016).

<sup>42</sup> See: *got voter ID? Valid Forms of Photographic Identification*. Kansas Secretary of State, Election Division. 2012., <http://www.gotvoterid.com/valid-photo-ids.html#idlist> (last accessed Aug. 18, 2016). Hereafter cited as "*got voter ID? Photographic Identification*."

Kansas Office of Vital Statistics, to serve as proof of citizenship<sup>43</sup> after swearing under penalty of perjury that the documentation is for voting purposes only. Despite these accommodations, throughout the testimony, the Committee heard numerous concerns regarding reasons why legitimate voters may be disenfranchised by these documentation requirements. Such reasons include: (1) inconsistencies in implementation and training; (2) insufficient voter education efforts; (3) the level of burden for citizens to obtain required documentation; and (4) a lack of provision for those born out of state to obtain free documentation.

### 1. *Implementation Training and Consistency*

Testimony throughout the Committee's hearing yielded three primary concerns regarding inconsistencies in implementation that may disenfranchise eligible voters under the SAFE Act.

The first is the erroneous assessment of fees for required documentation. Disability rights advocate Mr. Michael Byington testified, "I've worked with a number of people trying to get the [Kansas] birth certificate, and in almost all cases they have attempted to charge them."<sup>44</sup> He recalled one specific situation, when he accompanied a client who was both visually and hearing impaired to the Kansas Department of Motor Vehicles (DMV) in order to obtain a photo ID for voting purposes. Although his client explained that the ID was for voting purposes, the staff attempted to charge her \$17 for the service. When Mr. Byington reminded the staff person of the SAFE Act provision allowing for free photo identification for voting purposes, the staff reportedly replied, "I think I heard something about that law. And there's probably some form...but I wouldn't have the foggiest idea of where it is. That will be \$17."<sup>45</sup> Mr. Byington testified that he and his client insisted on waiting until the clerk was able to locate the appropriate form. Mr. Byington reported, "About an hour later my client walked out of that booth and out of that office with her ID and she hadn't had to pay for it. But had I not been there with the knowledge that I had of the laws, she would have definitely been charged the \$17."

In such situations, panelists argued any fees incurred for retrieving required voter identification may effectively stand as a poll tax, which is unconstitutional under both the 14<sup>th</sup> and the 24<sup>th</sup>.

<sup>43</sup> *got voter ID? Voter Registration* (No Citizenship Documents).

<sup>44</sup> Byington Testimony, Hearing before the Kansas Advisory Committee to the U.S. Commission on Civil Rights, January 28, 2016. Hearing Transcript, p. 120 line 20 – p. 121 line 23. Available at: [http://www.facadatabase.gov/download.aspx?fn=Meetings/2016-268-135169\\_transcript\\_\(2016-04-21-03-50-24\).pdf](http://www.facadatabase.gov/download.aspx?fn=Meetings/2016-268-135169_transcript_(2016-04-21-03-50-24).pdf) (last accessed March 10, 2017). Hereafter cited as: "Transcript"

<sup>45</sup> Byington Testimony, *Transcript*, p. 261 line 02 – p. 264 line 05.

Amendments to the U.S. Constitution.<sup>46</sup> Mr. Byington concluded, “that is very clearly the way in this country, we have for many years defined a poll tax and a poll tax is not constitutional, it’s not legal, and it’s not patriotic.”<sup>47</sup> Panelist Richard Levy, Distinguished Professor of Constitutional Law at the University of Kansas School of Law, emphasized even small fees associated with voting may raise related constitutional concerns. Referencing the U.S. Supreme Court decision in *Harper v. Virginia Board of Elections* (1966), he noted the amount of a poll tax is irrelevant to the discussion: “The Court just said paying a tax is not correlated to your qualifications to vote, period.”<sup>48</sup> In delivering the 1966 majority opinion on *Harper v. Virginia Board of Elections*, Justice William O. Douglas said:

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.<sup>49</sup>

Other concerns regarding improper training and implementation include poll workers erroneously rejecting voter identification that is in fact valid under the SAFE Act. Panelist Carrie O’Toole of the Potawatomi Tribal Council testified she had been denied the right to use her tribal ID as acceptable identification when voting. “It happened by chance that the election officer was sick and missed her training,” Ms. O’Toole explained. So when she presented her tribal identification card to vote, the election officer asked for a driver’s license instead. When Ms. O’Toole informed the election officer that a tribal ID is an approved form of government-issued identification under the Kansas SAFE Act, “she didn’t know anything about it. So it was very frustrating and I was so flustered and in shock that I forgot to ask for a provisional ballot to vote.”<sup>50</sup> During her testimony, Ms. O’Toole also noted on the same day she was denied the right to use her tribal ID to vote, she observed an election official also deny a military veteran the right

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<sup>46</sup> U.S. Const. amend. XIV, guarantees all people “equal protection of the laws.” Cornell U. Sch. of Law, Legal Info. Inst., <https://www.law.cornell.edu/constitution/amendmentxiv> (last accessed Sept. 14, 2016); U.S. Const. amend. XXIV, prohibits the establishment of poll taxes directly. See <https://www.law.cornell.edu/constitution/amendmentxxiv>. See also: Byington Testimony, *Transcript*, p. 263 line 08 – p. 264 line 17; Davis Testimony, *Transcript*, p. 131 lines 07 – 12.

<sup>47</sup> Byington Testimony, *Transcript*, p. 261 line 02 – p. 264 line 05.

<sup>48</sup> Levy Testimony, *Transcript*, p. 50 line 20 – p. 51 line 10.

<sup>49</sup> *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (No. 48.), <http://caselaw.findlaw.com/us-supreme-court/383/663.html> (last accessed Sept. 15, 2016).

<sup>50</sup> O’Toole Testimony, *Transcript*, p. 79 line 24 – p. 80 line 17.

to use his military ID to vote.<sup>51</sup> Ms. O'Toole now volunteers at the polls to help ensure such errors are not repeated. "We have worked very hard to get people to do the Native vote...I feel it's been very important for my elders and my community members that [they] take the time to be involved in this process."<sup>52</sup>

Similarly, former State Representative Ann Mah described a number of other situations in which poll workers erroneously rejected voter identification that should have been accepted:<sup>53</sup>

1. During the 2012 elections, voter ID's were reportedly rejected at multiple polling locations in Wichita, because the address on the ID did not match the voting address.
2. A voter attempted to vote using her temporary (paper) driver's license, along with her old driver's license as ID. The poll worker would not accept her temporary license, so she was forced to vote on a provisional ballot. Because her permanent license did not arrive before the canvas date, her vote was thrown out.
3. A voter was told to vote using a provisional ballot because the poll worker would not accept his suspended driver's license (which he still possessed) as valid identification.
4. Poll workers rejected a veteran's Department of Veteran Affairs service card because it had no address on it.
5. Poll workers rejected a Wichita State University ID as acceptable voter identification.

In her written testimony submitted to the Committee, Ms. Mah asserted that under the SAFE Act, each of these individuals identified should have been permitted to vote with the presented identification, though they were denied due to poll worker error.<sup>54</sup>

Finally, the Committee heard testimony that proof of citizenship documentation is sometimes lost in the voter registration data transfer between the Department of Motor Vehicles (DMV) and county elections officials. Douglas County Clerk Jamie Shew testified that in 2014, his county implemented an outreach program to contact voters who were in suspense due to a lack of documentation.<sup>55</sup> As the election drew nearer, county staff made personal phone calls to such voters, in an effort to get them to complete their registration. Mr. Shew testified, "The majority

<sup>51</sup> O'Toole Testimony, *Transcript*, p. 80 line 18 – p. 81 line 04.

<sup>52</sup> O'Toole Testimony, *Transcript*, p. 82 line 16 – p. 83 line 22.

<sup>53</sup> Mah Written Testimony, pp. 03 – 06 (Appendix B.1).

<sup>54</sup> Mah Written Testimony, pp. 03 – 06 (Appendix B.1).

<sup>55</sup> Shew Testimony, *Transcript*, p. 169 lines 11 – 24.

of the applicants, almost 60 percent, had registered through the DMV. They had presented their documentation, and somewhere it didn't show up to our office, and when we called them they were frustrated because -- they're like, 'I've already done this. Why am I doing this a second time?'"<sup>56</sup> Mr. Shew lamented that due to such frustration, many voters gave up and are deterred from voting all together—a concern that may disproportionately impact young voters.<sup>57</sup> He said, "We also know that administrative challenges are the largest impediment to the participation of younger voters. In 2014 we found out the largest group of voters in suspense were 18 to 24 years of age, and they are also the quickest to say 'Forget it. I've got stuff going on.'"<sup>58</sup>

## 2. Voter Education

In addition to the importance of properly training election officials and state service employees, the Committee heard testimony about the need to educate the voting public on the SAFE Act's new requirements. Referring to the Supreme Court Case *Crawford v. Marion County Election Board*, former Kansas Representative Ann Mah noted "voter education was a critical issue in [the Court upholding] the voter ID law in Indiana."<sup>59</sup> She asserted other states instituting new voter ID requirements, such as Indiana, Georgia, and Missouri, spent millions of dollars educating voters on their new requirements. She wrote, "Missouri, for example, spent \$13 million over the first few years of the law."<sup>60</sup> In contrast, following the passage of the SAFE Act, Kansas reportedly budgeted \$60,000 in 2012 and only \$200,000 in 2013 for voter education.<sup>61</sup> As a member of the Kansas legislature during the passage of the SAFE Act, Representative Mah recalled:

I asked for a copy of the Secretary's voter education plan for voter ID. During the hearings he said that they would rely primarily on free media and legislators to inform individuals of the changes. Other states have had to use broader media and not just low-volume radio stations. This was a real weak spot in the plan. It took Georgia years to meet the court's concerns. Kansas' education plan was minimal. A case in point. Wichita had a ballot initiative in early 2012. The Secretary of State started the public ads just two

<sup>56</sup> Shew Testimony, *Transcript*, p. 169 lines 11 – 24

<sup>57</sup> Shew Testimony, *Transcript*, p. 169 lines 11 – 24

<sup>58</sup> Shew Testimony, *Transcript*, p. 169 line 25 – p. 170 line 06

<sup>59</sup> Mah Written Testimony p. 02 (Appendix B.1)

<sup>60</sup> Mah Written Testimony p. 02 (Appendix B.1)

<sup>61</sup> Mah Written Testimony p. 02 (Appendix B.1)

weeks prior to the vote. There is no way someone born out of state or without an ID could comply in time to vote. Later I learned that 45 ballots were rejected for no ID.<sup>62</sup>

Other panelists also highlighted the need for increased voter education support, noting the efforts of nonprofits and advocacy groups to fill in where the state's efforts to educate voters have fallen short. Dr. Glenda Overstreet of the Kansas NAACP testified that despite her long standing commitment to voting, in the previous election she found out nearly 60 days after the election was over that her advance ballot was not counted.<sup>63</sup> She said, "I then stayed resolved to the fact that we constantly have to continue to keep our membership educated on the changing laws," a commitment that the NAACP in Kansas has taken on.<sup>64</sup> She continued, "It's part of an education process that we have to get out to combat some of these requirements that we're seeing that prove to be cumbersome."<sup>65</sup>

### 3. *Level of Burden*

In *Crawford v. Marion County Election Board*, the U.S. Supreme Court held that reasonable burdens on voting can be constitutional. In discussing this ruling, Panelist Richard Levy, Distinguished Professor of Constitutional Law at the University of Kansas, School of Law noted the ruling was in response to a facial challenge—meaning it was an overall challenge to Indiana's voter identification law, without regard to how the law had been applied.<sup>66</sup> Professor Levy explained the burden to establish in order to win a facial challenge in court is especially high, "and the Court emphasized that in *Crawford*."<sup>67</sup> As such, he testified an "as applied" challenge may result in a different outcome, "particularly for those voters it's especially difficult to meet the photo ID requirement."<sup>68</sup> Specifically, Levy recalled "the Indiana law contained a lot of alternative ways of identifying yourself and proving who you were that not all of which required that you actually have a photo ID...for example, you can submit...a utility bill with

<sup>62</sup> Mah Written Testimony p. 02 (Appendix B.1).

<sup>63</sup> Overstreet Testimony, *Transcript*, p. 86 lines 04 – 19.

<sup>64</sup> Overstreet Testimony, *Transcript*, p. 86 line 20 – p. 87 line 06; p. 99 line 15 – p. 100 line 08; p. 104 line 17 – p. 105 line 21.

<sup>65</sup> Overstreet Testimony, *Transcript*, p. 99 line 15 – p. 100 line 08.

<sup>66</sup> Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24; A "facial challenge" is distinguished from an "as applied" challenge, which challenges a particular application of a law, without necessarily challenging the law itself.

<sup>67</sup> Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24.

<sup>68</sup> Levy Testimony, *Transcript*, p. 22 line 21 – p. 23 line 24.

your name and address on it...part of the Court's reasoning was it was so easy to prove who you were under Indiana law that it couldn't really be a burden."<sup>69</sup>

In contrast, Kansas voter ID requirements under the SAFE Act are significantly more rigorous than the Indiana requirements reviewed under *Crawford*. In Kansas, voter identification must be government-issued, contain a photograph, and must not be expired.<sup>70</sup> The requirement that individuals provide documentary proof of citizenship upon registration adds an additional burden on would-be voters. As Professor Levy testified, "proving citizenship is more difficult than getting a photo ID, so the burdens are arguably more severe."<sup>71</sup> Therefore, he suggested that in particular "the proof of citizenship requirement for voter registration in the Kansas SAFE Act is more vulnerable to a Constitutional challenge under *Crawford*."<sup>72</sup>

Indeed, several panelists highlighted the individual burden the SAFE Act requirements may impose on individual voters. Marge Ahrens of the League of Women Voters commented, "it takes little to drive away those who have limited power already."<sup>73</sup> Examples of such burdens include:

- Douglass County Clerk Jamie Shew testified in order to meet eligibility requirements for state elections, his office found "it can take up to two months to get your birth certificate."<sup>74</sup>
- Former State Representative Ann Mah explained because Kansas is a rural state, many would-be voters may have to travel great distances to counties where IDs can be acquired.<sup>75</sup> She noted only 33 counties have full-time DMV locations where citizens could obtain IDs to vote, leaving 72 counties without full-time DMV offices to provide voter IDs.<sup>76</sup>

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<sup>69</sup> Levy Testimony, *Transcript*, p. 51 line 18 – p. 52 line 11.

<sup>70</sup> Some exceptions apply. For example, persons over age 65 may use an expired identification. For complete list of acceptable photographic identification, see: *got voter ID? Photographic Identification*.

<sup>71</sup> Levy Testimony, *Transcript*, p. 23 lines 20 – 22.

<sup>72</sup> Levy Testimony, *Transcript*, p. 23 lines 16 – 19.

<sup>73</sup> Ahrens Testimony, *Transcript*, p. 142 lines 01 – 08.

<sup>74</sup> Shew Testimony, *Transcript*, p. 168 line 17 – p. 169 line 10.

<sup>75</sup> Mah Written Testimony, p. 01 (Appendix B.1).

<sup>76</sup> Mah Written Testimony, p. 02 (Appendix B.1)

- Mr. Shew recalled that in 2014 he spoke to a 90 year old woman with no proof of birth because she was born at home. Her response to the enhanced requirements was, “I don’t have the energy for all that. I guess I voted most of my lifetime. I’m done.”<sup>77</sup> Mr. Shew testified the complexity of the forms and requirements is a deterrent for Kansas citizens who have been “confused by the process,”<sup>78</sup> especially for those citizens with low literacy levels.<sup>79</sup>
- Mr. Kip Elliot of the Disability Rights Center of Kansas explained individuals in hospitals and residential care or nursing facilities may not have family or other support persons who can help them apply for identification documents, such as a birth certificate, they may be missing.<sup>80</sup> In addition, staff may not be available to take them to the appropriate facilities, particularly in rural communities.<sup>81</sup> Mr. Elliot did note during one election cycle, Secretary Kobach sent staff out to a rural facility with him to help with registration; however, it is not clear the office would have the capacity to provide such assistance on a regular basis.<sup>82</sup>

In addition to the burden on individuals, testimony indicated voter registration requirements under the SAFE Act have also created a substantial burden on community groups and local elections agencies.<sup>83</sup> Civic organizations and local election agencies have reportedly struggled to support citizens working to satisfy voter registration requirements. Marge Ahrens testified despite the many years of experience that the League of Women Voters has in conducting voter registration outreach, the effectiveness of their efforts has declined significantly.<sup>84</sup> She noted,

Prior to implementation of the SAFE Act the League of Women Voters of Kansas and in nine communities registered voters at events which particularly targeted the underrepresented, schools, community organizations, churches. We frequently were registering people in public venues such as public libraries. And since that time there is a

<sup>77</sup> Shew Testimony, *Transcript*, p. 170 line 17 – p. 171 line 02.

<sup>78</sup> Shew Testimony, *Transcript*, p. 170 lines 07 – 16.

<sup>79</sup> Shew Testimony, *Transcript*, p. 168 lines 17 – 23.

<sup>80</sup> Elliot Testimony, *Transcript*, p. 73 line 16 – p. 74 line 18.

<sup>81</sup> Elliot Testimony, *Transcript*, p. 73 line 16 – p. 74 line 18.

<sup>82</sup> Elliot Testimony, *Transcript*, p. 76 lines 06 – 14.

<sup>83</sup> King Testimony, *Transcript*, p. 123 – 125; Davis Testimony, *Transcript*, p. 130 – 132; Ahrens Testimony, *Transcript*, p. 142 – 143; Shew Testimony, *Transcript*, p. 166, p. 173.

<sup>84</sup> Ahrens Testimony, *Transcript*, p. 135 line 09 – p. 138 line 24.



major shift, and I know this from the first-hand reports of the League presidents and voter service chairs across the state of Kansas.<sup>85</sup>

Ms. Ahrens described the difficulty of registering voters at such public events in the wake of the SAFE Act, because the process now requires documentation most people do not have on hand, and some do not have easily accessible.<sup>86</sup> She predicted that such events “are going to become less and less frequent because they’re not any of any benefit. People really cannot register at these tables.”<sup>87</sup> She concluded, “We maintain that all government processes need to be accessible and understandable. And now we believe that the complexity and confusion of the laws have created so much uncertainty that the registrant is in fact threatened.”<sup>88</sup>

Cille King of the League of Women Voters, also spoke to this phenomenon. Ms. King claimed while working on an initiative to reach out to voters on the suspense list, some people simply “said that they no longer wanted to vote.”<sup>89</sup> Ms. King documented the “great deal of volunteer time” devoted to help citizens finish their registration, lamenting that “getting citizens registered to vote should not be harder than getting them informed.”<sup>90</sup>

County elections officials have also faced significant burdens in order to ensure all eligible voters are able to register. Mr. Shew specified Douglas County spent more than \$30,000 on outreach and assistance to people working to satisfy voter requirements under the SAFE Act.<sup>91</sup> Ms. Ahrens testified 105 counties have tried to help citizens with incomplete registrations, at a cost of approximately \$5 per attempt.<sup>92</sup> Many smaller and rural counties may not be able to afford such expenses.

In his testimony, Secretary Kris Kobach dismissed concerns regarding the SAFE Act’s increased documentation burden on voters. He stated, “The photo ID part, I don’t think it’s a burden to reach into one’s wallet or one’s purse and pull out a photo ID. Someone could argue that you’re exerting calories when you’re doing that, and there is some process. I don’t think that’s a

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<sup>85</sup> Ahrens Testimony, *Transcript*, p. 136 lines 08 – 19.

<sup>86</sup> Ahrens Testimony, *Transcript*, p. 136 line 16 – p. 138 line 18.

<sup>87</sup> Ahrens Testimony, *Transcript*, p. 141 lines 04 – 07.

<sup>88</sup> Ahrens Testimony, *Transcript*, p. 138 lines 19 – 24.

<sup>89</sup> King Written Testimony, p. 01 (Appendix B.2).

<sup>90</sup> King Written Testimony, p. 01 (Appendix B.2).

<sup>91</sup> Shew Testimony, *Transcript*, p. 173 lines 09 – 13.

<sup>92</sup> Ahrens Testimony, *Transcript*, p. 142 line 24 – p. 143 line 02.

burden.”<sup>93</sup> With respect to the additional requirement of proving citizenship upon registration, Kobach said, “Is this step a burden? I guess it depends on how you define burden. Someone might say that it is to find your birth certificate or your passport and take a picture of it with your phones and email it in or send it in or carry it in. I don’t think it’s significant.”<sup>94</sup> Kansas Representative Jim Ward challenged this assertion, citing the 40,000 citizens on the suspended voter list due to lack of documentary proof of citizenship. “It is a burden for these voters for the ID part. And 40,000 people in Kansas would definitely disagree with the Secretary and say that this is a burden for them to participate.”<sup>95</sup> Even if many Kansas citizens are able to produce their documents with relative ease, testimony before the Committee overwhelmingly indicated at least some groups may face a substantial burden in obtaining the documentation required under the SAFE Act. Senator Faust-Goudeau lamented, “these 13 years of being in the legislature, I too have seen that voting...the whole process has diminished and [gone] backwards; we’re going backwards.”<sup>96</sup>

#### 4. Voters Not Born in Kansas

Despite provisions in the SAFE Act allowing for free identification documents for voting purposes, the Committee heard testimony that some individuals may actually incur a cost in order to obtain the required documentation. For example, a number of panelists pointed out that the SAFE Act provides only Kansas birth certificates for free.<sup>97</sup> Voters who were not born in Kansas must pay the applicable fee in the state of their birth in order to secure a certified copy of their birth certificate. Ms. Cheyenne Davis, Field and Political Director for the Kansas Democratic Party, testified, “For some people who have lived out of state or were born out of state and they do not have their birth certificate, the cost of that is [equivalent] to a poll tax.”<sup>98</sup> Douglass County Clerk Jamie Shew testified his office contacted the appropriate agency in each state in order to inquire as to such costs. Their inquiry revealed fees ranging from \$7 to \$45, with an average cost of \$20.<sup>99</sup>

<sup>93</sup> Kobach Testimony, *Transcript*, p. 234 lines 16 – 21.

<sup>94</sup> Kobach Testimony, *Transcript*, p. 235 lines 01 – 20.

<sup>95</sup> Ward Testimony, *Transcript*, p. 236 line 21 – p. 237 line 06.

<sup>96</sup> Faust-Goudeau Testimony, *Transcript*, p. 225 lines 01 – 04.

<sup>97</sup> Shew Testimony, *Transcript*, p. 167 line 04 – p. 168 line 16; Byington Testimony, *Transcript*, p. 121 lines 08 – 23.

<sup>98</sup> Davis Testimony, *Transcript*, p. 131 lines 07 – 12.

<sup>99</sup> Shew Testimony, *Transcript*, p. 167 lines 04 – 18.

In addition to the potential for the SAFE Act's proof of citizenship requirement to stand as a poll tax for Kansas citizens born out of state, Mr. Shew noted broader concern regarding equal protection. He noted under the Act, "one group of citizens...gets something that other groups of citizens do not have."<sup>100</sup> Citing the Help America Vote Act (HAVA), he testified that "each person should have equal, fair access just like any other voter regardless of your circumstances."<sup>101</sup> He concluded, "if one group of citizens gets a free birth certificate, all citizens should get a free birth certificate."<sup>102</sup> Accordingly, Mr. Shew noted as of 2014, his county began paying for birth certificates for any resident born out of state who needed the documentation for voting purposes.<sup>103</sup> Similarly, panelist Marge Ahrens of the League of Women Voters testified her organization had also purchased out of state birth certificates for Kansans who could not afford them, in order to help them complete their registration.<sup>104</sup> Mr. Shew cautioned, however, such initiatives vary by county, and many counties do not have the resources to provide this type of support.<sup>105</sup>

## B. Voter Participation

Throughout the hearing, the Committee received testimony from a number of panelists citing concern the challenges described above have already resulted in an actual decline in rates of voter participation and voter registration in Kansas since the passage of the SAFE Act. Panelist Doug Bonney of the Kansas Chapter of the American Civil Liberties Union (ACLU) testified that "there is at least preliminary evidence that after Kansas' strict photo ID requirement took effect on January 1, 2012, voter participation in Kansas dropped significantly."<sup>106</sup> The Committee notes in September 2014, the U.S. Government Accountability Office (GAO) released a report entitled "Elections: Issues Related to State Voter Identification Laws."<sup>107</sup> In it, the GAO reported results of an analysis it did of voter turnout in Kansas and Tennessee. The

<sup>100</sup> Shew Testimony, *Transcript*, p. 167 line 19 – p. 168 line 02.

<sup>101</sup> Shew Testimony, *Transcript*, p. 168 lines 03 – 16.

<sup>102</sup> Shew Testimony, *Transcript*, p. 168 lines 03 – 16.

<sup>103</sup> Shew Testimony, *Transcript*, p. 167 lines 19 – 24.

<sup>104</sup> Ahrens Testimony, *Transcript*, p. 142 lines 18 – 23.

<sup>105</sup> Shew Testimony, *Transcript*, p. 185 lines 01 – 10.

<sup>106</sup> Bonney Testimony, *Transcript* p. 67 lines 17 – 20.

<sup>107</sup> U.S. Government Accountability Office. Elections: Issues Related to State Voter Identification Laws [Reissued on Feb. 27, 2015], <http://www.gao.gov/products/GAO-14-634>, (last accessed July 27, 2016). Hereafter cited as: *GAO Elections: Issues Related to State Voter Identification Laws, 2015*.

analysis concluded voter turnout had indeed decreased in Kansas between the 2008 and the 2012 general elections to a greater extent than turnout decreased in selected comparison states, and the decrease was attributable to changes in the state's voter ID requirements.<sup>108</sup> The GAO also found race and age disparities in the demographics of those affected: turnout was reduced by larger numbers among African Americans and young voters between the ages of 18 and 23 than other groups during this time period.<sup>109</sup>

On the other hand, Senator Steve Fitzgerald, Vice Chair of the Elections and Ethics Committee in the Kansas Senate, attributed the enthusiasm for the 2008 national election to the historic nature of the election of the first African American president, combined with national get out the vote efforts.<sup>110</sup> He testified the diminished enthusiasm in 2012 was more in line with historical norms in Kansas, rather than being attributable to the implementation of any provisions of the SAFE Act.<sup>111</sup> The Senator did offer that the Elections Committee had been presented with concerns regarding disenfranchisement, though he did not believe the assertions were "substantive" and the questions raised had not been either "proved or disproved."<sup>112</sup>

### 1. Voter Turnout

In written testimony submitted to the Committee, Nathaniel Birkhead, Assistant Professor of Political Science at Kansas State University, explained the link between strict voter identification requirements and depressed voter participation:

In political science, the most common way to understand voter turnout is to focus on the costs of voting (things that make it harder to vote) and the benefits of voting (things that voters expect to receive if their preferred candidate wins). One of the most consistent findings in political science research is that turnout drops when the costs of voting go up, and that turnout goes up when the costs of voting go down.<sup>113</sup>

Professor Birkhead wrote:

<sup>108</sup> GAO Elections: Issues Related to State Voter Identification Laws, 2015. Note: the Kansas S.A.F.E. Act was enacted in April of 2011.

<sup>109</sup> GAO Elections: Issues Related to State Voter Identification Laws, 2015.

<sup>110</sup> Fitzgerald Testimony, Transcript p. 191 line 11 – p. 194 line 14.

<sup>111</sup> Fitzgerald Testimony, Transcript p. 191 line 11 – p. 194 line 14.

<sup>112</sup> Fitzgerald Testimony, Transcript p. 196 line 20 – p. 197 line 08.

<sup>113</sup> Birkhead Written Testimony, p. 01, lines 28-32 (Appendix B.3).

While no research has looked at Kansas' voter ID laws specifically, the consensus in scholarly research is that voter ID laws present a substantial cost to voting, and as such depress turnout. In particular, the costs associated with voter ID laws tend to have disproportionate impact among the poor, uneducated, and young...the ultimate impact...is to make the electorate unrepresentative of the state's citizens.<sup>114</sup>

Professor Birkhead went on to note that "Kansas' voter registration and voter ID laws are among the most demanding in the country."<sup>115</sup> Although as of the time of his writing, no empirical studies had been conducted to specifically assess the impact of Kansas' voter identification requirements on voter turnout in the state, Professor Birkhead referenced an empirical study that had been conducted of Georgia's voter identification requirements, which he noted are "similar to Kansas both in the requirement that voters are able to furnish a photo ID, and similar in what forms of photo IDs are valid."<sup>116</sup> This analysis found "the Georgia voter ID statute had a suppressive effect among those lacking IDs: there was an across the board drop in turnout of 6.5% among those without IDs."<sup>117</sup> In other words, "about 24,692 registered voters in Georgia were turned away due to the photo ID statute that is similar to Kansas."<sup>118</sup>

In reviewing this empirical research, the Committee notes that in addition to imposing voter photo identification requirements similar to Georgia, the Kansas SAFE Act also requires that voters show proof of citizenship upon registration. This additional requirement is unique to only two states in the country (Kansas and Arizona) and its impact has not yet been empirically studied. In response to these concerns, Senator Faust-Goudeau spoke about her efforts to introduce legislation to increase voter participation, and the political apathy and opposition she has faced from Secretary Kobach.<sup>119</sup>

## 2. *Suspense Voters*

In addition to the potential direct impact on rates of voter participation and voter registration, the Committee heard concern that many citizens in Kansas who have turned out to vote in recent

<sup>114</sup> Birkhead Written Testimony, p. 01, lines 10-15 (Appendix B.3).

<sup>115</sup> Birkhead Written Testimony, p. 02 line 27 – p. 3 line 02 (Appendix B.3).

<sup>116</sup> Birkhead Written Testimony, p. 04, lines 16-24 (Appendix B.3) *See also:* Hood, MV III, and Charles S. Bullock III. 2012. "Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute." *State Politics and Policy Quarterly* 12(4):394-14.

<sup>117</sup> Birkhead Written Testimony, p. 04, line 31 – p. 5 line 05 (Appendix B.3).

<sup>118</sup> Birkhead Written Testimony, p. 04, line 31 – p. 5 line 05 (Appendix B.3).

<sup>119</sup> Faust-Goudeau Testimony, *Transcript* p. 223 line 20- p. 228 line 20.

elections have not had their votes counted. Attorney Mark Johnson explained that under the SAFE Act, voters who register without proof of citizenship are placed on a “suspense voter” list, and must prove their citizenship within 90 days or be purged from the list and required to restart the voter registration process.<sup>120</sup> Secretary Kobach testified that most people on the suspense list never finished registering simply because they had moved, and that purging the list is a necessary way to decrease cost from sending those people reminders.<sup>121</sup> Similarly, panelist Catherine Engelbrecht of True the Vote, suggested the 90-day rule for purging the suspended voters list is a valuable step in encouraging voters to fix registration in a timely manner and that it “bolsters confidence” in “election integrity.”<sup>122</sup>

In contrast, Mr. Bonney of the ACLU raised concern regarding the large number of people on Kansas’ suspense voter list. He noted by September 2015, there were 37,000 voters on the suspense list.<sup>123</sup> Of those, “almost 32,600 were on the suspense list because they had not provided or because bureaucrats could not find documentary proof of citizenship for the voter registrants.”<sup>124</sup> Mr. Bonney testified those 32,600 people “equal 2 percent of all the registered voters in Kansas... When a law causes 2 percent of voter...registrants to go into suspense, that law is having a direct and damaging effect on voter participation in the state....”<sup>125</sup> Mr. Bonney also noted a disparate impact on the basis of both political affiliation and age, with 58 percent of those on the suspense voter list due to a lack of citizenship documentation being politically “unaffiliated” and 40 percent being under the age of 30.<sup>126</sup>

### 3. Provisional Voting

Under the SAFE Act, voters on the suspense voter list due to incomplete documentation or those without approved photo ID at the polls may vote using a provisional ballot, and submit their missing documentation at a later time in order to have their votes counted.<sup>127</sup> In a written

<sup>120</sup> Johnson Testimony, *Transcript* p. 150 line 20 – p. 161 line 01.

<sup>121</sup> Kobach Testimony, *Transcript* p. 233 lines 03 – 16.

<sup>122</sup> Engelbrecht Testimony, *Transcript* p. 152 line 16 – p. 153 line 08.

<sup>123</sup> Bonney Testimony, *Transcript* p. 68 lines 06 – 11.

<sup>124</sup> Bonney Testimony, *Transcript* p. 68 lines 06 – 11.

<sup>125</sup> Bonney Testimony, *Transcript* p. 69 lines 10 – 18.

<sup>126</sup> Bonney Testimony, *Transcript* p. 68 lines 20 – 25; See also: Smith Testimony, *Transcript*, p. 31 lines 19 – 21 & p. 32 lines 18 – 19.

<sup>127</sup> State of Kansas County Election Manual. Section D, Provisional Voting, pp. 85 – 86, [https://www.kssos.org/forms/elections/County%20Election%20Manual%20\(Combined\).pdf](https://www.kssos.org/forms/elections/County%20Election%20Manual%20(Combined).pdf) (last accessed February 1, 2017).

statement to the Committee, former State Representative Ann Mah noted before the 2012 election, the Shawnee County Election Commission would provide a list of the names of citizens who voted with provisional ballots because they were lacking photo identification. Representative Mah would then contact these voters to advise them about how to meet eligibility requirements and ensure their votes were counted. After the 2012 general election, Representative Mah requested these same lists. She testified:

When [Secretary] Kobach found out, he made me go to the district court to get the list. When the district court ordered him to give me the list, he went to federal court to try and stop me. When the federal judge ordered him to give me the list, Kobach got a law passed to stop any future requests of the names of those who voted provisional ballots. Now no one can help those who vote [by] provisional ballots understand what has happened and how to make their votes count.<sup>128</sup>

Marge Ahrens of the League of Women Voters raised additional concern regarding the use of provisional ballots. She noted voting with a provisional ballot poses another threat to voter participation because provisional ballots are not confidential and can be read by poll workers.<sup>129</sup> “It completes the breach of trust between a democratic government and all of its citizens around the most essential signature of a democracy, the right to vote and to the privacy of that vote for all.”<sup>130</sup> She argued this breach of privacy “means a great deal when you live in a small community.”<sup>131</sup>

Ms. Leanne Chase, a poll worker for both Sedgewick and Butler Counties, spoke of concern regarding long lines at the provisional ballot tables, because so many people did not have the required documentation.<sup>132</sup> She noted she lives in a small county, and poll workers know their neighbors, but could still not allow them to vote because they did not have a photo ID.<sup>133</sup> She mentioned provisional voting is particularly difficult on parents, who were trying to get their children ready for school the next day, yet were told after waiting in line to vote they would have to return downtown in the next few days to provide their documentation for their provisional ballot to count.<sup>134</sup>

<sup>128</sup> Mah Written Testimony, p. 06 (Appendix B.1).

<sup>129</sup> Ahrens Testimony, *Transcript* p. 141 lines 17 – 24.

<sup>130</sup> Ahrens Testimony, *Transcript* p. 143 lines 10 – 15.

<sup>131</sup> Ahrens Testimony *Transcript* p. 141 lines 22 – 24.

<sup>132</sup> Chase Testimony, *Transcript*, p. 253 line 18 – p. 255 line 03.

<sup>133</sup> Chase Testimony, *Transcript*, p. 253 line 18 – p. 254 line 04.

<sup>134</sup> Chase Testimony, *Transcript*, p. 253 line 18 – p. 255 lines 04-14.

Overall, testimony before the Committee indicated that although no empirical research exists to evaluate the impact of the SAFE Act on voter turnout in Kansas, preliminary data in the state as well as comparison empirical research in other states indicate stricter voter identification requirements result in lower voter turnout—and Kansas’ voter ID requirements under the SAFE Act are among the strictest in the nation. Furthermore, a lack of access to suspense voter lists, and the purging of those lists after 90 days, may make it more difficult for county officials to assist voters in completing the requisite documentation. Finally, privacy concerns relating to the required use of a provisional ballot may additionally deter eligible voters from participating. Further study in each of these areas is necessary to ensure the rights of all eligible Kansas citizens to vote, and to have their vote counted.

### C. Civil Rights and Disparate Impact

As a Federal Advisory Committee focused specifically on matters of civil rights, the Committee took particular note throughout the hearing of concerns panelists raised regarding evidence of both discriminatory intent and disparate impact. Constitutional Law Professor Richard Levy of the University of Kansas School of Law explained that “Because the S.A.F.E. Act’s requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.”<sup>135</sup> Professor Levy also noted, however, that Section 2 of the Voting Rights Act (VRA) goes beyond these constitutional protections in that it “prohibits state laws or requirements that *result* in discrimination without regard to *intent* or *purpose*.”<sup>136</sup> The Committee heard testimony that raised concern regarding both potential discriminatory intent and disparate impact in relation to the SAFE Act, each discussed below.

#### 1. Improper Intent

In his testimony, Professor Levy emphasized that constitutional challenges based on discriminatory intent are often difficult to demonstrate, because contemporary policymakers are unlikely to openly declare discriminatory intent while writing, introducing, or discussing new laws or regulations.<sup>137</sup> Professor Levy further explained that under some circumstances,

<sup>135</sup> Levy Written Testimony, pp. 06 – 07 (Appendix B.4).

<sup>136</sup> Levy Written Testimony, pp. 07 – 09 (Appendix B.4).

<sup>137</sup> Levy Testimony, *Transcript* p. 16 line 24 – p. 17 line 14.



procedural irregularities can be considered evidence of discriminatory intent.<sup>138</sup> In this light, the Committee notes Secretary Kobach is the only Secretary of State in the nation with the authority to prosecute voter fraud—a fact which Dr. Glenda Overstreet of the Kansas NAACP testified may indicate exactly such a procedural irregularity raising questions of improper intent.<sup>139</sup>

In addition, Professor Levy raised question about the structure of the SAFE Act itself, in that its requirement for proof of citizenship at the time of voter registration only applies after July 1, 2013.<sup>140</sup> As such, while this requirement may affect some older voters who moved from out of state after this date, “it applies to everyone who wasn’t 18 as of July 1<sup>st</sup>, 2013.”<sup>141</sup> He concluded, “that might create a problem under the 26th Amendment if that’s viewed as discrimination or if you could prove that there was an intent to exclude younger voters, perhaps because of their political affiliations or leanings.”<sup>142</sup>

Finally, concern regarding the intent of the SAFE Act stemmed from testimony regarding recent cases of voter fraud in the state. Secretary Kobach himself testified every allegation of voter fraud his office has prosecuted since receiving prosecutorial authority in 2015 has involved individuals who have voted twice, often in two or more different jurisdictions.<sup>143</sup> Instead of focusing on preventing problems with such “double-voting” however, attorney Mark Johnson testified much of the debate around the adoption of the SAFE Act was focused on preventing undocumented immigrants from registering to vote: “In the spring of 2011 the advocates of the SAFE Act told the legislature that voter impersonation was rampant and untold numbers of aliens were voting.”<sup>144</sup> However, Mr. Johnson asserted that the cases of voting fraud that have been identified have not substantiated this concern.<sup>145</sup> He concluded, “We have to determine

<sup>138</sup> Levy Testimony, *Transcript* p. 16 lines 06 – 23; Levy Written Testimony, pp. 06 – 07 (Appendix B.4).

<sup>139</sup> Overstreet Testimony, *Transcript* p. 115 line 14 – p. 115 line 09; p. 87 lines 07 – 15; *See also*: Bonney Testimony, *Transcript* p. 67 lines 02 – 13.

<sup>140</sup> Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

<sup>141</sup> Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

<sup>142</sup> Levy Testimony, *Transcript*, p. 24 line 13 – p. 25 line 04.

<sup>143</sup> Kobach Testimony, *Transcript*, p. 249 lines 03 – 10; *See also*: Leiker, Amy Renee. “Wichita man pleads guilty in Kansas voter fraud case.” *The Wichita Eagle*, May 4, 2016. Available at: <http://www.kansas.com/news/local/crime/article75545277.html> (last accessed December 30, 2016).

<sup>144</sup> Johnson Testimony, *Transcript*, p. 155 lines 14 – 21.

<sup>145</sup> Johnson Testimony, *Transcript*, p. 156 – 157; p. 158 lines 06 – 18.

whether the [stated] rationale for the legislation has been borne out by the facts.”<sup>146</sup> “There have been no cases filed involving aliens voting in Kansas.”<sup>147</sup>

## 2. *Disparate Impact*

Testimony from a majority of panelists throughout the Committee’s hearing indicated concern that in addition to a general deterrent effect, the Kansas SAFE Act may pose a disproportionate burden on a number of specific groups of citizens, many of whom fall into federally protected classes. Examples from the testimony illustrate such concern below:

### *Age*

- Dr. Michael Smith compared U.S. census tract data with available data on suspense voters in Kansas and found a significant relationship between the age of citizens in each county and the number of suspense voters.<sup>148</sup> University campuses were particularly likely to have high numbers of suspense voters—The University of Kansas had the highest percentage of suspense voters of any census tract in the state.<sup>149</sup>
- Mr. Doug Bonney of the Kansas ACLU testified that in September 2015, voters under the age of 30 made up about 15 percent of registered voters in Kansas, but more than 40 percent of those on the suspense voter list because they were lacking citizenship documentation.<sup>150</sup>
- Ms. Marge Ahrens discussed how prior to the SAFE Act, the League of Women Voters of Kansas registered young people in public venues such as libraries and high schools; however, with the proof of citizenship requirement there is little value in those efforts because young voters no longer possess the required documentation and may not know how to acquire it.<sup>151</sup> Ms. Ahrens further testified that “high school registration turnout...is very low across the state. Young adults and the poor move more than any group, and they have the weakest hold on their documents of any group.”<sup>152</sup>

<sup>146</sup> Johnson Testimony, *Transcript*, p. 155 line 22 – p. 156 line 06.

<sup>147</sup> Johnson Testimony, *Transcript*, p. 157 lines 17 – 18.

<sup>148</sup> Smith Testimony, *Transcript*, p. 40, line 09 – p. 41 line 25.

<sup>149</sup> Smith Testimony, *Transcript*, p. 35 lines 12 – 24.

<sup>150</sup> Bonney Testimony, *Transcript*, p. 68 lines 12 – 25.

<sup>151</sup> Ahrens Testimony, *Transcript*, p. 137 lines 03 – 11.

<sup>152</sup> Ahrens Testimony, *Transcript*, p. 137 lines 11 – 16.

- Mr. Jaime Shew testified that “administrative challenges are the largest impediment to the participation of younger voters. In 2014 we found out the largest group of voters in suspense were 18 to 24 years of age, and they are also the quickest to say, ‘Forget it. I’ve got stuff going on.’”<sup>153</sup>
- Mr. Michael Byington testified that the SAFE Act identification requirements disproportionately burden people who struggle with mobility, including the elderly, for whom it is more difficult to access transportation to get an ID and more difficult to manage all of the required documentation.<sup>154</sup>

#### Sex

- Ms. Cheyenne Davis, a Field and Political Director for the Kansas Democratic Party, testified “if [women] have changed their names, then that is reflected in a paper trail that could be scattered across the country.”<sup>155</sup> Ms. Davis described her work with one woman who paid \$75 for her birth certificate from another state. She then had to get her marriage decree, and divorce decree—both from different states—in order to complete her registration.<sup>156</sup> Similarly, Representative Jim Ward testified about a bill he proposed to combat the fact that “women [are] disproportionately affected by the documentation requirement” due to marriage and divorce changes in name.<sup>157</sup>
- Elle Boatman wrote that it can be difficult or nearly impossible for transgender/gender non-conforming people to obtain documentation that reflects their legal/preferred name and gender identity, and the process for changing these documents is complex and cost-prohibitive. This leaves transgender/gender non-conforming people at risk of experiencing violence and rejection at their polling place if their identification does not “look” like them.<sup>158</sup>

<sup>153</sup> Shew Testimony, *Transcript*, p. 169 line 25 – p. 170 line 06.

<sup>154</sup> Byington Testimony, *Transcript*, p.120 lines 03-19.

<sup>155</sup> Davis Testimony, *Transcript*, p. 131 line 13 – p. 132 line 04.

<sup>156</sup> Davis Testimony, *Transcript*, p. 131 line 13 – p. 132 line 04.

<sup>157</sup> Ward Testimony, *Transcript* p. 217 line 19 – p. 218 line 04.

<sup>158</sup> Boatman Written Testimony, p. 01 (Appendix B.5).

- Mr. Jamie Shew testified that single parents, who are most often women, reported an inability to find the time to maneuver bureaucratic requirements to obtain the required documentation.<sup>159</sup>

#### *Disability*

- Mr. Michael Byington testified that the SAFE Act identification requirements disproportionately burden people who struggle with mobility, including the elderly, people with mental or physical disabilities, or those with visual or hearing impairments, for whom it is more difficult to access transportation to get an ID and more difficult to manage all of the required documentation.<sup>160</sup> Mr. Byington pointed out that, “if you’re blind or visually impaired significantly, you’re probably going to have to hire someone to help you locate that document if you need it for purposes of voter registration.”<sup>161</sup>
- Mr. Jamie Shew and Mr. Kip Elliot each cited concern for people with mental illness or physical disabilities who are living in assisted living or skilled nursing facilities.<sup>162</sup> For these individuals, access to transportation and funds is difficult, though they may not meet requirements for permanent advanced voting, which is often reserved for people who medically cannot leave their residence.<sup>163</sup>

#### *Race/Color*

- Dr. Michael Smith provided evidence there is a correlation between census tracts with high African American populations and an increase in the number of suspense voters, suggesting that African American voters are likely disproportionately represented on the suspense voters list.<sup>164</sup>
- Disability rights advocate Mr. Michael Byington described his work with one African American individual, who was born outside of Kansas in the southern U.S. in the 1930s. This gentleman told Mr. Byington, “they just weren’t very careful about maintaining birth certificate records for people of ... my skin tone back in the 1930s when I was

<sup>159</sup> Shew Testimony, *Transcript*, p. 170 lines 07 – 16.

<sup>160</sup> Byington Testimony, *Transcript*, p. 261 line 02 – p. 264 line 05.

<sup>161</sup> Byington Testimony, *Transcript*, p.120 lines 10 – 15.

<sup>162</sup> Shew Testimony, *Transcript*, p. 164 line 14 – p. 165 line 16; Elliot Testimony, *Transcript* p. 73 line 06 – p. 74 line 25.

<sup>163</sup> Shew Testimony, *Transcript*, p. 164 lines 14-23; Elliot Testimony, *Transcript* p. 73 line 06 – p. 74 line 25.

<sup>164</sup> Smith Testimony, *Transcript*, p. 42 lines 01 – 05.

born.” Mr. Byington reported this man “ended up simply not registering to vote because he could not get the birth certificate.”<sup>165</sup>

The following categories are not expressly protected under current federal civil rights law; however, the Committee notes the Commission’s mandate includes the authority to study and report on *all* citizens “being accorded or denied the right to vote in federal elections as a result of patterns or practices of fraud or discrimination.”<sup>166</sup> Testimony indicated the following categories may intersect with other federally protected categories or otherwise threaten election integrity.

*Income/Poverty*

- Dr. Michael Smith provided evidence indicating there was a relationship between high levels of voters below the poverty line and more suspense voters. This evidence suggests the SAFE Act’s proof of citizenship requirement may disproportionately impact low income voters.<sup>167</sup> Dr. Smith also suggested this relationship may indicate a disproportionate impact on communities of color, but it is difficult to disassociate race from poverty in the data.<sup>168</sup>
- Mr. Shew testified that citizens without permanent homes had greater difficulty obtaining and keeping track of documents required to vote.<sup>169</sup>
- Ms. Ahrens indicated that “persons of limited means” are most often overburdened by the SAFE Act’s identification requirements.<sup>170</sup> Ms. Ahrens also indicated that “young adults and the poor move more than any group, and they have the weakest hold on their documents of any group.”<sup>171</sup>
- Dr. Smith’s analysis suggested young voters in high-poverty census tracts may be less likely to provide the follow up documentation necessary to complete their registration once they are placed on the suspense voter list.<sup>172</sup>

<sup>165</sup> Byington Testimony, *Transcript*, p. 121 lines 12 – 23.

<sup>166</sup> 45 C.F.R. § 703.2; see also 42 U.S.C. § 1975(a)(1).

<sup>167</sup> Smith Testimony, *Transcript*, p. 42 lines 06 – 13.

<sup>168</sup> Smith Testimony, *Transcript*, p. 42 lines 01 – 13.

<sup>169</sup> Shew Testimony, *Transcript*, p. 165 17 – 22.

<sup>170</sup> Ahrens Testimony, *Transcript*, p. 142 lines 01 – 04.

<sup>171</sup> Ahrens Testimony, *Transcript*, p. 137 lines 14 – 22.

<sup>172</sup> Smith Testimony, *Transcript*, p. 59 line 08 – p. 61 line 14.

*Political Affiliation*

- Dr. Smith found that suspense voters were “far more likely to be unaffiliated and far less likely to register as Republican.”<sup>173</sup> Furthermore, suspense voters tend to be concentrated in certain census tracks, such as in Johnson County, suburban Kansas City, Sedgwick County/Wichita, Shawnee County, and Douglas County.<sup>174</sup>

Mr. Davis Hammet, a community member who spent time volunteering to assist with voter registration drives in the state, explained that for many Kansans citizens, the SAFE Act requirements appear reasonable, and it may be difficult for some to understand why strict identification requirements could be a problem.<sup>175</sup> However, the disparities in impact on marginalized communities are stark. He explained, “it’s very difficult...for white, affluent men to understand why it would be a problem for a photo ID or birth certificate.”<sup>176</sup> However, in many communities, “just stopping and asking someone to fill out a form is incredibly difficult.”<sup>177</sup> After the registration form is completed, he said, “If you could just see people’s faces, a low-income single mom who you’re trying to register to vote and you tell her that she’s going to have to go home and do all this extra work just to vote....I just wish every legislator could see that face looking back at them through this legislation.”<sup>178</sup> He noted apathy and disenchantment with the political system are high in many marginalized communities because of legislation such as the SAFE Act which makes people feel disempowered,<sup>179</sup> and “advances the structural oppression and the advantages of certain people.”<sup>180</sup>

**D. Addressing Voter Fraud**

The integrity of the U.S. electoral system is both a central tenet of democracy and essential to the protection and advancement of civil rights. Such integrity requires equal consideration to ensuring both that (1) no individual is fraudulently afforded the right to vote; and that (2) no eligible citizen is unduly denied the right to vote as a result of discrimination. The Committee

<sup>173</sup> Smith Testimony, *Transcript*, p. 31 line 18 – p. 32 line 22.

<sup>174</sup> Smith Testimony, *Transcript*, p. 55.

<sup>175</sup> Hammet Testimony, *Transcript*, p. 125 line 21 – p. 126 line 24.

<sup>176</sup> Hammet Testimony, *Transcript*, p. 126 lines 01 – 25.

<sup>177</sup> Hammet Testimony, p. 127 lines 08 – 18.

<sup>178</sup> Hammet Testimony, p. 128 lines 02 – 11.

<sup>179</sup> Hammet Testimony, p. 127 lines 08 – 18.

<sup>180</sup> Hammet Testimony, p. 129 lines 04 – 15.

heard testimony indicating that, at times, such concerns can appear to be in conflict with one another, and thus must be carefully balanced. In his testimony, Kansas Secretary of State Kris Kobach noted: “I think we have an ethical duty to ensure that every election is decided fairly...the Secretary of State needs to make sure it’s [both] easy to vote and hard to cheat.”<sup>181</sup>

In considering evidence of both voter fraud and voter disenfranchisement, supporters and critics of the SAFE Act agreed that even small discrepancies in electoral integrity can have a significant impact on election outcomes, and thus on the foundation of our democracy. Secretary Kobach testified, “we have many close elections in Kansas where...it was decided by just two or three or six votes and those elections if you have even just a handful of votes that are cast by individuals who were not eligible to vote residing in a different state, you have a stolen election.”<sup>182</sup> Similarly, one could reasonably conclude that just a handful of disenfranchised voters could also swing the outcome of an election. Representative Ward noted, “Every vote matters...we are very competitive in the senate elections, and very competitive in the house elections across the state and we will continue to be.”<sup>183</sup>

### 1. National Significance

The Committee notes small variations in voter access and participation have in fact determined electoral outcomes at all levels of government. The 2016 U.S. presidential election was decided by less than one percent of the vote in a few key swing states—outcomes in Wisconsin and Pennsylvania were determined by 0.7% of the vote; Michigan was determined by just 0.2% of the vote.<sup>184</sup> These three states together carried enough electoral votes to define the outcome of the presidential election. While Kansas is not typically considered to be a swing state in national elections, proponents of the SAFE Act have suggested its use as a model for voting requirements across the country.<sup>185</sup> Accordingly, the Committee finds the discussion of appropriately balancing concern regarding voter fraud with the need to maintain open and unfettered access to the polls to be one of critical national importance.

To this end, testimony provided as part of this Committee’s inquiry, as well as secondary review of available evidence suggests the number of eligible voters turned away from the polls in

<sup>181</sup> Kobach Testimony, *Transcript*, p. 249 lines 03 – 21.

<sup>182</sup> Kobach Testimony, *Transcript*, p. 249 lines 03 – 21.

<sup>183</sup> Ward Testimony, *Transcript*, p. 219 line 17 – p. 220 line 03.

<sup>184</sup> The Cook Political Report, updated Jan. 2, 2017. *2016 Popular Vote Tracker*, <http://cookpolitical.com/story/10174> (last accessed Jan. 31, 2017).

<sup>185</sup> Kobach Testimony, *Transcript*, p. 244 lines 01-09; Engelbrecht Testimony, *Transcript*, p. 144 line 18 – p. 145 line 02; p. 148 lines 06 – 12.

Kansas due to a lack of required identification or a failure to provide documentary proof of citizenship may far exceed the number of documented cases of voter fraud. Secretary Kobach himself testified that in the November 2012 elections, 532 out of the 1.2 million ballots cast in Kansas were cast on provisional ballots that were not counted due to a lack of required photo identification.<sup>186</sup> In comparison, the Secretary alleged 231 cases of voter fraud in the 13 year period between 1997 and 2010.<sup>187</sup> In May 2016, the Associated Press reported that 18,373 individuals have been denied voter registration at Kansas motor vehicle offices due to the state's proof of citizenship requirement.<sup>188</sup> This is compared to evidence that in Kansas just three noncitizens have attempted to vote in federal elections and approximately 14 have attempted to register between 1995 and 2013.<sup>189</sup> In reviewing this evidence, U.S. District Judge Julie Robins concluded "even if instances of noncitizens voting cause indirect voter disenfranchisement by diluting the votes of citizens, such instances pale in comparison to the number of qualified citizens who have been disenfranchised by this law."<sup>190</sup>

Those who continue to raise concerns regarding voter fraud have cited errors in voter registration data as evidence that voter fraud may be significantly more widespread than it appears.<sup>191</sup> Following the 2016 presidential election, President Donald Trump contended 3-5 million undocumented individuals voted illegally in the election, costing him the nation's popular vote. He promised a federal investigation in response.<sup>192</sup> In January 2017, NBC News reported that a

<sup>186</sup> Kobach Testimony, *Transcript*, p. 202 line 09 – p. 203 line 13. *Note: According to Secretary Kobach, 838 provisional ballots were cast; however, 306 of those voters later presented the required ID so that their ballots would be counted.*

<sup>187</sup> Kobach Testimony, *Transcript*, p. 240 lines 17 – 21; *Note: other panelists testified that earlier claims of the Secretary alleged 21 cases of fraud during this timeframe. See: Bonney Testimony, Transcript*, p. 93 lines 04 – 10. *Note: in an email to the Committee on 2/9/17, Rep. Ann Mah offered the following clarification: "There were 231 reports to the previous Secretary between 1997 and 2010. Most were just anecdotal and did not even get investigated. Only a few turned out to be actual cases that were worthy of investigation."*

<sup>188</sup> Roxana Hedgesman, *Judge says Kansas can't require citizenship proof to vote*, ASSOCIATED PRESS, May 17, 2016, <http://bigstory.ap.org/article/105ca12809694ca98e7ad9e0faad7b81/judge-says-kansas-cant-require-citizenship-proof-vote> (last accessed Jan. 31, 2017).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> John Gibbs, *Voter Fraud Is Real. Here's The Proof*, THE FEDERALIST, Oct. 13, 2016, <http://thefederalist.com/2016/10/13/voter-fraud-real-heres-proof/> (last accessed Jan. 31, 2017).

<sup>192</sup> Daniella Silva, *President Trump Says He Will Ask for 'Major Investigation' into Unsubstantiated Allegations of Voter Fraud*, NBC NEWS, POLITICS, Jan. 25, 2017 (last accessed Jan. 31, 2017).



2012 Pew research study<sup>193</sup> did find “millions of invalid voter registrations due to people moving or dying, but the report’s author, executive director of the Center for Election Innovation and Research David Becker, said in late November 2016 that the study found no evidence of voter fraud.”<sup>194</sup> The NBC report also cited Heather Gerken, a professor of law at Yale University and expert on election law, who explained that people moving out of state or grieving the loss of a loved one are unlikely to take time to call election officials to update the affected registration.<sup>195</sup> She noted, “to equate that with voter fraud is irresponsible...they’re completely different issues.”<sup>196</sup>

## 2. Potential Solutions

To both preserve election integrity and ensure the greatest possible access for eligible citizens to vote, varying provisions across states may offer compromises that could appropriately balance election integrity and voter access concerns. Some examples include:

- automatic voter registration, available in seven states as of December 2016;<sup>197</sup>
- same day voter registration, available in 16 states as of January 2017;<sup>198</sup>
- online voter registration, available in 34 states and the District of Columbia as of January 2017 (including Kansas);<sup>199</sup>

<sup>193</sup> Inaccurate, Costly, and Inefficient: Evidence that America’s Voter Registration System Needs an Upgrade. *The Pew Center of the States: Election Initiatives, Issue Brief*. Feb. 2012, [http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes\\_assets/2012/pewupgradingvoterregistrationpdf.pdf](http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2012/pewupgradingvoterregistrationpdf.pdf) (last accessed Jan. 31, 2017) [Hereafter cited as: *America’s Voter Registration System Needs an Upgrade, 2012*]

<sup>194</sup> Daniella Silva, *President Trump Says He Will Ask for ‘Major Investigation’ into Unsubstantiated Allegations of Voter Fraud*. NBC NEWS, POLITICS, Jan. 25, 2017 (last accessed Jan. 31, 2017).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> National Conference of State Legislators: Automatic Voter Registration. Dec. 8, 2016, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx> (Last accessed Jan. 31, 2017).

<sup>198</sup> National Conference of State Legislators: Same Day Voter Registration. Jan. 11, 2017, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last accessed Jan. 31, 2017).

<sup>199</sup> National Conference of State Legislators: Online Voter Registration. Jan. 31, 2017, <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx> (Last accessed Feb. 1, 2017).

- “non-strict” voter identification laws that allow at least some voters without acceptable identification to vote using alternative verification methods, such as signing an affidavit declaring their identity; available in 22 states as of September 2016.<sup>200</sup>

Senator Faust-Goudeau testified she introduced legislation, Senate Bill 333, which would “allow individuals to register to vote and check a box saying that they are a Kansas citizen and then the Secretary of State’s office would cross reference with the vital statistics office to ensure that that individual had actually been born in the State of Kansas.”<sup>201</sup> In addition, the Senator also introduced legislation which would allow same day voter registration, though reportedly at the direction of Secretary Kobach, the Chairman of the Ethics and Elections Committee would not allow her a hearing on the proposed legislation.<sup>202</sup> Finally, she also introduced legislation to allow college students attending school out of state to get their advanced ballots early, “similar to what we allowed those in the military to do.”<sup>203</sup>

Representative Jim Ward suggested that Kansas voters should sign an affidavit stating under penalty of perjury that they are a citizen and a resident of the State of Kansas; such a statement should serve as sufficient proof of citizenship to register and vote.<sup>204</sup> Currently, the federal voter registration form requires exactly such an oath.<sup>205</sup> Proponents of the SAFE Act have cautioned, however, that signing an affidavit may not be sufficient in an increasingly mobile society, and that confusion may lead non-citizens to fill out a form even if they are not eligible.<sup>206</sup> Catherine Engelbrecht of True the Vote suggested international norms support a more rigorous demonstration of proof of identity in order to register and vote. She noted both Mexico and Canada require voters to document their citizenship prior to voter registration.<sup>207</sup>

Despite this difference, and perhaps in part due to the fragmented system whereby each state maintains its own voting requirements in consultation with the Elections Assistance

<sup>200</sup> National Conference of State Legislators: Voter Identification Requirements | Voter ID Laws. Sept. 26, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last accessed Jan. 31, 2017).

<sup>201</sup> Faust-Goudeau Testimony, *Transcript*, p. 223 line 24 – p. 224 line 07.

<sup>202</sup> Faust-Goudeau Testimony, *Transcript*, p. 227 lines 01 – 18.

<sup>203</sup> Faust-Goudeau Testimony, *Transcript*, p. 227 line 19 – p. 228 line 09.

<sup>204</sup> Ward Testimony, *Transcript*, p. 217, lines 11 – 18; *See also*; Bonney Testimony, *Transcript*, p. 93.

<sup>205</sup> Merrit Kennedy, *Court Blocks Proof of Citizenship Requirement in 3 States*. NPR NEWS: THE TWO-WAY. Sept. 10, 2016. Available at: <http://www.npr.org/sections/thetwo-way/2016/09/10/493405211/court-blocks-proof-of-citizenship-requirement-for-voters-in-3-states> (last accessed Jan. 31, 2017).

<sup>206</sup> Engelbrecht Testimony, *Transcript*, p. 148 – 149, p. 187.

<sup>207</sup> Engelbrecht Testimony, *Transcript*, p. 149 line 21 – p. 150 line 10.

Committee,<sup>208</sup> current U.S. data presented by the Pew Center on the States suggests that more than 24 percent of the voting eligible population of the U.S. is unregistered, compared with just seven percent of the voting eligible population in Canada.<sup>209</sup> As noted in the previous section of this report, inaccuracies in voter registration records are most commonly cited as evidence that the U.S. electoral system is widely vulnerable to fraud. Thus, the maintenance of complete and accurate voter registration rolls is perhaps the single most important strategy for addressing election integrity concerns. Yet, as Secretary Kobach pointed out in his testimony, every state has different voter registration requirements, and one state, North Dakota, has no voter registration at all.<sup>210</sup> The Pew study suggested the U.S. voter registration system could be improved through three key strategies: (1) comparing voter registration lists with other data sources; (2) using data matching techniques to improve accuracy; and (3) establishing new ways for voters to submit their data directly online, minimizing manual data entry and the resulting costs and errors.<sup>211</sup>

An international review of the voter registration structures and requirements of other democracies around the world, published by the “nonpartisan electoral reform organization” FairVote, suggested most national governments take a much more active role than the U.S. in ensuring all citizens are accurately registered: “the international norm is a process of government-mandated automatic voter registration of every citizen who reaches voting age.”<sup>212</sup> FairVote’s review explores how “other major, well-established democracies concretely manage to build comprehensive, inclusive, accurate voting rolls that leave no voters behind while ensuring a high level of privacy.”<sup>213</sup> Canada, for example, uses data sharing agreements between federal agencies to allow individuals to check a box when they file their taxes, apply for citizenship, or file a change of address notice with the post office, which will automatically register them to vote or update their voter registration information with Elections Canada.<sup>214</sup> The

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<sup>208</sup> 52 U.S.C. § 205.05, §205.08

<sup>209</sup> *America’s Voter Registration System Needs an Upgrade*, 2012, p. 08.

<sup>210</sup> Kobach Testimony, *Transcript*, p. 235 lines 01 – 14.

<sup>211</sup> *America’s Voter Registration System Needs an Upgrade*, 2012, p. 09.

<sup>212</sup> Eve Robert, *Voter Registration: An International Perspective* Right to Vote Initiative. FairVote Research Report. p. 01, <http://archive.fairvote.org/riv/Universal%20Voter%20Registration-4-21-09.pdf> (last accessed Jan. 31, 2017) [Hereafter cited as: *FairVote: An International Perspective*].

<sup>213</sup> *FairVote: An International Perspective*, p. 01.

<sup>214</sup> *FairVote: An International Perspective*, pp. 09 – 10.

country has also utilized door-to-door enumerations,<sup>215</sup> school based registration drives,<sup>216</sup> and birthday cards mailed directly to electors turning 18,<sup>217</sup> to ensure maximum registration among the voting-eligible population. In much of Europe and Latin America, a civil registry system combined with the issuance of national citizen IDs allows for the efficient maintenance of highly accurate voter rolls.<sup>218</sup> At the conclusion of its review of international voting standards, FairVote determined, “the U.S. System could be improved by allowing room for federal level supervision (or certification) of the voter lists (in a European fashion), or interoperability of voters between states...of all the democracies studied, only the U.S. has no national lists or standards for voter registration.”<sup>219</sup>

The Committee takes very seriously its commitment to ensuring that *neither fraud nor* voter disenfranchisement presents a threat to the integrity of U.S. elections in Kansas or on the national stage. Where appropriate, the Committee remains open to reviewing rigorous and verifiable evidence suggesting either has been compromised. As the President’s concerns regarding voter fraud launch the topic to the forefront of national discussion, the Committee urges caution that both fraud protection measures and potential voter disenfranchisement must be considered in tandem, and their impacts weighed against one another.

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<sup>215</sup> FairVote: *An International Perspective*, pp. 03 – 05.

<sup>216</sup> FairVote: *An International Perspective*, pp. 15 – 16.

<sup>217</sup> FairVote: *An International Perspective*, pp. 16 – 17.

<sup>218</sup> FairVote: *An International Perspective*, pp. 09 – 10.

<sup>219</sup> FairVote: *An International Perspective*, 19; see also 52 U.S.C. § 20505 (*The national mail-in voter registration form developed by the Federal Election Assistance Commission (updated 2006) allows individuals to register by mail in most states for federal elections using a single form. However, instructions for completing the registration and required accompanying documentation vary by state. Wyoming does not accept mail registration, and New Hampshire uses the federal form only as a request for their own mail-in registration form*), <https://www.usa.gov/register-to-vote/item-212998>. (last accessed Feb. 1, 2017).

#### IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>220</sup> The Kansas Advisory Committee heard testimony that the State's 2011 Secure and Fair Elections Act may disproportionately disenfranchise voters on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to prevent voter fraud and maintain the integrity of all elections at the local, state, and federal levels.

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of Kansas and to the nation as a whole.

##### A. Findings

1. Provisions within the SAFE Act allow citizens seeking identification documents for the purposes of voting to receive such documents from the appropriate state agency for free. However, in practice, a number of eligible citizens may be required to pay for their documents. Any such instances may effectively be compared to a poll tax, which is unconstitutional under both the 14<sup>th</sup> and 24<sup>th</sup> Amendments:
  - a. Insufficient training for state workers may result in confusion regarding who is eligible for free documentation and how to process the free applications; and
  - b. Voters requiring identity documents from states other than Kansas must pay the applicable fees from the relevant state agency; there are no provisions to allow Kansas voters to obtain required out-of-state documents free of charge.
2. Improper or insufficient training of poll workers has resulted in eligible voters being turned away because the poll workers were unaware that the identification provided is in fact considered "acceptable" under the SAFE Act requirements. Such examples include military ID, tribal ID, current but suspended drivers' licenses, and state university photo IDs, among others.

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<sup>220</sup> 45 C.F.R. § 703.2.

3. Inefficient transfer of registration information between state agencies such as the department of motor vehicles and county elections officials, has resulted in data loss. Such data loss has resulted in citizens facing requests to submit the same identification documents multiple times, creating confusion and deterring eventual voter participation.
4. The level of voter education implemented in Kansas to inform citizens about new identification requirements under the SAFE Act was significantly less than similar efforts in other states, and may have resulted in eligible citizen's failure to comply with the new law.
5. Kansas' proof of citizenship and voter ID requirements under the SAFE Act are the strictest in the nation, and may impose a substantially higher burden than that which has been previously challenged in the U.S. Supreme Court. Community groups, local elections officials, and individual citizens all reported struggling to comply with the requirements.
6. The current consensus in political science research is that stricter voting requirements result in lower voting participation. Preliminary analysis of voter turnout data in Kansas indeed suggests that voter participation declined following the implementation of the SAFE Act.
7. Preliminary analysis of suspense voter lists and those required to vote using provisional ballots due to a lack of required documentation suggest as many as two percent of registered voters may not have their votes counted. The purging of suspense voter rolls after 90 days makes it difficult to follow up with suspense voters and to accurately identify the populations affected.
8. A number of panelists suggested the Kansas SAFE Act may have been written and implemented with improper, discriminatory intent. Evidence of such intent included:
  - a. Procedural irregularities – Secretary Kobach is the only Secretary of State in the country with prosecutorial authority over alleged cases of voter fraud;
  - b. The Act's proof of citizenship requirement only applies to voters who registered to vote in Kansas after July 2013, disproportionately affecting young voters (all who turned 18 after this date), and perhaps having a disproportionate impact on the basis of political affiliation; and
  - c. All current, documented cases of voter fraud in Kansas involve individuals illegally voting in multiple jurisdictions; yet no provisions of the SAFE Act address this particular type of fraud.
9. Testimony indicated the SAFE Act may disparately impact voters on the basis of age, sex, disability, race, income level, and political affiliation.

10. Balancing the need to ensure voting integrity with all eligible citizens' democratic right to participate free and fair elections is a topic of critical national importance. The U.S. is currently the only major democracy without a standard voter registration system at the national level. Differences in voting requirements between states, as well as an analysis of international standards of best practices, may provide positive solutions for properly addressing both election integrity and voter access concerns moving forward.

## **B. Recommendations**

1. The U.S. Commission on Civil Rights should conduct a national study on voting rights in the U.S. Such a study should include:
  - a. An analysis of changes in state voting laws and related changes in voter participation following the 2013 U.S. Supreme Court *Shelby County v. Holder* decision;
  - b. An analysis of the feasibility and potential impact of establishing a uniform, national voter registration system for all elections; and
  - c. An analysis of current allegations of voter fraud and its related evidence; such a review should include a cost/benefit analysis comparing evidence of voter fraud with evidence of voter suppression, including concerns regarding potential fees associated with required identity documents, poll worker training, and public education efforts.
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the U.S. Congress:
  - a. The U.S. Congress should establish a working committee to study the impact of the 2013 U.S. Supreme Court decision *Shelby County v. Holder* including a review of any changes in state voting laws and related changes in voter participation since the ruling;
  - b. According to the results of this study, the Congress should develop an updated formula to identify which states require continued review under the Voting Rights Act, and introduce appropriate legislation to implement the new formula; and
  - c. The working committee should then conduct an analysis of the feasibility and potential impact of establishing a uniform, national voter registration system.
3. The U.S. Commission on Civil Rights should issue the following, formal recommendations to the U.S. Department of Justice, Civil Rights Division, Voting Section:

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- a. The Division should conduct a thorough review of the requirements imposed under the Kansas SAFE Act to assess their compliance with applicable federal law including but not limited to: the Voting Rights Act, the Help America Vote Act, and the National Voter Registration Act; and
    - b. If such a review reveals areas of noncompliance or conflict with federal law, then the Division should take appropriate enforcement action to correct them.
  4. The U.S. Commission on Civil Rights should issue a letter to the U.S. Election Assistance Commission, to the Kansas Governor, and the Kansas Legislature urging them to:
    - a. Review the findings and recommendations contained within this report; and
    - b. Further investigate identified areas of concern within their jurisdiction and take appropriate action to address them.



**V. APPENDIX****A. Hearing Agenda: January 28, 2016****B. Written Testimony:**

1. Ann Mah, Former Representative, Kansas State Legislature
2. Cille King, League of Women Voters
3. Nathaniel Birkhead, Kansas State University Department of Political Science
4. Richard Levy, University of Kansas School of Law
5. Elle Boatman, FaceoOfTrans.com, WiTCoN

## U.S. COMMISSION ON CIVIL RIGHTS



## The Impact of the Secure and Fair Elections (S.A.F.E.) Act on Individual Civil Rights in Kansas

**Hosted By:**

The Kansas Advisory Committee to the U.S. Commission on Civil Rights

**Date:**

Thursday January 28, 2016

**Time:**

9:00 a.m.—5:15 p.m.

**Location:**

Topeka and Shawnee County Public Library

1515 SW 10th Avenue,  
Topeka, Kansas 66604

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**U.S. COMMISSION ON CIVIL RIGHTS**

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Chicago IL, 60603

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Online: [www.usocr.gov](http://www.usocr.gov)

The Kansas Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to voting requirements in the State. This meeting is free and open to the public.

- Opening Remarks and Introductions (9:00am-9:15am)
- Panel 1: Academic (9:15am-10:30am)
- Panel 2: Community (10:45am-12:00pm)
- Open Forum I (12:10pm-12:30pm) **\*\*Recently added**
- Break (12:30pm-1:30pm)
- Panel 3: Voting Rights (1:30pm-2:45pm)
- Panel 4: Elected Officials (3:00pm-4:15pm)
- Open Forum II (4:20pm-5:00pm)
- Closing Remarks (5:00pm-5:15pm)

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

*State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.*

Agenda

Opening Remarks and Introductions (9:00am-9:15am)

Panel 1: Academic (9:15am-10:30am)

Dr. Nathaniel Birkhead, Kansas State University  
Professor Richard Levy, University of Kansas  
Dr. Michael Smith, Emporia State University

Panel 2: Community (10:45am-12:00pm)

Doug Bonney, Kansas ACLU  
Kip Elliot, Disability Rights Center of Kansas  
Lieutenant Colonel (Ret.) Robert Morse  
Carrie O'Toole, Prairie Band Potawatomi Tribal Council  
Dr. Glenda Overstreet, Kansas NAACP

Open Forum I (12:10pm-12:30pm) (**Recently Added**)

Break (12:30pm-1:30pm)

Panel 3: Voting Rights (1:30pm-2:45pm)

Marge Ahrens, League of Women Voters  
Catherine Engelbrecht, True the Vote  
Mark Johnson, Partner, Dentons US LLP  
Jamie Shew, County Clerk for Douglas County

Panel 4: Elected Officials (3:00pm-4:15pm)

Senator Oletha Faust-Goudeau  
Senator Steve Fitzgerald  
Secretary of State Kris Kobach  
Representative Jim Ward

Open Forum II (4:20pm-5:00pm)

Closing Remarks (5:00pm-5:15pm)

Comments on Kansas Voting Laws for the Kansas Committee  
of the  
U.S. Commission on Civil Rights

These comments on Kansas voting laws are being provided to the Kansas Committee of the USCCR in preparation for the hearing on the Kansas voter ID law. I understand that data shows that voting in Kansas took a larger than expected dip following implementation of the law in 2012. I was in the Kansas House of Representatives during the passage and implementation of that law and served as the ranking Democrat on the House Elections Committee. I am writing to provide information you may find helpful in your deliberations and better understand the impact of the Voter ID law on Kansas voters and elections.

This document is a compilation of issues raised in HB 2067 (the S.A.F.E. Act), passed in 2011, that might be violations of federal law, the Constitution, or simply raise barriers to voting. They are divided into the categories of voter identification, advance voting, and the impact of the law on voters and procedures.

I have already submitted to the Committee comments presented September 2, 2015, to the Kansas Secretary of State's office regarding proposed regulation changes to the Kansas proof of citizenship law. In Kansas we have more than 32,000 voter registrations being held in suspense because registrants did not provide proof of citizenship. I would suggest the committee consider investigating that law as well.

**VOTER IDENTIFICATION:**

All voters have to provide a government-issued photo ID at the polls. The poll workers verify that the person is the one on the ID. If there is no photo ID or the poll workers believe it is not a valid ID, a provisional ballot may be cast and a valid ID provided prior to canvass. Some voters are exempted from the ID requirement, such as those on permanent disability, military out of the area on duty, or those with religious objections.

1. At first, I thought there might not be much of a case to appeal our voter ID law, since several states already have a photo ID requirement. But in reviewing what the Supreme Court said were the key requirements for an acceptable photo ID law in the Indiana case and what the courts required in Georgia, it appears we do not meet requirements.
2. In Georgia, there were concerns about how far a person had to travel or how much time it took or how much planning was needed to get the free ID they might to vote. Georgia had to set up a location in every county to provide free IDs. Distance to travel to obtain that ID was also considered, but not in Kansas. Being a rural state, people can live quite a distance from the one city in the county where an ID may be obtained. Not every county has an office providing IDs that is open full time.
3. People trying to get a free photo ID to vote after 1/1/2012 were told they had to have a birth certificate to get the ID. This can be an extra burden, especially for the elderly, poor, or those born out of state.

4. Voter education was also a big issue in states implementing voter ID requirements. Indiana, Georgia, and Missouri spent millions educating voters on the voter ID law. Missouri, for example, spent \$13 million over the first few years of the law. The Supreme Court noted that voter education was a critical issue in approving the voter ID law in Indiana. Kobach budgeted \$60,000 in 2012 and only \$200,000 in 2013. I asked for a copy of the Secretary's voter education plan for voter ID. During the hearings he said that they would rely primarily on free media and legislators to inform individuals of the changes. Other states have had to use broader media and not just low-volume radio stations. This was a real weak spot in the plan. It took Georgia years to meet the court's concerns. Kansas' education plan was minimal.
5. A case in point. Wichita had a ballot initiative in early 2012. The Secretary of State started the public ads just two weeks prior to the vote. There is no way someone born out of state or without an ID could comply in time to vote. Later I learned that 45 ballots were rejected for no ID.
6. I asked the Division of Motor Vehicles (DMV) how many counties had locations where you could get an ID to vote. At that time there were only 33. That means that over 70 counties have no full-time DMV and those wanting a voter ID could have to travel to another county to get one.
7. To document some of the problems people are having with voter ID compliance I talked with a nursing home supervisor in Peabody who worked hard to get her residents the IDs they need to vote. She has 51 residents. About 75% of them voted. But only 9 had IDs and only 2 had the birth certificates needed to get a voter ID. The residents came from Kansas, six other states and Korea. Many had no family contact and she didn't know where to start to find the birth certificates. They only get \$62 a month stipend, so paying for an out-of-state birth certificate would be a burden at best and poll tax at worst. Then even if they can get the documents, they have to travel 15 miles to the next town to the DMV. She hated to see them lose their right to vote, but she couldn't spend all the hours necessary to get them their photo IDs. I mentioned this situation in an elections committee hearing. In response, Secretary Kobach sent Eric Rucker to Peabody to fix the situation. Even after that attempt, not every resident was able to get a photo ID. Several just gave up trying – and their right to vote. I visited with another nursing home in Paola with similar concerns. That's just the tip of the iceberg.
8. Here is the Peabody nursing home director's story about how it went when Eric Rucker came from Secretary Kobach's office to fix the situation in 2012:  
 "Okay, after 2 of the 3 days of ID processing with Marion County, here is an update. It took 2 ½ hours yesterday with 3 of our staff to process 6 clients ID's plus 1 hour of driving time with a driver. We were not told they needed SS#'s on any of the forms and they were necessary. Every time there was a typo upon entering the info the system said they had performed an illegal operation and shut down. They had to call Topeka each time to reset.  
 Today, Marion County came out to process the out-of-state births. They took pics and took the information with them to send to the SOS's office. There they will process (investigate for authentication). The County office was not sure how long this would

take or if the client's would have an ID in time to vote at the August 7 election. In the 6 months that we have been working on the persons without ID, a dozen and a half with ID's have expired. Secretary Kobach was on KFDI Monday as saying Kansas had avoided the glitches other States have had by being proactive. Ha! I am exhausted with this entire process as I am sure you are. Each year, with new admissions and expired ID's, this is going to be a mess."

When the director asked Mr. Rucker what would happen with all the other nursing homes in the state that he would not be going to, he said that it was their legislators' job to get them the information they needed.

9. It is clear that what information voters get at the polling place if they have to vote a provisional ballot for no photo ID is inconsistent place to place. Some report they received a note saying they had to bring in a photo ID prior to the canvass. Others did not.
10. In a situation in the 2014 primary, a local senior residence (Brewster Place in Topeka) reported that seniors without IDs were not allowed to vote a provisional ballot. Two years after implementation, this kind of lapse in training of poll workers is not acceptable.
11. In the Supreme Court's decision on the Indiana voter ID law, it noted that there may be a case brought forward by seniors born out of state, who would have particular difficulty obtaining IDs. That is still the case in Kansas.

#### VOTER ID AND ADVANCE VOTING:

To advance vote in person, it is the same as voting on election day at the polls in terms of showing ID. If you have no ID, you may cast a provisional ballot and provide an ID prior to the canvass date. To request an advance ballot by mail, you have to provide a driver's license number, non-drivers ID number, or a photocopy of any of the IDs identified in KSA 25-2908. If you send the request in without proper ID, you have to provide it prior to the canvass date. If you need to make a photocopy, you can get one made for free at any state office.

1. Other court cases have noted that requiring voters to get an ID to the election office by the canvass date can be an issue. We extended the canvass date three days (from the Friday following the Tuesday election to the Monday following a Tuesday election), but it still may be short in a court's mind, especially when the voter is located in another city than the county election office. I think Indiana is the state where the court said 10 days should be allowed to get IDs to the election office.
2. Requiring photo ID to get an advance ballot adds a new burden for those who cannot get out to vote. You are only excused from the photo ID requirement if you have a permanent disability ballot (or meet one of the exclusions in KSA 25-2908).
3. The law will not allow you to put a social security number (SSN) on the advance ballot request as proof of identity. County clerks tell me that they can get everything they need to know about you from your name, address, and the last four digits of your SSN.

SSN is the easiest thing for voters to come up with and most have one. If we just kept the last four digits of the SSN as an identifying feature, it would eliminate the cost and burden of folks who don't have an ID getting one to get an advance ballot.

4. Indiana does not require a photo ID and that was the state Kobach cited as his model. During testimony, Kobach said many times our voter ID law would be like Indiana's and easily meet a court challenge. That was not true and the difference in advance ballot handling is just one example.
5. There are now extra burdens to returning a mail ballot to the election office. If you have someone return it for you, you both have to sign an affidavit designating who is to return it. That was not required prior to the S.A.F.E. Act. There are penalties if everything is not done correctly, trying to use intimidation to keep people from returning ballots for someone else.

#### IMPACT OF THE VOTER ID LAW:

Once the voter ID law started in 2012, it did not take long to feel the impact.

1. I made a point in the House Elections Committee about the burden of getting a birth certificate for a photo ID for those born out-of-state. To cover up this issue, Kobach said that those born out-of-state, or those for whom the state of Kansas had no birth certificate, could get a free photo ID at the county election office. The election office is supposed to have a camera there, take your picture, and Kobach's office will make an ID. The interesting thing is that all you have to do to get this ID is sign an affidavit. The same accommodation is not made to the rest of those born in Kansas. Further, there was no education/information made public about this opportunity, so no one really knows about it. And the counties are all across the board about how they implement it. In Douglas county they will actually go to your house to take your photo and make the ID themselves. My point is help from county to county in any aspect of the law varies widely.
2. As you can imagine, the first year of the voter ID law saw its issues due to lack of education and lack of training of poll workers. Here are just a few of the reports sent to me regarding what was happening at the polls in the 2012 and 2014 elections.
  - A voter said she had her temporary (paper) driver's license along with her old driver's license when she went to vote. The poll workers would not accept the paper ID and made her vote a provisional ballot. Since her permanent license did not arrive before the canvass date, her vote was thrown out. There are tens of thousands of Kansans in this situation at any given time. The truth is, they are supposed to accept this document at the polls. So, again, there is no consistent enforcement of the law across the state.
  - In 2012, IDs were rejected at multiple polling locations in Wichita because the address on the ID did not match the voting address. That is not a requirement of the law. You can, in fact, even use an out-of-state driver's license. The only thing the photo is to be used for is to match name and face.
  - An elderly woman's only ID was a photo of herself in her military uniform taped to her walker. She had no other ID so her provisional vote was eventually thrown out.

- Two elderly residents at an Osage county nursing home had no valid ID. At the polls on election day they were made to vote provisional ballots and their ballots were thrown out at the county canvass. The county clerk contacted relatives to help, but the gentlemen had no photo IDs and no way to get one on time.
- A voter refused to show his ID as a protest, and was told that when he filled out his provisional ballot that was all he had to do and that his vote would count. He didn't know he had to provide an ID prior to the canvass in order for his vote to count. What voters are told when they vote a provisional ballot varies widely across the state.
- In Marion County they told voters of provisional ballots that they had to have their IDs in by the Friday after the election. They should have given them until Monday, the canvass date. So not all county election officials knew what the law said.
- Three residents of the same facility took expired drivers licenses to vote. All were under the age of 65, so an expired license would not have been a valid ID for any of them. The white resident was allowed to vote a regular ballot, but the Hawaiian and the Mexican-American voters were made to vote provisional ballots. The two provisional ballots would have ultimately been thrown out since they had no other IDs.
- A voter told me he had to vote a provisional ballot because his license was suspended and he had no other valid photo ID. There are thousands of Kansans with suspended licenses at any time. The truth is, if you were allowed to keep your suspended license, they are to accept it. But many times it is confiscated. You can get a free photo ID from the DMV in this situation, but, again, you need a birth certificate, and no one tells these suspended drivers what is available to them.
- A veteran presented his Department of Veterans Affairs service card but it was rejected by poll workers because it had no address on it. He was told they wouldn't take anything but a driver's license. In another instance they rejected a Wichita State University ID, which was also a legal photo ID. There has been a dispute about taking high school IDs. It is hard to tell how many poll officials across the state have a different understanding of what constitutes a valid photo ID.
- A nursing home in Wichita reported that they took a resident to the DMV three times to get an ID, but could not provide enough proof she was a citizen.
- A voter in Carbondale did not have his driver's license current at the time he voted. He voted a provisional ballot, but figured his ballot would be thrown out because he worked in Topeka and could not get the documents needed in time to get a valid ID. I asked him to go through his wallet and we found a Topeka city bus pass with a photo. I faxed it to the Osage county election office and they took the ID. Had I not intervened on his behalf, his vote would have been thrown out. Neither he nor the poll workers were aware the bus pass would be valid for voting. Even the county election official had to check with the Secretary's office to verify that it would.
- The Topeka Rescue Mission reported that 50% of the women staying there have no ID and 15% of men. They would have a difficult time getting the underlying documents to get a birth certificate and then a photo ID. And they have no



transportation to get to the DMV. The Lawrence shelter said that 20% of their residents have no IDs. The Kansas City Rescue Mission said that 40% of their residents have no ID. The Saline Rescue Mission reported that they help get the birth certificates, but they have to get to the DMV by bus and they don't give them bus tokens.

- In Shawnee county, a student who did not provide a driver's license number on his absentee ballot request was told he had to have the information back by 7 pm on election day. He actually had until the canvass date. I heard this same story from two other students who had mistakenly put their school address on the outside of the envelope instead of their home voting address.
  - For non-drivers, a trip to the DMV to get a state ID can be a burden. One disabled Kansan told me a harrowing story of waiting hours (not unusual) to get his ID. With his health issues, he almost gave up. He had resources to help him get through it, but not everyone does.
3. Prior to the 2012 general election, I contacted the Shawnee County election commissioner about getting the names of those who were made to vote a provisional ballot for lack of photo ID. I wanted to be able to contact them and advise them they needed to take action to make their votes count. The county election commissioner said it would be no problem. They routinely gave out those lists. After the 2012 general election I requested the list. When Kobach found out, he made me go to the district court to get the list. When the district court ordered him to give me the list, he went to federal court to try and stop me. When the federal judge ordered him to give me the list, Kobach got a law passed to stop any future requests of the names of those who voted provisional ballots. Now no one can help those who vote provisional ballots understand what has happened and how to make their votes count.
  4. In the 2012 primary and general elections, there were 787 ballots thrown out for no voter ID. In the 2014 primary and general elections there were 427 ballots thrown out. I did some calculations of the votes thrown out in Kansas for no photo ID compared to Georgia in 2012. Kansas had several times more votes thrown out than Georgia, based on numbers voting and votes thrown out. I credit lack of education and disparate implementation of the law across the state for so many votes being thrown out.

#### **WHAT COULD BE DONE?**

There are a number of measures that could be taken to alleviate the problems created by the Kansas S.A.F.E. Act voter ID requirements. Here are just a couple:

1. Do not require those voting a provisional ballot for lack of photo ID at the polls to provide an ID prior to the canvass date. In order to vote a provisional ballot the voter must fill out a voter registration form. That means they have to provide a driver's license number or a social security number, their address, their birth date, and a signature swearing they are who they say they are. If the election office finds all that information valid and the signature matching the one on file, they should have their vote counted without additional effort.

2. Expand the types of valid IDs accepted. In other states, like our neighboring state, Missouri, there are a number of IDs that are accepted that are not government-issued photo IDs.

On a final note, Secretary Kobach has been given prosecutorial powers over election crimes. He has stated that in October he will announce some cases he is filing. He says they are cases where people voted in two places. Interestingly, these are cases that would not be prevented under the S.A.F.E. Act.

I hope this has been helpful in understanding the situation with voter ID in Kansas. If you have questions, please contact me.

Ann Mah  
[annmah@att.net](mailto:annmah@att.net)  
785-231-0823

**Statement to the Kansas Commission on Civil Rights, January 28, 2016 addressing the burden of the SAFE Act on an organization that helps Kansans register to vote.**

I am Cille King, with the League of Women Voters of Lawrence-Douglas County. Our local League has, over the years, been very active in registering Kansas citizens to vote. In the fall of 2013, we learned that the statewide voters in suspense list was growing into the thousands due to the requirement to provide proof of citizenship to register to vote.

We discussed our desire to contact those in suspense with the Douglas County clerk's office. We requested and received from them an electronic list of those in suspense. This suspense list of October 30, 2013, had 827 people, of which 55 % were under 25 years of age. Douglas County is the home of the University of Kansas and Haskell Indian Nations University which explains why our young voters in suspense are so greatly represented on the suspense list.

Our League committee developed a narrative for telephone calls and email contacts. Only some of the names on the suspense list had accompanying phone numbers. We checked the phone book for matching last names and addresses to find 30 – 40 additional numbers.

University of Kansas email addresses were found by entering the names (one by one) into the KU's email search.

We had **little identifiable success** with calling or email efforts. The majority of phone calls went to message machine (we left a message of the problem and a call back number), some didn't have a message machine, and some were no longer working numbers. There were a few people who answered the phone or called back. They responded that they would take care of it, and a few said that they no longer wanted to vote. Of those who said they would take care of it, some remained on the suspense list a month later. No one responded to our emails. So, we didn't know if it was our message or a letter from the County Clerk, or some other reason when some eventually provided their proof of citizenship.

Later we expanded to using facebook and text messaging, with the same lack of response.

The most effective means, we found, was to talk with the voter, personally.

The weekend before the November 2014 election, we paired up and went **to people's homes** to help them finish their registration. We concentrated our efforts on the student housing around the KU campus, and an area of low-income housing on the north central side of the city. We went to 115 homes and helped 30 of those people finish their voter registration. Some documents we carried to the county clerk, some we watched as the voter took an image of his document and emailed it to the county clerk, and some we learned had finished by checking the voter rolls after the files had been updated, following the statewide canvass.

All this takes a great deal of volunteer time. Over an hour was spent to achieve each **successful** home visit. Countless hours are spent with the telephone calls, emails, facebook and text messages. League and member resources are consumed by this effort which reached so few of those Douglas County residents with incomplete voter registrations.

Our Leagues want all citizens to be informed and voting. Getting citizens registered to vote should not be harder than getting them informed.

Respectfully, Cille King, League of Women Voters Lawrence-Douglas County; cilleking@gmail.com

1 Thank you for the invitation to participate in the Kansas Advisory Committee to the US  
 2 Commission on Civil Rights' hearing to discuss the important matter of Kansas' Voter ID laws.  
 3 I regret being unable to offer my oral testimony at the hearing, though appreciate the opportunity  
 4 to submit my written testimony.

5 My name is Nathaniel Birkhead, and I have a PhD in Political Science (Indiana University  
 6 2012). I am an Assistant Professor of Political Science at Kansas State University, where I have  
 7 been since 2012. Some of my published research focuses state legislative elections, voter  
 8 behavior, and citizen participation. Thus, I am qualified to offer this testimony, which is an  
 9 attempt to summarize the extensive body of research that addresses turnout and voter ID laws.

10 While no research has looked at Kansas' voter ID laws specifically, the consensus in the  
 11 scholarly research is that **voter ID laws present a substantial cost to voting, and as such**  
 12 **depress turnout**. In particular, the costs associated with **voter ID laws tend to have**  
 13 **disproportionate impact among the poor, uneducated, and young**. This makes the electorate  
 14 older, better educated, and more affluent than the state's population. Thus, the ultimate impact  
 15 of voter ID laws is to make the electorate unrepresentative of the state's citizens.

16 Political scientists have long viewed citizen participation in elections as the most critical form of  
 17 political activity. Not only does voter participation convey legitimacy to elections results, but  
 18 also ensures responsiveness of politicians to voters. As V.O. Key once wrote, "The blunt truth is  
 19 that politicians and officials are under no compulsion to pay much heed to classes and groups of  
 20 people that do not vote."<sup>1</sup> As such, there is a large and thorough body of political science  
 21 research dedicated to understand the factors that may increase or decrease political participation  
 22 by its citizens.

23 In what follows, I begin with a brief discussion of what political scientists know about things that  
 24 influence citizens' decisions to vote in an election, in a general sense. I will then proceed to a  
 25 more specific discussion of the political science research on voter ID laws.

26

#### 27 *Citizens Vote Less when the Costs of Voting Are High*

28 In political science, the most common way to understand voter turnout is to focus on the costs of  
 29 voting (things that make it harder to vote) and the benefits of voting (things that voters expect to  
 30 receive if their preferred candidate wins).<sup>2</sup> One of the most consistent findings in political  
 31 science research is that turnout drops when the costs of voting go up, and that turnout goes up  
 32 when the costs of voting go down.

33 The most substantial costs associated with voting have been poll taxes and literacy tests, which  
 34 many former states Confederate states enacted following the Civil War and the end of

<sup>1</sup> Key, V.O. 1949. *Southern Politics in State and Nation*. New York: Vintage. Pg., 527

<sup>2</sup> Hershey, Marjorie. 2009. "What We Know about Voter ID Laws, Registration, and Turnout,"  
*PS: Political Science and Politics*. 42(1), 87-91.

1 Reconstruction. Poll taxes often required some payment to register to vote, while literacy tests  
 2 required potential voters to demonstrate their reading and math skills before being allowed to  
 3 vote. These standards were not meted out equally, however, as many states including a number  
 4 of “grandfather clauses” that prevented blacks access to the ballot, while still allowing some poor  
 5 or illiterate whites to vote.<sup>3</sup> These costs on voting had very real implications for voter  
 6 participation: poll taxes in the South depressed turnout by nearly 15 percentage points, while  
 7 literacy tests depressed turnout by about 9 percentage points.<sup>4</sup> The implications of this research  
 8 clearly show that citizens respond to the costs associated with voting, and tend to stay home  
 9 when the costs are too high. Moreover, the effects of poll-taxes and literacy tests were not held  
 10 equally across a state’s citizenry – blacks and poor whites were disproportionately affected by  
 11 them.

12 Potential voters are also sensitive to costs as they attempt to register. Reforms that have  
 13 attempted to make the voter registration process easier have had significant effects. For  
 14 example, in states where driver’s license agency employees asked clients if they’d like to register  
 15 to vote, turnout was about 5 percentage points higher in states where driver’s license agencies  
 16 simply made registration materials available.<sup>5</sup> Thus, actively encouraging people to register to  
 17 vote had a real and significant impact on individuals’ decisions to vote.

18 Moreover, this active voter registration program particularly boosts the turnout rates among  
 19 groups who are typically less likely to vote. These active voter registration programs benefitted  
 20 the “young, the residually mobile, and those with lower levels of education.”<sup>6</sup> By contrast,  
 21 states with less active voter registration programs – that is those with a higher cost to registration  
 22 – had less participation by the less educated and the young. Thus, not only do all citizens  
 23 respond to the costs of voting, but some groups of citizens are *particularly* sensitive to the costs  
 24 of voting. As such, these costs prevent the electorate from being wholly representative of the  
 25 state’s citizenry.

26

#### 27 *Voter ID Laws Present a Significant Costs to Voting*

28 Kansas’ voter registration and voter ID laws are among the most demanding in the country.  
 29 Since 2013, to register to vote, Kansas requires that citizens furnish proof of US citizenship –  
 30 necessitating a passport, birth certificate, or naturalization papers – before being added to the

<sup>3</sup> Highton, Benjamin. 2004. “Voter Registration and Turnout in the United States.” *Perspectives on Politics* 2(September):507-15. Rosenstone, Steven J and John Mark Hansen. 2003. *Mobilization, Participation, and Democracy in America* New York: Longman.

<sup>4</sup> Springer, Melanie J. 2012. “State Electoral Institutions and Voter Turnout in Presidential Elections, 1920-2000” *State Politics and Policy Quarterly* 12(3): 252-83.

<sup>5</sup> Knack, Stephen. 1995. “Does ‘Motor Voter’ Work?” *Journal of Politics* 57(August): 796-811.

<sup>6</sup> Highton, Benjamin and Raymond Wolfinger. 1998. “Estimating the Effects of the National Voter Registration Act of 1993” *Political Behavior* 20(June):79-104.

1 record. **Kansas and Arizona are currently the only two states in the country that require**  
 2 **such documentation.**

3 Once a voter has been registered, they must show photographic identification to vote in person,  
 4 and unless the person is 65 or older, the photo ID must be current and have an expiration date on  
 5 it. As Hershey writes, this restriction “poses no additional costs to registrants with a current  
 6 driver’s license, state ID, passport, or other appropriate ID.” However, for those who do not  
 7 have a current suitable ID, the process of acquiring one – by furnishing social security card, birth  
 8 certificate, proof of residency, and so on – imposes financial costs as well as requiring time,  
 9 information, and transportation. Moreover, the burden of acquiring these non-drivers’ license ID  
 10 cards is often large, as people who need them do not have driver’s licenses and likely do not  
 11 have access to public transportation in their county.

12 To put these requirements in context, **Kansas is one of only 9 states to have what the National**  
 13 **Conference of State Legislatures calls a “Strict Photo ID” requirement.** That is, the ballot  
 14 will not be counted unless the voter furnishes a photo ID at the polling place, or else casts a  
 15 provisional ballot and provides a valid form of ID to the county election officer. By contrast, 14  
 16 states have what the NCSL terms “Non-strict, non-photo ID requirements,” where the most  
 17 common practice is to ask voters without an ID to sign an affidavit affirming that they are the  
 18 person listed on the record (as in Connecticut, Delaware, Kentucky, Michigan, and several other  
 19 states).<sup>7</sup> Moreover, *16 states do not require a document* to vote. Thus, we clearly see that the  
 20 costs associated with voting in Kansas are quite high, and indeed far higher than in most other  
 21 states.

22

#### 23 *Voter ID Laws Decrease Turnout*

24 To my knowledge, no political science research project has focused on Kansas’ voter ID laws,  
 25 specifically. However, as states began passing voter ID laws in the early 2000s, several studies  
 26 have analyzed their impact on turnout. There are a number of different approaches to studying  
 27 these effects – from aggregate elections analysis to a number of different survey instruments.<sup>8</sup>

<sup>7</sup> “Voter Identification Requirements” 1/4/2016. National Conference of State Legislatures.  
<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> Accessed 2/12/2016.

<sup>8</sup> Alvarez, R. Michael, Delia Bailey, and Jonathan N. Katz 2008 “The Effect of Voter  
 Identification Laws on Turnout.” Social Science Working Papers 1267R, California Institute of  
 Technology; Barretto, Matt A, Stephen A Nuño, and Gabriel R. Sanchez 2009 “The  
 Disproportionate Impact of Voter-ID Requirements on the Electorate” *PS: Political Science and  
 Politics* 41(1):111-16. Vercellotti, Timothy and David Andersen. 2006. “Protecting the  
 Franchise, or Restricting it?” Paper presented at the annual meeting of the American Political  
 Science Association, Philadelphia, PA.; Mycoff, Jason D., Michael W. Wagner, and David C.  
 Wilson. 2009. “The Effect of Voter Identification Laws on Aggregate and Individual Level  
 Turnout.” *PS: Political Science and Politics* 41(1):121-26.

1 Rather than analyzing the strengths and weaknesses of each study, I will focus on the most  
 2 methodologically sophisticated, as they offer the most reliable conclusions.

3 Individual level survey results show that, in general, voter ID laws reduce turnout. Alvarez,  
 4 Bailey, and Katz show that voter ID laws make registered voters less likely to turn out on  
 5 election day. Moreover, the stricter voter ID laws are, the less likely citizens are to vote. As  
 6 Alvarez et al note “stricter requirements – more than merely presenting a non-photo  
 7 identification card – are significant negative burdens on voters, relative to a weaker requirement,  
 8 such as merely signing a poll-book.” Erikson and Minnite find similar results in their analysis:  
 9 going from “lax to severe voter ID requirements is associated with a couple of percentage points  
 10 less in the voting rate.”<sup>9</sup>

11 While these results are reliable, survey results do come with their own limitations. Simply,  
 12 citizens often fill out surveys inaccurately. For example, they may report that they voted, despite  
 13 not having done so. Alternatively, they may report having a government ID, but not actually be  
 14 able to furnish one. Ultimately, the best way to determine if voter ID laws restrict turnout is to  
 15 move beyond survey results to focus on actual shifts in official recorded votes.

16 The best analysis of the impact of voter ID laws comes from Hood and Bullock<sup>10</sup>, who relied on  
 17 data from the state of Georgia as ID laws were implemented between the 2004 and 2008  
 18 elections. The Georgia voter ID law is similar to Kansas’, both in the requirement that voters are  
 19 able to furnish a photo ID, and similar in what forms of photo IDs are valid. Hood and Bullock  
 20 analyzed the voter registration and history database, which the state of Georgia cross-referenced  
 21 with DMV records, indicating which registrants had either a valid driver’s license or state ID  
 22 card. This database is incredibly unique, and offers the ideal research design to determine how  
 23 voter ID laws influence voter behavior. We do not need to worry about citizens misreporting  
 24 voting, nor do we need to worry about citizens’ accuracy in being able to furnish a state ID card.

25 Hood and Bullock are able to determine which citizens voted in 2004 before the ID laws went  
 26 into effect, they are able to determine which citizens voted without a state ID. They are able to  
 27 make a similar evaluation in 2008, after the voter ID laws went into effect. Thus, they are able to  
 28 clearly identify which citizens were still able to vote, and which citizens were disenfranchised by  
 29 the voter ID laws. Simply put, the Georgia database that Hood and Bullock gained access to is  
 30 the gold standard for examining the voter ID laws’ impact.

31 Their analysis found that the Georgia voter ID statute had a suppressive effect among those  
 32 lacking IDs: there was an across the board *drop in turnout of 6.5%* among those without IDs.  
 33 They ultimately conclude that “turnout in Georgia in 2008 would have been four-tenths of a  
 34 percentage point higher” if the photo ID statute had been blocked by the courts. Put another

<sup>9</sup> Erikson, Robert S. and Lorraine C. Minnite 2009. “Modeling Problems in the Voter Identification-Voter Turnout Debate” *Election Law Journal* 8(2): 85-101.

<sup>10</sup> Hood, MV III, and Charles S. Bullock III. 2012. “Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute.” *State Politics and Policy Quarterly* 12(4):394-14.

1 way, Hood and Bullock estimate that about **24,692 registered voters in Georgia were turned**  
 2 **away due to the photo ID statute that is similar to Kansas’.**

3 Again, the preponderance of evidence – whether from government issued surveys like the  
 4 Current Population Survey (CPS) or from official government records like Georgia’s files –  
 5 show that voter ID laws have a clear suppressive effect on the voting eligible population.

6

7 *Voter ID Laws on Disproportionately Decrease Turnout by the Poor and Uneducated*

8 Several empirical studies listed above have shown that the costs of registering to vote, and  
 9 voting, do not equally effect all citizens’ voting behavior. Rather, the costs are  
 10 disproportionately felt by some groups – the less educated, poor, and young – than by other  
 11 groups.<sup>11</sup>

12 Though racial and ethnic minorities are affected by voter ID laws, the empirical estimates are  
 13 mixed. Some studies show that blacks are disproportionately affected. Barreto et al found that  
 14 black registered voters were less likely than whites to have a valid state-issued ID. Similarly, the  
 15 laws may not always be enforced consistently: Alvarez et al found that a much higher proportion  
 16 of black voters were asked for identification in 2007 and in the 2008 Super Tuesday events than  
 17 white voters were. By contrast, Hood and Bullock’s analysis of Georgia found that whites were  
 18 slightly more demobilized than blacks by the new law, though we should note that this may have  
 19 been due to higher than average get-out-the-vote drives by the Obama campaign in 2008 that  
 20 disproportionately mobilized black voters.

21 **A consistent finding across these studies is that the poor and uneducated of all races and**  
 22 **ethnicities tend to be adversely effected.** Alvarez et al show that registered voters with lower  
 23 levels of income or education are less likely to turn out to vote when the voter ID laws are more  
 24 restrictive. These findings are corroborated by Erikson and Minnite, and by Vercellotti and  
 25 Anderson. Moreover, it is always important to emphasize that blacks and Latinos tend to have  
 26 lower socio-economic status than whites. As such, while racial and ethnic minorities are not  
 27 disproportionately targeted by voter ID laws, they nonetheless are still heavily influenced.

28 To conclude, the evidence shows clearly that voter ID laws demobilize citizens. The higher the  
 29 cost of registering to vote, and the higher the cost of being able to cast a vote, the less likely  
 30 citizens are to turn out. Again, estimates based off the government’s official records in Georgia  
 31 show that over 24,000 voters were turned away by the restrictive voter ID law. While it is  
 32 unclear the extent to which these laws demobilize racial and ethnic minorities, a robust finding is  
 33 that the increased costs of voting disproportionately demobilize the poor and uneducated. **The**  
 34 **result is that strict voter ID laws, such as Kansas’, create an electorate that is more affluent**

<sup>11</sup> Jackson, Robert A., Robert D. Brown, and Gerald C. Wright. 1998 “Registration, Turnout, and the Electoral Representativeness of the U.S. State Electorates.” *American Politics Quarterly* 26(July):259-87; Avery, James M. and Mark Peffley. 2005. “Voter Registration Requirements, Voter Turnout, and Welfare Eligibility Policy.” *State Politics and Policy Quarterly* 5(1):47-67.



- 1 **and educated than its state's citizens are.** This unrepresentative electorate creates a system
- 2 where policy written by elected officials represents the concerns of the electorate, rather than the
- 3 concerns of all the state's citizens.

**KANSAS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS****The Impact of the Secure and Fair Elections (S.A.F.E.) Act  
on Individual Civil Rights in Kansas  
January 28, 2016****Constitutional (and Statutory) Issues Surrounding the S.A.F.E. Act**

by  
Richard E. Levy\*

***Introduction***

I want to thank the Advisory Committee for giving me the opportunity to discuss the important issues raised by the Kansas Secure and Fair Elections Act (the S.A.F.E. Act). Although I have personal views about these issues, I will endeavor to put those views to one side, so as to offer a neutral account of the issues raised by the act and the applicable legal principles. My goal in so doing is to provide the committee with a framework it can use to analyze the complex legal issues raised by the act.

The S.A.F.E. Act imposes three sets of requirements that affect the exercise of voting rights: (1) new voters must submit proof of citizenship at the time of registration; (2) voters must provide a photo ID at the polling place; and (3) additional verification steps must be taken to submit ballots by mail. In practice, the first two requirements present more serious legal questions. To the extent that the proof of citizenship and photo ID requirements make it more difficult for some people to participate in elections, they may violate constitutional and statutory provisions that protect the right to vote. In general terms, the validity of such requirements depends on the nature and extent of the burden they impose on the right to vote and whether those burdens are justified by sufficiently important state interests.

In the context of specific constitutional and statutory provisions, however, determining the validity of the S.A.F.E. Act raises a variety of complex questions, not all of which are within the purview of the Advisory Committee. To assist the Advisory Committee in navigating these complex issues, I will summarize and explain the applicable legal principles. The key principles are set forth as a series of “bullet points” in the executive summary, which is followed by a more detailed discussion of each principle. Please note that I have not attempted to conduct or provide comprehensive research into lower court decisions addressing similar issues.

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*Executive Summary*

- The S.A.F.E. Act's proof of citizenship and photo ID requirements may be invalid if they (1) discriminate by restricting the right to vote based on impermissible classifications or (2) impose excessive burdens on the right to vote without sufficient justification.
- In constitutional challenges based on improper discrimination, voting requirements that use a "suspect" (race) or "quasi-suspect" (gender) classification are nearly per se invalid, but other classifications are valid so long as they are reasonably related to a legitimate state purpose.
- Because the S.A.F.E. Act's requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.
- Section 2 of the Voting Rights Act (VRA) does not require proof of discriminatory intent, but rather prohibits voting requirements that have the effect of restricting the right to vote because of race, which is determined in light of the totality of circumstances, including multiple factors.
- Laws that impose undue burdens on the right to vote may violate the Constitution irrespective of discrimination, with the applicable level of scrutiny dependent upon the severity of the burden.
- Although the Court upheld photo ID requirements in *Crawford v. Marion County Election Board* and the same framework would apply to the requirements of the S.A.F.E. Act, the result in *Crawford* is not controlling if, as applied to some voters, the S.A.F.E. Act's requirements impose more severe burdens on the right to vote.
- Even requirements that neither discriminate on the basis of race nor impose severe burdens may be invalid if they serve illegitimate purposes or are unrelated to the state's legitimate interests in conducting free and fair elections.

### Discussion

- **The S.A.F.E. Act's proof of citizenship and photo ID requirements may be invalid if they (1) discriminate by restricting the right to vote based on impermissible classifications or (2) impose excessive burdens on the right to vote without sufficient justification.**

The conduct of free and fair elections for positions of public trust is essential to our system of democracy. Accordingly, the right to vote is considered fundamental and is subject to a variety of protections reflected in constitutional amendments, Supreme Court precedents, and statutory provisions. The state can and indeed must regulate the voting process in various ways, but state laws or regulations that improperly impair or impede the right to vote are invalid. Broadly speaking, the requirements of the S.A.F.E. Act implicate two types of voting rights claims: discrimination claims and impermissible burden claims.

*Discrimination claims* focus on the *nature of the classification* used in determining the ability to vote. In other words, they assert that voting requirements have the purpose or effect of restricting the right to vote based on improper classifications, such as race. Some constitutional amendments, notably the Fifteenth, Nineteenth, and Twenty-Sixth Amendments explicitly prohibit the denial or abridgment of the right to vote on account of race, gender, and age (for citizens over 18 years of age). Thus, statutes, regulations, or other requirements that violate these amendments are per se invalid. More broadly, the Equal Protection Clause of the Fourteenth Amendment also prohibits improper classifications that limit the right to vote. *See generally Reynolds v. Sims*, 377 U.S. 533 (1964) (holding that the Equal Protection Clause incorporates a one person-one vote principle). In addition, § 2 of the Voting Rights Act (VRA), 52 U.S.C. § 10301 (formerly codified at 42 U.S.C. § 1973), prohibits voting practices that have the effect of denying or abridging the right to vote on account of race.

*Impermissible burden claims* focus on the *extent of the impairment* imposed by a voting requirement. In other words, they assert that voting requirements impose excessive burdens that improperly prevent people from voting (without regard to whether the requirement uses improper classifications). Thus, for example, the Twenty-Fourth Amendment prohibits the imposition of a poll tax as a condition of voting in federal elections and the Supreme Court has held that the Equal Protection Clause prohibits poll taxes for state or local elections. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966). More generally, reasonable regulations that impose only incidental burdens on the right to vote are generally valid, but requirements that impose severe burdens are invalid unless they are justified by especially compelling reasons. *See Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). In addition, some federal statutes, such as the National Voter Registration Act (NVRA), are intended to make it easier to vote. *See* 52 U.S.C. §§ 20501-20511 (formerly codified at 42 U.S.C. §§ 1973gg-1 to 1973gg-10) (requiring states to allow eligible persons to register to vote in federal elections when applying for or renewing a driver's license).

As pending litigation suggests, the proof of citizenship and photo ID requirements of the S.A.F.E. Act are subject to both kinds of legal challenge and both kinds of challenge implicate both constitutional and statutory provisions. *See* Complaint for Declaratory and Injunctive

Relief, *Cromwell v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan. Sept. 30, 2015), available at 2015 WL 5731924; *Belenky v. Kobach*, No. 2013-CV-001331, (Shawnee County District Court), at <https://public.shawneecourt.org/PublicAccess/publicAccess/publicAccess/?goto=caseLookup>. I will discuss the principles that apply to a discrimination claim first, followed by the principles that apply to an impermissible burden claim. It is important to note that the validity of both types of claims depends on an assessment of the facts—specifically (1) how the law’s requirements affect voting rights in practice; (2) the purposes and motives behind the law; and (3) the extent to which the law is justified by valid concerns about voter fraud.

- **In constitutional challenges based on improper discrimination, voting requirements that use a “suspect” (race) or “quasi-suspect” (gender) classification are nearly per se invalid, but other classifications are valid so long as they are reasonably related to a legitimate state purpose.**

In general terms, discrimination claims based on equal protection and related constitutional provisions are determined using “ends-means scrutiny.” Under this form of analysis, courts consider (1) whether the ends or purposes of state action are valid; and (2) the means chosen (i.e., the classification) are sufficiently related to those ends. Conventionally, this type of scrutiny may be more or less deferential to the state, depending on the nature of the classification and whether the classification burdens fundamental rights. The focus here is on the nature of the classification—the burden on fundamental rights will be discussed below in connection with analysis of impermissible burden claims.

The law does not treat all people equally and all laws must classify in some way—even murder laws treat murderers differently from non-murderers. Courts are usually very deferential to the state’s policy judgments, and ordinary classifications are subject to a form of scrutiny known as the “rational basis test.” Under this form of scrutiny a law is valid so long as the state’s purpose is “legitimate” and the classification is “reasonably” or “rationally” related to it. The rational basis test is usually extraordinarily deferential—courts accept any plausible purpose for a law (without regard to whether it was advanced at the time of the state action) and any means that policy makers might plausibly believe would further that purpose. *See F.C.C. v. Beach Communications*, 508 U.S. 307, 313 (1993) (“In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”). In some cases, however, the Court has applied what appears to be a less deferential form of the rational basis test when state action appears to be motivated by animus against a politically unpopular group, which is not a legitimate purpose. *See Romer v. Evans*, 517 U.S. 620 (1996); *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *U.S.D.A. v. Moreno*, 413 U.S. 528 (1973).

Because the rational basis test is usually easy to satisfy, parties challenging a law typically try to convince the courts to apply heightened forms of scrutiny, which include both “strict scrutiny” and “intermediate scrutiny.” Strict scrutiny applies to classifications that are inherently suspect, such as race and national origin.<sup>1</sup> To survive strict scrutiny, the state must provide clear

<sup>1</sup> In this context, national origin refers to ethnicity or ancestry, not citizenship. Voting rights can clearly be limited to U.S. citizens.

and convincing proof that the purpose is “compelling” and that the use of the classification is “necessary” and/or “narrowly tailored” to the attainment of that purpose. *See, e.g., Johnson v. California*, 543 U.S. 499, 505 (2005) (“Under strict scrutiny, the government has the burden of proving that racial classifications ‘are narrowly tailored measures that further compelling governmental interests.’”) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)). To satisfy this test, there must be strong evidence to show that the interest is compelling and that it was the true purpose of the law. Likewise, the classification must also be necessary in the sense that there are no non-discriminatory alternatives and narrowly tailored in the sense that it cannot be over inclusive (reaching more cases than necessary to fulfill its purpose) or under inclusive (omitting cases that would fulfill its purpose). Although there are some exceptions, strict scrutiny is very difficult to survive and usually results in the invalidation of a law.

As its name suggests, intermediate scrutiny falls somewhere between the rational basis test and strict scrutiny. It requires an important governmental purpose and the classification must be substantially related to that purpose. *See, e.g., Craig v. Boren*, 429 U.S. 190, 197 (1976) (“To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”). In practice, the application of intermediate scrutiny may be more or less strict, depending on the context. *Compare United States v. Virginia*, 518 U.S. 515 (1996) (applying stricter form of intermediate scrutiny to invalidate Virginia Military Institute’s males-only admissions policy), *with Nguyen v. I.N.S.*, 533 U.S. 53 (2001) (applying deferential form of intermediate scrutiny to uphold more rigorous citizenship requirements for foreign born children of unmarried U.S. fathers than of unmarried U.S. mothers).

In the context of voting requirements, however, there are specific constitutional amendments prohibiting discrimination based on race (the Fifteenth Amendment) and gender (the Nineteenth Amendment). Accordingly, if the S.A.F.E. Act denies or abridges the right to vote because of race or gender, then it is likely per se invalid, without regard to whether it survives strict or intermediate scrutiny. In any event, its requirements have been defended as nondiscriminatory, and there is no suggestion that they would be valid if they do in fact discriminate on the basis of race or gender. Thus, the critical issue for purposes of this type of claim is whether the act’s requirements discriminate on the basis of race or national origin.

It is important to note that the Supreme Court has explicitly rejected the application of heightened constitutional scrutiny to several classifications potentially implicated by the S.A.F.E. Act, including the poor, the elderly, and the disabled. Thus, although there were some indications in some cases during the 1950s and 1960s that the Supreme Court was prepared to apply heightened scrutiny to laws discriminating against the poor, it refused to recognize wealth as a suspect classification in *Dandridge v. Williams*, 397 U.S. 471 (1970) and *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Not long thereafter, the Court held that age is not a suspect classification, upholding a state’s mandatory retirement age for law enforcement officers. *See Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976). Likewise, the Court declined to recognize disability as a suspect classification in *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), although it nonetheless held that the denial of a zoning variance to a group home for adults with developmental disabilities violated even the rational basis test because it was based on animus.

Accordingly, the principal discrimination claim at issue in the S.A.F.E. Act relates to race or national origin. There is no suggestion that the act discriminates on the basis of gender, and any disproportionate burden on the poor, the elderly, or the disabled would not be invalid unless it is motivated by animus against those groups (see below).

- **Because the S.A.F.E. Act's requirements are facially neutral as to race or national origin, it will be treated as discriminatory for constitutional purposes only if there is proof of discriminatory intent, which may be proved by a stark pattern of disparate impact or by the circumstances surrounding the adoption of the act.**

The S.A.F.E. Act is “facially neutral” in the sense that it does not explicitly incorporate classifications based on race, national origin, gender, or other “suspect” characteristics. Accordingly, any discrimination claims are based on “disparate impact”; i.e., the claim that the proof of citizenship or photo ID requirement disproportionately burdens racial and ethnic minorities.

The Supreme Court has held, however, that the Constitution prohibits only intentional discrimination. Thus, facially neutral laws that disproportionately burden racial and ethnic minorities are unconstitutional only if it is shown that they were adopted for the purpose of excluding minorities. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976) (upholding use of high school diploma and test scores to determine promotions notwithstanding racially disproportionate impact); *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45 (1959) (upholding English literacy requirement for voting in the absence of proof of discriminatory intent or application). In practice, it may be very difficult to prove that facially neutral laws were adopted with discriminatory intent.

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the Court discussed how to prove discriminatory intent in the context of a disparate impact claim. First, the disparate impact itself may create an inference of discriminatory intent, especially if the pattern cannot be explained by other, race-neutral reasons. *See, e.g., Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (concluding that drawing city boundaries into an irregular twenty-eight-sided figure that excluded all but a few of its 400 black voters without excluding a single white voter reflected intentional discrimination); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (licensing program for laundries applied to deny all applications by Chinese Americans while granting licenses to all but one white applicant violated equal protection). This sort of proof requires a particularly clear pattern that cannot be explained on other grounds; it is not sufficient to show a statistical probability that race is a factor. *See McCleskey v. Kemp*, 481 U.S. 279 (1987) (rejecting equal protection challenge to capital punishment notwithstanding statistical analysis demonstrating that race was a significant factor in the imposition of the death penalty); *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979) (concluding that although veteran's preference beneficiaries were over 98% male, the statistical pattern did not establish discrimination based on sex because the desire to benefit veterans was a legitimate alternative explanation for the disparity).

Second, the courts may consider the procedural and substantive context of the challenged action, including:

- “The historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes”;
- “[t]he specific sequence of events leading up to the challenged decision”;
- “[d]epartures from normal procedural sequence”;
- “substantive departures . . . particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached”;
- “[t]he legislative or administrative history . . . especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports.”

*Arlington Heights*, 429 U.S. at 267-68. Because it seems unlikely that the S.A.F.E. Act’s disparate impact, standing alone, would be sufficient to establish discriminatory intent, the Advisory Committee will need to consider these factors to determine whether the S.A.F.E. Act violates equal protection or the Fifteenth Amendment.

In addition, if there is an especially bad fit between the requirements of a law and its alleged purposes, that may suggest that those purposes are a mere pretext, masking an improper purpose. The Supreme Court has applied this sort of reasoning in cases like *Romer v. Evans*, 517 U.S. 620 (1996), and *United States v. Windsor*, 133 S. Ct. 2675 (2013), concluding that laws adversely affecting homosexuals or same sex couples were based on “animus” and therefore invalid because the sweep and scope of the laws were so far removed from the supposedly legitimate justifications advanced on their behalf. *See also Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (applying similar reasoning to conclude that denial of zoning variance was based on animus against adults with developmental disabilities). Although the Supreme Court has not used this sort of analysis to determine whether a facially neutral law discriminates on the basis of race, it has done so in regard to religious discrimination, in which facially neutral laws are also subject to the rational basis test unless there is proof of discriminatory intent. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (concluding that a city’s ban on animal sacrifice was motivated by religious discrimination because the scope of the ban did not match the city’s asserted health and safety or animal cruelty justifications).

Whether the S.A.F.E. Act reflects a discriminatory intent for purposes of constitutional claims based on equal protection or the Fifteenth Amendment may not be a critical question, however, because § 2 of the Voting Rights Act (VRA) provides greater protection against voting requirements with a racially disproportionate impact.

- **Section 2 of the Voting Rights Act (VRA) does not require proof of discriminatory intent, but rather prohibits voting requirements that have the effect of restricting the right to vote because of race, which is determined in light of the totality of circumstances, including multiple factors.**

The Voting Rights Act (VRA), originally adopted in 1964, provides additional protections against voting requirements, practices, and procedures that limit voting rights on the basis of race. Although the VRA was adopted pursuant to Congress’s authority to enforce the Fourteenth and Fifteenth Amendments, the Supreme Court has made clear that this power includes the



power to provide some protections that go beyond the protections of the Amendments themselves. Thus, for example, although the Supreme Court held in *Lassiter* that an English literacy requirement did not violate the Fifteenth Amendment, it also upheld the authority of Congress to prohibit the imposition of literacy requirements for students who have completed the sixth grade in American schools where the language of instruction was English. *See* 52 U.S.C. § 10303(e); *see also Katzenbach v. Morgan*, 384 U.S. 641 (1966) (upholding original version of this provision as within the scope of congressional power to enforce the Fourteenth and Fifteenth Amendments).

Of particular relevance here is § 2(a) of the VRA, as amended, 52 U.S.C. § 10301(a), which prohibits the adoption or application of any requirement that “results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color . . . .”<sup>2</sup> This provision prohibits state laws or requirements that **result** in discrimination without regard to **intent** or **purpose**. To underscore this point, § 2(b) further specifies that:

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Subsection (b) also provides that “[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered,” but adds a proviso that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”

In practice, courts analyze § 2 claims using a two part framework in which plaintiffs must show:

- (1) That a challenged requirement imposes a discriminatory burden because “members of a protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice”; and
- (2) The burden is linked to social and historical conditions that have produced or currently produce discrimination against members of the protected class.

*See, e.g., Veasey v. Abbott*, 796 F.3d 487 (5<sup>th</sup> Cir. 2015) (upholding district court’s determination that Texas photo ID law violated § 2); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4<sup>th</sup> Cir. 2014), cert. denied, 135 S. Ct. 1735 (2015) (granting preliminary injunction against some parts of North Carolina elections reforms and affirming the denial of a preliminary injunction against other parts of the law because the plaintiffs had not shown irreparable harm).

In making these determinations, courts often consider several factors identified in the Senate Report accompanying the VRA, which the Supreme Court endorsed in *Thornburg v. Gingles*, 478 U.S. 30 (1986). These factors include:

<sup>2</sup> The validity of this provision was unaffected by *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), which invalidated the formula for determining the scope of the VRA’s “preclearance” requirements and thus rendered those requirements unenforceable. The preclearance requirements would not have applied to Kansas in any event.

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

*Id.* at 36-37 (quoting S. Rep. No. 97-417, at 28-29 (1982)). Two other factors identified in the report (but not on the numbered list) are “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group” and “whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.” *Id.*

Because it is easier to establish a violation of § 2 than to establish a violation of the Fourteenth or Fifteenth Amendment, and because courts generally prefer to avoid resolving unnecessary constitutional questions, the success of any discrimination claims will likely depend primarily on the application of § 2. If there is a violation of § 2, then the analysis of constitutional claims of discrimination is unnecessary. *See Veasey v. Abbott*, 796 F.3d at 513-14 (finding it unnecessary to address claims that Texas photo ID law requiring proof of citizenship imposed unconstitutional burdens on the right to vote). On the other hand, if the evidence is insufficient to show a violation § 2, then it is highly unlikely that the evidence would prove intentional discrimination.

- **Laws that impose undue burdens on the right to vote may violate the Constitution irrespective of discrimination, with the applicable level of scrutiny dependent upon the severity of the burden.**

The second type of voting rights claim focuses on the burdens imposed by voting requirements. Some burdens, such as a poll tax, are per se invalid. Other burdens may violate the Equal Protection Clause of the Fourteenth Amendment.<sup>3</sup> Although there might be an argument that photo ID or registration requirements are a form of poll tax if it costs money to comply, the United States Court of Appeals rejected that claim in *Veasey*, 796 F.3d at 514-17, and it will not be further discussed here. The discussion that follows considers the analysis of equal protection claims based on the burdens imposed by the S.A.F.E. Act’s voter registration and photo ID requirements.

<sup>3</sup> When regulation of political parties and primaries is involved, burdens on the right to vote may also implicate freedom of political association, which is guaranteed by the First Amendment. In addition, courts sometimes treat the right to vote as protected by due process. The analysis of freedom of association or due process claims does not differ materially from the equal protection analysis.

Although most challenges to the burdens imposed by voting requirements arise under the Equal Protection Clause, the focus of such claims is not the nature of the classification incorporated in the requirement, but rather the burden it imposes. As the Court explained in *Reynolds v. Sims*, 377 U.S. 533, 566 (1966), “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators.” Thus, [d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race . . . .” *Id.* Although *Reynolds* involved vote dilution as a result of legislative districts of unequal population size, a similar principle applies to other regulations that may burden the right to vote, including restrictions on voter registration or casting ballots.

Nonetheless, the Court has also recognized that federal, state, and local governments must regulate the electoral process and that such regulations will inevitably impose some burdens on some voters. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (reasoning that “[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections” and that “[e]lection laws will invariably impose some burden upon individual voters”). As a result, the “rigorousness” of scrutiny “depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Id.* at 234. Under this approach, requirements that impose “severe restrictions must be narrowly drawn to advance a state interest of compelling importance,” but “the State’s important regulatory interests are generally sufficient to justify” “reasonable, nondiscriminatory restrictions.” *Id.* (internal quotation marks and citations omitted).

In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the Court applied this framework to a photo ID requirement, although the precise meaning of the framework was the subject of disagreement between the plurality opinion and concurring Justices. The plurality treated the test as creating a sliding scale of scrutiny under which the more severe the burden the greater the degree of rigorousness applies. The concurring justices, however, viewed *Burdick* as establishing that the rational basis test would apply unless a restriction was “severe” in which case strict scrutiny applied. Regardless of their disagreements about the meaning of the *Burdick* framework, the plurality and concurring opinion agreed that the plaintiffs in that case failed to establish that the photo ID requirement in question imposed sufficient burdens to justify elevated forms of scrutiny, and upheld it as a reasonable measure to prevent voter fraud.

- **Although the Court upheld photo ID requirements in *Crawford v. Marion County Election Board* and the same framework would apply to the requirements of the S.A.F.E. Act, the result in *Crawford* is not controlling if, as applied to some voters, the S.A.F.E. Act’s requirements impose more severe burdens on the right to vote.**

Both plurality and concurring opinions in *Crawford* emphasized that the case involved a “facial” challenge to the Indiana photo ID requirement and that the plaintiffs in that case had made no showing that the requirement would prevent a large number of people from voting or severely burden their right to do so. In view of these limiting factors, the result in *Crawford* is not necessarily controlling as to the S.A.F.E. Act’s requirements.

First, the plurality in *Crawford* emphasized that the law was being challenged “on its face,” i.e., without regard to its application in a particular case. Ordinarily, parties challenge the validity of a law or regulation “as applied” to them or their conduct. Such a challenge focuses on the specific application and the remedy would be to prevent prohibit the unconstitutional application of the law, without necessarily invalidating the law itself. In such a challenge, the argument is that the law’s unconstitutional sweep is so broad that it must be invalidated as a whole. As the Court emphasized in *Crawford*, the standards for a successful facial challenge are especially difficult to meet. For example, it cited *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008), which described the standard as follows:

[A] plaintiff can only succeed in a facial challenge by “establish[ing] that no set of circumstances exists under which the Act would be valid,” i.e., that the law is unconstitutional in all of its applications.” . . . While some Members of the Court have criticized [this] formulation, all agree that a facial challenge must fail where the statute has a “ ‘plainly legitimate sweep.’ ” (citations omitted).

Although the facial challenge failed in *Crawford*, a parties whose voting rights are burdened might be able to challenge the law as applied to them, which requires a lesser showing. *See Lee v. Virginia State Board of Elections*, (E.D. Va. December 18, 2015), available at 2015 WL 9274922 (concluding that a facial challenge to state’s photo ID law was foreclosed by *Crawford*, but allowing an as-applied challenge to go forward).

Second, if the burdens imposed by the S.A.F.E. Act are more severe, or if there is better evidence that its provisions prevent or impede the right to vote, a higher level of scrutiny may apply and the state’s justifications may be insufficient. This point is most clear with respect to the proof of citizenship requirement for voter registration, insofar as the Indiana law did not impose such a requirement. In practice, proof of citizenship may be more difficult than obtaining a photo ID, especially insofar as under the S.A.F.E. Act, obtaining a driver’s license (which is a valid photo ID) does not of itself establish citizenship. Media accounts suggest that tens of thousands of voter registrations have been held in suspense because of the proof of citizenship requirements and that the Secretary of State’s office has sought to remove individuals from the list of voters whose registration is held in suspense (which would require them to register again). If accurate, these accounts might suggest that, as applied to some voters, the degree of burden imposed by the proof of citizenship requirement is more severe than the burden imposed by the photo ID requirement in *Crawford*. Nonetheless, it is unclear whether this burden would be severe enough to trigger higher levels of scrutiny.

The same point also applies to the S.A.F.E. Act’s photo ID requirement, if it is more difficult to satisfy than the requirement in *Crawford* or there is more evidence that it prevents some people from voting or otherwise imposes severe burdens on the right to vote. Ultimately, however, the success of any such challenge, even an as-applied challenge, would likely depend on proof that the photo ID requirement imposes a severe burden on some voters.

It should be noted that any effort by the state to require proof of citizenship to register and vote in federal elections would be preempted by the National Voter Registration Act, which requires states to accept registrations using a federal form that does require proof of citizenship, *see Gonzalez v. Arizona*, 677 F.3d 383 (9<sup>th</sup> Cir. 2012), but that federal law does not apply to state

elections. The resulting dual system of registration and voting in national and state elections raises some distinctive state law issues, *see Belenky v. Kobach, supra*, which are beyond the scope of the Advisory Committee's inquiry.

- **Even requirements that neither discriminate on the basis of race nor impose severe burdens may be invalid if they serve illegitimate purposes or are unrelated to the state's legitimate interests in conducting free and fair elections.**

The Supreme Court's cases also indicate that even nondiscriminatory laws that do not impose severe burdens may violate equal protection if they serve improper purposes or are unrelated to the state's legitimate interests in the integrity of elections. Thus, for example, in *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966), the Court invalidated a poll tax in a state election, concluding that—even if the burden imposed was minimal—“a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard” because “[v]oter qualifications have no relation to wealth nor to paying or not paying this or any other tax.” In the context of the S.A.F.E. Act, limiting the franchise to citizens and preventing voter fraud are certainly legitimate purposes and the act's requirements would appear to be related to them.

Nonetheless, there may be a constitutional problem if those purposes are a pretext for some other, improper goal. First, animus towards a politically unpopular group, if established, would be an illegitimate purpose. Second, and perhaps more pertinent, voter requirements intended to secure partisan political advantage would presumably be invalid. In *Crawford*, for example, the plurality observed that “[i]t is fair to infer that partisan considerations may have played a significant role in the decision” to adopt a photo ID requirement and that “[i]f such considerations had provided the only justification for a photo identification requirement, we may also assume that [it] would suffer the same fate as the poll tax at issue in *Harper*.” 553 U.S. at 203. Nonetheless, the plurality went on to state that “if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators.” *Id.* at 204. Thus, the plurality concluded that the state interests identified as justifications for the photo ID requirement were “both neutral and sufficiently strong to require us to reject petitioners' facial attack on the statute.” *Id.*

As with the other aspects of the *Crawford* decision, this analysis may not be controlling in this case, particularly if there is an as-applied challenge and the evidence of a partisan purpose is stronger.

**Written Testimony of Elle Boatman, Founder and Creative Director of FaceOfTrans.com,  
co-Founder of WiTCoN**

I think that the culmination for transgender people regarding the SAFE Act is the rejection they are likely to experience at their polling center, which is ultimately the end result of a number of barriers that trans people face in obtaining accurate, legal identification documents. It can be difficult or even impossible for transgender people to obtain photo ID that accurately reflects their legal/preferred name, gender identity, or even their appearance.

Firstly, the legal process for a trans person changing their name is often intimidating and cost-prohibitive. Even if one does manage to legally change their name, obtaining updated documents can be a nightmare of bureaucratic red tape. In Kansas, updating your name on your license is a two-step process (two trips to court and one to the DMV) and the process for updating your gender is a completely separate process which requires a physician's note. Many trans people in Kansas are unable to access a health care professional willing to provide the required medical documentation. Accurate birth certificates can often be impossible for trans people to obtain as many states severely restrict or do not allow you to update birth certificate information.

An incident in West Virginia was made famous due to DMV clerks denying service to trans women based on their appearance, telling them that they would have to remove any and all makeup and wigs before they would be allowed to be photographed. I personally know a trans woman, my fiancée, who was turned away from her polling place in Wichita because her license photo did not look enough like her.

In short, the SAFE Act has immense potential to put a transgender person in a very uncomfortable and possibly dangerous situation. The trans person is unduly required to "out" themselves to not only the polling official but to everyone within hearing range of the conversation, and they will still most likely be wrongly turned away and unable to vote for all of their trouble

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**Kansas Advisory Committee to the  
United States Commission on Civil Rights**



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# **Voting Rights in New Hampshire**



A Report of the  
New Hampshire Advisory Committee to the  
U.S. Commission on Civil Rights

March 2018



**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

# **Voting Rights in New Hampshire**

A Report of the  
New Hampshire Advisory Committee to the  
U.S. Commission on Civil Rights

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**New Hampshire Advisory Committee to the  
U.S. Commission on Civil Rights**

Letter of Transmittal

New Hampshire Advisory Committee to the  
U.S. Commission on Civil Rights

Members of the Commission  
Catherine E. Lhamon, Chairperson  
Debo P. Adegbile  
Gail Heriot  
Peter N. Kirsanow  
Davie Kladney  
Karen K. Narasaki  
Patricia Timmons-Goodson, Vice Chair  
Michael Yaki

Mauro Morales, Staff Director

The New Hampshire Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Voting Rights in New Hampshire." The report was adopted by the Advisory Committee by a unanimous vote.

Sincerely,

JerriAnne Boggis, Chairperson  
New Hampshire Advisory Committee

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Voting is the foundation of our government, our society, and our way of life. Without the right to vote, we have no say in the decisions that affect our lives every day, decisions that range from...educating our children, keeping our air and water clean, caring for the sick, building roads and bridges, responding to natural disasters, to decisions about how we will engage with other countries and cultures around the world.<sup>1</sup>

## Introduction

“Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies.”<sup>2</sup> The fundamental right of all citizens over the age of 18 to vote is constitutionally guaranteed by the 15th, 19th, and 26th Amendments. These Amendments prohibit franchise discrimination on the basis of race, sex, and age respectively. Nonetheless, various legal and procedural obstacles historically hindered the exercise of this right for certain groups. As a result, equal access to the polls for many voters developed slowly. Federal civil rights legislation enacted during the civil rights movement sought to correct this imbalance, not only by guaranteeing that individuals have the *right* to vote irrespective of their minority status, but also by ensuring they can *exercise* it by casting a ballot. Despite great progress in the decades that followed, however, many recent changes in election laws enacted by state and local governments have created barriers to voting for minority groups.

New Hampshire, like most of the country, has changed its election laws in recent years. It also has a changing electorate that is growing older and more diverse every year. The New Hampshire State Advisory Committee to the United States Commission on Civil Rights sought to examine these election laws to see how New Hampshire’s changes affect its voters—looking particularly for any evidence suggesting these changes might have a disparate impact on voters of color. The Committee held a roundtable session on September 30, 2013 and a briefing meeting on May 22, 2014 to address the issue. It invited experts and knowledgeable individuals to share information with the members of the Committee to help them better understand how to

<sup>1</sup> Transcript of the briefing before the U.S. Commission on Civil Rights by the New Hampshire State Advisory Committee, *Voting Rights in New Hampshire*, Sept. 25 2013 [hereinafter cited as 2013 Transcript] (statement by Joan Ashwell) at 184.

<sup>2</sup> Lyndon B. Johnson, President of the United States, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=27140>).

protect voting rights in New Hampshire. This report details the Committee’s findings and recommendations.

## Background

### 1. Voting Rights in the United States

The 15th Amendment provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” and that, “Congress shall have the power to enforce this article by legislation.”<sup>3</sup> The Amendment was ratified in 1870 and interpreted narrowly by the Supreme Court only to prohibit laws that used race as a qualification or pre-condition for voting.<sup>4</sup> As a result, many states successfully enacted various legal and procedural obstacles to prevent Black voters from participating in elections for decades after its ratification. Using techniques such as voter literacy tests, poll taxes, voucher requirements, and grandfather clauses, these states continued to disenfranchise people of color with impunity. In a recent decision by the Supreme Court, Chief Justice Roberts succinctly concluded that, “the first century of congressional enforcement of the [15th] Amendment . . . can only be regarded as a failure.”<sup>5</sup>

The 19th Amendment prohibits discrimination by denying persons the right to vote on the basis of gender.<sup>6</sup> The story behind its ratification is the long and arduous history of the woman’s suffrage movement. Women had actively campaigned for suffrage since 1848, when the first Woman’s Rights Convention met in Seneca Falls, New York. The amendment was written by Susan B. Anthony and Elizabeth Stanton, leaders of the National Woman Suffrage Association, an organization formed specifically to push for a Constitutional amendment granting women the right to vote. Despite being first introduced in 1878, the amendment was not ratified until 1920—42 years later—after decades of failed attempts to pass it through Congress.

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<sup>3</sup> U.S. CONST. amend. XV.

<sup>4</sup> See *United States v. Reese*, 92 U.S. 214, 218 (1875) (noting that “[i]t is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment”).

<sup>5</sup> *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 197 (2009).

<sup>6</sup> See U.S. CONST. amend. XIX.



The 26th Amendment prohibits denying persons over the age of 18 the right to vote on the basis of age.<sup>7</sup> It was ratified in 1971 as a response to youth activism during the Vietnam War. Proponents of the amendment argued that youth who were old enough to serve in the military and die for their country should be old enough to vote. Congress and the rest of the country agreed resoundingly. The 26th Amendment was ratified three months and eight days after it was submitted to the states, making it the fastest ratification of any amendment.

The Voting Rights Act (VRA) of 1965 sought to correct racially discriminatory practices by prohibiting laws that had the *effect* of denying or abridging voting rights on the basis of race.<sup>8</sup> This legislation was very successful. Joan Ashwell, an election law specialist with the League of Women Voters in New Hampshire, informed the Committee that the VRA increased voter turnout and limited disenfranchisement of voters of color nationwide. “Overall, the 37 years from 1965 to 2002 saw a huge expansion of access for citizens to be able to vote across [the United States].”<sup>9</sup> When Congress reauthorized the VRA in 2006, it noted in its findings that there had been “significant progress” regarding “minority” voter registration, turnout, and representation in Congress.<sup>10</sup> In Alabama for example, there was almost a 50 percent disparity between White and Black voter registration in 1965. By 2012, Black voter registration was only seven percent less than White voter registration.<sup>11</sup> Additionally, one percent more Blacks than Whites actually voted in 2012.<sup>12</sup> Congress stated clearly, however, that the VRA still served a vital purpose at the time of reauthorization. “[T]he evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination

<sup>7</sup> See U.S. CONST. amend. XXVI.

<sup>8</sup> See Voting Rights Act of 1965, 42 U.S.C. § 1973(a)-(b) (1965).

<sup>9</sup> 2013 Transcript (statement by Joan Ashwell) at 186.

<sup>10</sup> Fannie Lou Hamer, Rosa Parks & Coretta Scott King, *Voting Rights Act Reauthorization and Amendments Act of 2006*, 109 Pub. L. No. 246, §2(b)(1), 120 Stat. 577 (2006) (amending the Voting Rights Act of 1955, 42 U.S.C. § 1973 (1965)), available at <http://www.gpo.gov/fdsys/pkg/STATUTE-120/html/STATUTE-120-Pg577.htm> (last accessed July 2, 2014).

<sup>11</sup> The gap could be smaller. As a percentage of the population, twice as many Blacks did not respond to the survey than non-Hispanic Whites (22 percent versus 11 percent respectively), but based on received responses, only 9 percent of Blacks were unregistered, versus 13 percent for non-Hispanic Whites. See U.S. Census Bureau, *Voting and Registration by Race in Alabama, 2012*, available at [http://thedataweb.rm.census.gov/TheDataWeb\\_HotReport2/voting/voting.html?GESTFIPS=2&INSTANCE=Nov+2012](http://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.html?GESTFIPS=2&INSTANCE=Nov+2012) (last accessed July 1, 2014).

<sup>12</sup> *Id.*

following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.”<sup>13</sup>

The VRA was successful in part because it included a “preclearance requirement” for certain states and counties that used discriminatory tests and had low voter turnout and registration during the 1964 Presidential Election.<sup>14</sup> The preclearance requirement was a prophylactic measure against legislation that hindered minority access to polls by requiring specific jurisdictions to submit proposed changes to their voting procedures to the Attorney General or a panel of federal judges for approval.<sup>15</sup> If a state or district wished to remove themselves from the pre-clearance requirement, they could bring a “bailout” action at the U.S. District Court for the District of Columbia.<sup>16</sup>

In 2013, the Supreme Court struck down the coverage formula of the preclearance requirement in *Shelby County v. Holder*.<sup>17</sup> The court reasoned that unequal treatment of states under federal law threatens principles of federalism and equal sovereignty. A federal law should not apply to some states differently than others unless very particular circumstances require it to do so. In order to be constitutional, “a departure from the fundamental principle of equal sovereignty requires showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.”<sup>18</sup> The court concluded that “[n]early 50 years later, things have changed dramatically.”<sup>19</sup> “[V]oter registration and turnout numbers in the covered States have risen. . . . There is no longer such a disparity.”<sup>20</sup> The court further explained that although the 15th Amendment gives Congress power to craft legislation to protect voters of color, it “is not designed to punish the past; its purpose is to ensure a better future.”<sup>21</sup> The court concluded that

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<sup>13</sup> 120 Stat. 577 §2(b)(7).

<sup>14</sup> 42 U.S.C.A. §1973b-c (2012); for a complete list of states and counties covered by the preclearance requirement at the time the law was struck down by the Supreme Court, See U.S. Department of Justice, *Jurisdictions Previously covered by Section 5 at the Time of the Shelby County Decision*, [http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php) (last accessed July 1, 2014).

<sup>15</sup> See *Id.* §1973c.

<sup>16</sup> See *Id.* §1973b(a).

<sup>17</sup> See *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013).

<sup>18</sup> *Id.* at 2622 (citing *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)).

<sup>19</sup> *Id.* at 2625.

<sup>20</sup> *Id.* at 2627.

<sup>21</sup> *Id.* at 2629.

the formula was unconstitutional, but invited Congress to adjust the coverage formula to current registration and turnout data.

## 2. Voting Rights in New Hampshire

New Hampshire has a long and proud electoral history on both a federal and state level. On the national stage, New Hampshire receives a great deal of attention because it is a swing state and holds the first presidential primary election. This primary operates as a testing ground for presidential candidates from both parties. The state also enjoys very high turnout from its electorate. In the 2012 Election, New Hampshire ranked fourth out of 50 states and the District of Columbia in turnout of their voter eligible population at 70.9 percent.<sup>22</sup>

On a state level, New Hampshire has a strong preference towards local governance through an active citizenry. It has the second largest legislature in the country after the U.S. House of Representatives. This “General Court” is composed of a Senate and House of Representatives that have 24 and 400 members respectively.<sup>23</sup> With a population of about 1.3 million people, each member represents an average of 3,250 individuals—only about 2,000 of which are eligible to vote. This structure allows all of New Hampshire’s citizens to be close to their representatives and their governing body. These members are not professional politicians, but rather come from a variety of occupations. They are only paid \$200 per term plus travel expenses—a remarkably small stipend relative to the importance of their responsibility.<sup>24</sup> It is a testament to New Hampshire’s sense of civic engagement.

New Hampshire has a unique voting rights history. Although the VRA’s preclearance requirement predominantly applied to southern states, eight towns and two unincorporated areas in New Hampshire were also subject to the VRA’s preclearance requirement. They had used literacy tests and reported lower voter turnout and registration during the 1960s. Just prior to the *Shelby County* decision, however, New Hampshire became the first and only state to bail out of

<sup>22</sup> New Hampshire came in behind Minnesota at 76.1 percent, Wisconsin at 73.2 percent, and Colorado at 71.1 percent. See Nonprofit VOTE, *America Goes to the Polls 2012*, 2012, <http://www.nonprofitvote.org/documents/2013/03/america-goes-to-the-polls-2012.pdf> (last accessed July 1, 2014) [hereafter cited as Nonprofit VOTE 2012] at 7.

<sup>23</sup> New Hampshire Almanac, *State Government Overview*, <http://www.nh.gov/nhinfo/stgovt.html> (last accessed Jul. 1, 2014).

<sup>24</sup> *Id.*

its preclearance requirements before a three judge panel.<sup>25</sup> An investigation by the Attorney General revealed “no law implicating racial discrimination in voting.”<sup>26</sup> At the time the requirement was imposed on New Hampshire, six out of the ten towns subject to the requirement did not have a single voter of color. Therefore, even though they used literacy tests, they could not have been put in place with the intention of disenfranchising voters of color. The parties stipulated that, “[New Hampshire] likely would have been successfully able to demonstrate that the covered towns had no known history of intentional racial discrimination in voting at the time of coverage.”<sup>27</sup>

Several other federal acts are applicable to New Hampshire’s election procedures including the Help America Vote Act (HAVA), which requires every state to have a centralized voter database.<sup>28</sup> New Hampshire created such a database before the 2006 election and continues to maintain it through local election officials. David Scanlan, New Hampshire’s Deputy Secretary of State, explained to the Committee that “[the] list is still maintained at the local level by local supervisors. . . . They’re the only ones with authority to add names to the checklist and remove names.”<sup>29</sup> HAVA also requires accessible voting for persons with disabilities, including the ability to vote independently and in private. All polling places must be acceptable under the standards set forth by the American with Disabilities Act. To satisfy the requirements of this Act, each state in compliance with HAVA provisions receives funding from the Election Assistance Commission.<sup>30</sup>

Finally, New Hampshire is also subject to the Military and Overseas Voter Empowerment Act (MOVE). MOVE helps overseas military personnel and citizens who live abroad to vote. It requires that absentee ballots be delivered 45 days in advance of an election to the voters that have requested one. It also requires that ballots be deliverable electronically. Mr. Scanlan

<sup>25</sup> *New Hampshire v. Holder*, No. 1:12-CV-01854, at \*20 (D.D.C. Mar. 1, 2013) [http://www.justice.gov/crt/about/vot/misc/nh\\_cd.pdf](http://www.justice.gov/crt/about/vot/misc/nh_cd.pdf) (last accessed July 1, 2014).

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 15.

<sup>28</sup> See Help America Vote Act of 2002, Pub. L. No. 107-252, 2002. (116 Stat. 1666) <https://www.eac.gov/assets/1/6/HAVA41.PDF>.

<sup>29</sup> 2013 Transcript (statement by David Scanlan) at 168.

<sup>30</sup> See 42 U.S.C. § 15403 (2014).

explained, “For those voters that ask, we deliver their ballot by email, and then the voter is responsible for printing the ballot off, marking it and then physically mailing it back.”<sup>31</sup>

In recent years New Hampshire has enjoyed a pristine record of complying with federal voting rights requirements. Federal jurisdiction is only triggered when there is a federal candidate’s name on a ballot or if there are any voter registration issues. Suspected cases of vote buying, bribery, impeding voter participation through the dissemination of false information, and voter fraud will then trigger an investigation. Mark Zuckerman, Assistant U.S. Attorney and election officer for the District of New Hampshire, reported to the Committee that in the 14 years that he has been with the U.S. Attorney’s Office, he has not found a single federal violation of voting rights.<sup>32</sup>

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<sup>31</sup> 2013 Transcript (statement by Scanlan) at 170.

<sup>32</sup> Transcript of the briefing before the New Hampshire State Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights in New Hampshire*, May 22, 2014 [hereinafter cited as 2014 Transcript] (statement by Mark Zuckerman) at 10.

## Findings of the New Hampshire State Advisory Committee

### 1. Voter ID Law

There are many types of voter fraud such as multiple voting, impersonating a voter, and voter intimidation. There are also many types of voter registration fraud such as registering someone who is deceased, someone who is not a U.S. citizen, or someone who is a convicted felon in the course of serving a prison sentence. In recent years, many states have started requiring voters to present photo identification at the polls or during registration to prevent individuals from impersonating other voters on Election Day. This problem is generally known as “voter impersonation fraud,” but is criminalized under New Hampshire’s election laws as “wrongful voting” along with most other acts of voter fraud.<sup>33</sup>

In 2012, New Hampshire enacted a voter ID law to protect against voter impersonation fraud. The law requires that voters show an acceptable form of identification when going to the polls.<sup>34</sup> Unless the voter is over 65, any ID that has been expired for 5 years or more will not be accepted. Although many states have passed very strict voter ID laws, New Hampshire’s voter ID law is flexible in a few ways. First, if the voter has a different type of ID not specifically allowed by the law, it is up to the discretion of election officials whether or not to challenge them. Second, if the voter has no ID whatsoever, but can be vouched for by election officials, they still may vote. Third, if a voter shows up without a valid form of ID and no one can vouch for them, they must sign an affidavit in front of election officials before voting. The Secretary of State and the Attorney General of New Hampshire then investigate them. The Secretary of State mails the voter a verification letter to the address provided at the time of voting. This letter must be returned by the voter within 90 days in a prepaid envelope to confirm their identity. If they do not return the letter, the Attorney General will pursue a further investigation, which typically entails a phone call or a visit to the address listed.

Even if a voter has to sign an affidavit, their vote is counted on the day of the election. New Hampshire does not use provisional ballots, which are counted after they are verified. There is no

<sup>33</sup> See N.H. REV. STAT. ANN. § 659:34 (2013).

<sup>34</sup> See N.H. REV. STAT. ANN. § 659:13 (2013). Acceptable forms of identification include a driver’s license, non-photo ID from a DMV, voting ID, passport, military ID, and certain types of student IDs.

delay in counting votes cast with an affidavit. The Secretary of State's office "stressed when [the] legislature was considering the bill that . . . no qualified voter be turned away from the polls. So if a person was able to register to vote, they should have a way to be able to then vote [even without an ID]."<sup>35</sup>

The panelists were split on whether or not the law detrimentally affected New Hampshire election processes. The League of Women Voters (the League) was critical of the law both in principal and because of its effect on the 2012 election. They claimed that the law is offensive. Joan Ashwell, election law specialist for the League, concluded that "New Hampshire treats every citizen who tries to vote as a probable felon."<sup>36</sup> "Many people will also be intimidated or offended by the fact that they will be investigated after their election because they lack a photo ID," she said.<sup>37</sup> The League also noted that wait lines increased from 2008 to 2012 because of the voter ID law, with the average voter in New Hampshire waiting 60 percent longer.<sup>38</sup> Finally, they questioned whether a lack of public understanding of the new ID law led people to believe they were not able to vote. Liz Tentarelli, co-president of the League, cited examples of voter confusion to the Committee. "I think the saddest question [the League] received was... from a woman who said she had a driver's license but didn't have a military ID or a passport, so could she still vote? [She was under] the perception she had to meet all of these requirements."<sup>39</sup>

Mr. Scanlan, New Hampshire Deputy Secretary of State, disagreed regarding the effect the law had on state and federal elections. He testified that the vast majority of voters were aware of the new law and able to comply with it. "[T]he reality was that the number of voters that showed up to the polls [in 2012] that had to fill out an affidavit to obtain [a ballot] was about three quarters of one percent."<sup>40</sup> He also noted that the law did not have a substantial deterrent effect on turnout. "Statewide," he said, "the numbers drop[ed] very slightly [from] 2008. So the numbers were almost identical in . . . turnout."<sup>41</sup> This conclusion is in accord with a national study, which showed that turnout in New Hampshire only dropped 1.5 percent from 2008 to 2012.<sup>42</sup> However,

<sup>35</sup> 2013 Transcript (statement by Scanlan) at 229.

<sup>36</sup> 2013 Transcript (statement by Ashwell) at 189.

<sup>37</sup> *Id.* at 193.

<sup>38</sup> *Id.*

<sup>39</sup> 2013 Transcript (statement by Liz Tentarelli) at 174.

<sup>40</sup> 2013 Transcript (statement by Scanlan) at 199.

<sup>41</sup> *Id.* at 205.

<sup>42</sup> Nonprofit VOTE 2012 at 8.

he also mentioned that, particularly for local elections, “the percentage of voters coming through forgetting their ID is slowly creeping up.”<sup>43</sup> “[T]here is a certain degree of protest taking place, where people just intentionally did not show their IDs and are requiring the AG’s office to follow up.”<sup>44</sup>

Ms. Radke, the Vice President of the New Hampshire City and Town Clerks’ Association, provided similar testimony. In the town of Bedford, 15,000 people are registered to vote and about 11,000 of them voted in 2012. “In 2008 . . . [it was] the same. About the same number of people voted . . .”<sup>45</sup> She also noted that only 48 of these voters did not have their IDs and had to sign an affidavit. There was little evidence which suggested either that voters were not aware of the law, or that the law had a detrimental effect on turnout.

However, there is little evidence that voter fraud is a substantial problem in New Hampshire. At the time of the September 2013 roundtable, the Attorney General’s investigators had only contacted about half of the 4,000 individuals who signed an affidavit in the 2012 Presidential Election; however, “they [had] not found . . . any instances of voter impersonation fraud [in the first 2000 investigations].”<sup>46</sup> From 2000 until 2012, New Hampshire had a total of only two documented cases of voter fraud. Caitlin Rollo, political and research director of Granite State Progress Education Fund, testified that this makes a statewide voter fraud percentage of .0003 percent.<sup>47</sup>

Similar voter registration fraud investigations from past elections have yielded no confirmed instances of fraud.<sup>48</sup> New Hampshire has a provision requiring those who register to vote to provide photo ID. In the case an individual does not present a photo ID when registering, New Hampshire law requires similar investigatory procedures as for its voter ID law.<sup>49</sup> None of these investigations has revealed any instances of voter registration fraud. In a 2010 state general election, for example, there were 23,512 persons who registered to vote on Election Day. Forty-

<sup>43</sup> 2014 Transcript (statement by Scanlan) at 14.

<sup>44</sup> *Id.* at 21.

<sup>45</sup> 2013 Transcript (statement by Lori Radke) at 204.

<sup>46</sup> 2013 Transcript (statement by Ashwell) at 211.

<sup>47</sup> 2014 Transcript (statement by Caitlin Rollo) at 93.

<sup>48</sup> See Attorney General’s Office of New Hampshire, *Voter Fraud Investigation Report 2006; 2008; 2010*, New Hampshire’s Secretary of State, <http://sos.nh.gov/Miscellaneous.aspx> (last accessed Jul. 1, 2014).

<sup>49</sup> See N.H. REV. STAT. ANN. § 654:12 V (a)-(f) (2012).



eight of those individuals did so without a photo ID and were therefore investigated by the Secretary of State and Attorney General. All but four individuals mailed back the required letter to the Secretary of State that confirmed their identity. The remaining four individuals were eventually cleared by investigators: one had gone away to college in another state, one had accidentally submitted a registration with errors in her contact information, one had moved since registering to vote, and one had an incorrect address because of a clerical error.<sup>50</sup>

In light of the incredibly small size of the problem, many question whether the law is worth the cost: both in terms of money and the risk of making it more difficult for the people of New Hampshire to vote. Mr. Scanlan reported that there is a cost to generating the mailing, paying the postage, and employing staff from the Secretary of State's office to begin the voter verification process. Although exact numbers are not yet available, the League estimated that each investigation costs around \$360. Mr. Scanlan also noted that "there was a tremendous workload placed on the Attorney General's office as a result of having to follow up on all of those verification mailings."<sup>51</sup> Furthermore, in the actual cases of voter fraud mentioned above, Ms. Rollo noted that, "In both instances, the existence of the voter ID law did not stop the voter fraud from happening, nor did it help identify it after the fact."<sup>52</sup>

*a. At Risk Populations*

IDs other than driver's licenses are acceptable under New Hampshire's voter ID law. Groups that are less likely to have driver's licenses, however, are more likely to be burdened by the law because they will need to obtain a different form of identification. As such, access to the polls may be more difficult for the elderly, the disabled, and the homeless. For these individuals, it can be more cumbersome to obtain an alternative form of ID because many of them lack transportation and tend to be poorer.

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<sup>50</sup> Matthew G. Mavrogeorge, Assistant Attorney General of New Hampshire, *Voter Fraud Investigation Report-2010*, Jul. 11, 2011, <http://sos.nh.gov/Miscellaneous.aspx> (last accessed Jul. 1, 2014).

<sup>51</sup> 2014 Transcript (statement by Scanlan) at 16.

<sup>52</sup> 2014 Transcript (statement by Rollo) at 94.

New Hampshire is an aging state. Between 2000 and 2010, New Hampshire had the second largest increase in median age of a state of 4.0 years, just behind Maine with an increase of 4.1.<sup>53</sup> It now has the fourth highest median age in the United States with 41.1 years.<sup>54</sup> As a percentage of their population, 44.2 percent New Hampshire is over 45 years old, and 13.5 percent is over 65.<sup>55</sup> Sylvia Gale, a board representative of the New Hampshire Citizens Alliance for Action and an elected member of the New Hampshire House of Representatives, testified that many elderly persons are unjustly burdened by the law as a consequence of acting responsibly, “having given up their driving privileges years ago in the interest of the safety of themselves and others.”<sup>56</sup>

The voter ID law also burdens the homeless and impoverished. Kevin Kintner, program director for New Horizons for New Hampshire—the largest homeless shelter in New Hampshire— informed the committee that a little over ten percent of the 900 people that are sheltered annually do not have any form of ID.<sup>57</sup> They are also more likely to lose an ID because they have to keep everything with them at all times. The process to get an ID then becomes much more difficult. He gave two examples of New Hampshire residents who struggled to obtain a photo ID in order to vote because, ironically, they lacked identification necessary to get that ID. Kintner reported that in order to get a photo ID, you need two forms of ID, but “there is a frustrating Catch 22. . . . [T]he most standard way of getting a birth certificate or Social Security card is to have a photo ID.”<sup>58</sup> He asserted, “Losing your ID should not mean a loss of your personhood, should not mean a loss of your citizenship.”<sup>59</sup>

Furthermore, simply being poor might be an obstacle to obtaining an ID. “The ID itself may have a cost, but prior to that there might be notary fees when accompanying letters and signatures are required . . . [or] travel fare when one needs to go somewhere in person. Not every municipality or county across the country works the same way when it comes to copying a birth certificate, and fees, again, may apply.”<sup>60</sup> Many of these individuals have avoided going to doctors and

<sup>53</sup> See David Brooks, *Granite State's Median Age Tops Florida*, The Telegraph, May 15, 2011, <http://www.nashuatelegraph.com/news/919366-196/granite-states-median-age-tops-floridas.html> (last accessed July 2, 2014) [hereinafter *Granite State's Median Age*].

<sup>54</sup> *Id.*; see also Appendix A for a map depicting the United States median age by state in 2010.

<sup>55</sup> *Granite State's Median Age*.

<sup>56</sup> 2014 Transcript (statement by Sylvia Gale) at 88.

<sup>57</sup> 2014 Transcript (statement by Kevin Kintner) at 50-52.

<sup>58</sup> 2014 Transcript (statement by Kevin Kintner) at 54-55.

<sup>59</sup> *Id.* at 57.

<sup>60</sup> *Id.* at 55-56.

dentists because they cannot afford them, and therefore do not have many records to draw from when applying for a social security card.

The disabled suffer many of the same problems that the elderly and impoverished do. At least 11 percent of the national population has disabilities.<sup>61</sup> Adults with disabilities face high rates of unemployment and poverty relative to people without disabilities. According to the most recent survey of the U.S. Census Bureau, people without disabilities are two-thirds more likely to be employed full-time over people with severe disabilities. While earnings and income rates are lower for people with disabilities, poverty rates are higher. Approximately 28.6 percent of people with severe disabilities aged 15 to 64 lived in poverty, while 14.3 percent of people without disabilities were impoverished.<sup>62</sup>

*b. Future Requirements and Recent Legislation*

Further changes to the law are set to take effect in September of 2015. One controversial provision mandates that voters who do not bring their photo IDs to the polls, in addition to signing an affidavit, will also have their photo taken for the purpose of the subsequent investigation.<sup>63</sup> Scanlan told the committee that the “digital image of the voter will then be kept on file in the event that the Attorney General feels like they have to follow” up on any verification mailings.<sup>64</sup>

Currently, the law is set to be paid for with funds taken from New Hampshire’s election fund, which is supplied by the federal government under the Help American Vote Act (HAVA). It is not clear whether this is a permissible use of the funds. Under HAVA, states must use the funds to put them in compliance with HAVA requirements, such as maintaining an accessible voter system that adheres to the ADA and fulfilling the requirements of the Military and Overseas Voter Empowerment Act (MOVE). After a state has done so, leftover funds may be used only

<sup>61</sup> Rebecca Schleifer, *Disabled and Disenfranchised*, Huffington Post, Sept. 5, 2012, [http://www.huffingtonpost.com/rebecca-schleifer/disabled-voting-rights\\_b\\_1853234.html](http://www.huffingtonpost.com/rebecca-schleifer/disabled-voting-rights_b_1853234.html) (last accessed July 7, 2014).

<sup>62</sup> Matthew W. Brault, *Americans with Disabilities: 2010, Household Economic studies, Current Population Report*, United States Census Bureau, Jul. 2012, <http://www.census.gov/prod/2012pubs/p70-131.pdf> (last accessed July 7, 2014) at 12.

<sup>63</sup> See N.H. REV. STAT. ANN. § 659:13 I(c)(2) (2013) (effective September 1, 2015).

<sup>64</sup> 2014 Transcript (statement by Scanlan) at 15.

“to improve the administration of elections for Federal office.”<sup>65</sup> Although states are left considerable discretion in how they choose to spend the money, it is not clear that the cameras improve the “administration of elections” or, assuming they do, if they may be used for general elections as well.<sup>66</sup>

## 2. Access for Disabled Voters

Voters with disabilities face greater challenges when voting. They require physical access to polling places, technology to allow them to vote privately and independently, and transportation to and from the polls. They also can face attitudinal barriers at the polls from election officials. Incidents were reported to the Committee of disabled voters not being offered handicapped accessible voting machines and election officials not understanding how to assist them without violating their right to vote independently and in private. Julia Freeman-Woolpert, outreach advocacy director at the Disabilities Rights Center, explained that “there still remain many obstacles to voting privately and independently [for disabled people]. There are still town halls in New Hampshire that have barriers to access, making it more difficult to register. Some polling locations . . . still have some barriers to physical access . . . and there are still many attitudinal barriers that discourage or prevent people with disabilities from voting, especially people with mental disabilities.”<sup>67</sup>

There have been scattered incidents of voting rights violations for disabled individuals in New Hampshire. Ms. Woolpert reported the results of a survey given by the Disabilities Rights Center to disabled voters after the 2012 Primary and 2013 municipal elections. She reported that occasional specific problems would come up for these voters. For example, one polling location had a locked door to the separate handicapped accessible entrance while another location prevented a disabled person’s representative from being allowed in the booth with the voter. But the survey results also showed more systemic problems in both elections. In the 2012 Primary, seven of the 94 voters with disabilities surveyed, 18.9 percent, reported then were unable to vote

<sup>65</sup> See Help America Vote Act of 2002, Pub. L. No. 107-252, §251(b)(2), 116 Stat 1666, 1667 (2002), available at [http://www.eac.gov/assets/1/workflow\\_staging/Page/41.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/41.PDF).

<sup>66</sup> *Id.*

<sup>67</sup> 2014 Transcript (statement by Julia Freeman-Woolpert) at 37.

privately and independently.<sup>68</sup> In the 2013 municipal elections, 100 percent of disabled voters were unable to vote privately and independently because none of the polling locations had the accessible voting system set up.<sup>69</sup>

HAVA provided \$16.8 million to New Hampshire to assist disabled citizens in voting in federal elections. For state and local elections, Title II the Americans with Disabilities Act (ADA) requires these same standards be maintained. New Hampshire uses a telephone/fax voting system to accommodate blind individuals and satisfy some of these requirements. Guy Woodland, former Senior Vice President for the New Hampshire Association for the Blind, explained to the Committee that financial considerations have led to the use of older technology for handicapped voters. “[T]he Secretary of State did not accept the recommendation of the persons with disabilities who were brought together to make a decision. They decided to go with a technology that was old . . . a telephone/fax.”<sup>70</sup> This technology, however, can easily be replaced. The accessible voting system was not purchased by the state, but is leased annually.

Mr. Woodland has been legally blind for 45 years.<sup>71</sup> He presented his concerns about New Hampshire’s Accessible Voting System to the Committee and problems he has encountered when trying to vote in the city of Concord. Sometimes this system is not set up in all polling locations and sometimes it does not ensure that disabled voters can vote privately and independently. Since 2007, Mr. Woodland has only been able to vote privately and independently twice. The remaining times the city of Concord has not been equipped to allow him to vote by himself and the only alternative was to have someone with vision vote for him. Mr. Woodland emphasized that there is a lot at stake for New Hampshire. “There are probably 50,000 people in New Hampshire living with blindness or failing vision,” he said, “So that is a significant number of our population.”<sup>72</sup>

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<sup>68</sup> Disabilities Rights Center Survey, 2012 Primary Voting (annexed to Disabilities Rights Center, Inc. to U.S. Commission on Civil Rights, June 3, 2014 [hereinafter cited as DRC letter].

<sup>69</sup> Disabilities Rights Center, Selected Findings from November 2013 Survey of Polling Places (Local Elections) (annexed to DRC letter).

<sup>70</sup> 2014 Transcript (statement by Guy Woodland) at 46-47.

<sup>71</sup> Guy Woodland, *Technological Glitch Kept Me from Voting*, Concord Monitor, Jun.30, 2012, <http://www.concordmonitor.com/news/4393171-95/accessiblevotingsystem-concordward7> (last accessed July 2, 2014).

<sup>72</sup> 2014 Transcript (statement by Woodland) at 47.

Cindy Robertson, a Senior Staff Attorney at the Disabilities Rights Center, presented similar testimony pertaining to the accessible voting system. For many local elections, the handicapped accessible voting machine is simply not put up, which is an ADA violation. Otherwise it is slow and difficult to manage. It took her 25 minutes to cast her ballot. Trying to vote for a write in candidate was extremely difficult over the phone. She also testified about the attitudinal barriers by some election officials. “[T]here was a lot of anger expressed by the poll workers about having to use, to set up, and to basically aggravate themselves with this machine when few people used it . . . . Why can’t people just have someone with them? Why can’t we just help them vote? Why do we have to do this?”<sup>73</sup> For many disabled citizens, however, the availability of absentee voting is not a sufficient alternative for exercising this fundamental right. Mr. Woodland told the Committee, “[I]t is frustrating. All I want to do . . . is to go into the polling booth . . . [and] be able to access voting privately and independently; and I feel, as a citizen, I should have that right.”<sup>74</sup>

### 3. Voter Registration

Registering to vote in New Hampshire is different from most other states. New Hampshire requires voters to register in person up to 10 days before an election at the clerk’s office or at the polls on Election Day. “This is the only state in the country that requires citizens to register to vote in person, with an election official, and provide documents to prove identity, domicile, and citizenship.”<sup>75</sup> The one exception to this is if you are registering absentee because of a physical disability, religious belief, military service or temporary absence.<sup>76</sup> These are the only reasons for which an individual may register and vote absentee in New Hampshire. In this case voters may register by mail, but neither absentee nor regular registration is available online. As of June 2014, only 20 states permit online voter registration.<sup>77</sup>

There is no portable voter registration in New Hampshire. Any resident that moves, even if between cities in the same county, will need to re-register again in person in order to vote. The

<sup>73</sup> 2014 Transcript (statement by Cindy Robertson) at 43.

<sup>74</sup> 2014 Transcript (statement by Woodland) at 49.

<sup>75</sup> 2013 Transcript (statement by Ashwell) at 188.

<sup>76</sup> See N.H. REV. STAT. ANN. § 657:1 (2006); § 657:2 (2010).

<sup>77</sup> Sophie Lehman, *Nebraska to Allow Online Voter Registration*, Nonprofit VOTE, Apr. 1, 2014, <http://www.nonprofitvote.org/nebraska-allow-online-voter-registration/> (last accessed July 2, 2014).

League recommends modernizing the centralized voter database so that voters can change their registration information the day they move. “[B]ecause of the statewide database that we do have, you ought to be able to, that day, simply change your address [and] get assigned from one polling district to another.”<sup>78</sup> Mr. Scanlan testified that the centralized voter database could be cross checked with the national change of address list to track who has moved out of state, and that the Secretary of State’s office is currently working on it.<sup>79</sup> Updating and modernizing this database could facilitate the purge and help create a portable voter registration system.

Every ten years inactive voters are “purged” from New Hampshire voter registration lists. Individuals who have not voted in any election in the past four years and have not registered since the last state general election will be purged.<sup>80</sup> The purge most likely contributed to increased wait times at the polls in 2012. In 2011, “there were roughly 100,000 names that were removed from that list. So typically what happens is [large bulks] of those voters re-register then on the day of the election.”<sup>81</sup> It takes “about 20, 25 minutes to register each person individually,” which substantially added to the wait times at certain polling precincts.<sup>82</sup> For example, Member Elliott-Traficante was an election official in Concord on the day of the election. She reported that in her Ward, 400 people went through this same day registration process out of the 2,700 people who voted. That means about 15% of all voters in that Ward had to spend at least 20 extra minutes at the polls.

Unique registration procedures have led to some criticism. The League testified that some individuals wrongly believed they were unable to register to vote. “We even found some senior citizens were confused . . . they said[,] [‘]but I don’t drive anymore, I don’t have a car so I can’t register it, so I can’t register to vote now that I’ve moved to this new town.[’] And that’s just wrong.”<sup>83</sup> New Hampshire is not subject to the 1993 National Voter Registration Act.<sup>84</sup> This act requires states to adhere to certain registration procedures for federal elections, including

<sup>78</sup> 2013 Transcript (statement by Tentarelli) at 226.

<sup>79</sup> 2013 Transcript (statement by Scanlan) at 209.

<sup>80</sup> See N.H. REV. STAT. ANN. § 654:39 (2010).

<sup>81</sup> 2013 Transcript (statement by Scanlan) at 208.

<sup>82</sup> 2013 Transcript (statement by Ashwell) at 206.

<sup>83</sup> 2013 Transcript (statement by Tentarelli) at 176.

<sup>84</sup> National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (1993)

<http://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg77.pdf> (last accessed July 2, 2014).

registering to vote when voters register their car. New Hampshire, however, is exempt from the Act because they permit voter registration on Election Day.

#### 4. Training for Election Officials

The Secretary of State's office administers the state and federal elections in New Hampshire. They work with about 6,000 local election officials who run the polls. The Secretary of State's office and other agencies offer training opportunities and resources for election officials, including live training, publications, and online resources. Prior to state elections in every even year, the Secretary of State's office will do about 20 training sessions on the road for election officials. It also trains users of the centralized voter database. "[W]e have a training facility here in Concord with computer stations where we bring supervisors of the checklist and town clerks in . . . and . . . train them in depth on how to use the system."<sup>85</sup> The list is then maintained exclusively by these local officials. No training for these election officials, however, is required under New Hampshire's election laws.

The League was concerned for the preparedness of election officials for exactly this reason. "We also know it's not required and many people don't go. . . [H]aving an informed and active citizen body participating in government is important, and . . . misinformation or no information is a danger to our democracy."<sup>86</sup> There were incidents of election officials misguiding voters. Ms. Rollo informed the Committee that in one case an election official denied a member of the New Hampshire House of Representatives a ballot because he or she did not have a photo ID. Neither the official nor the member, however, was aware of the affidavit option and as a result the member did not vote.<sup>87</sup> The Disabilities Rights Center also reported that in 2013, multiple polling locations did not set up their accessible voting system because they thought it was not required for municipal elections.<sup>88</sup> These examples show the importance of having proper training for election officials, particularly in light of complex and changing election laws.

#### 5. Public Access

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<sup>85</sup> 2013 Transcript (statement by Scanlan) at 220.

<sup>86</sup> 2013 Transcript (statement by Tentarelli) at 183.

<sup>87</sup> 2014 Transcript (statement by Rollo) at 112.

<sup>88</sup> Disabilities Rights Center, Selected Findings from November 2013 Survey of Polling Places (Local Elections) (annexed to DRC letter).



Public awareness of election procedures is critical to effective civic participation, especially in New Hampshire where there are complex and changing voting laws. Mr. Scanlan emphasized that the Secretary of State's office had made a concerted effort to educate the public prior to the 2012 election. "[T]he Secretary of State's Office was very aggressive in the press . . . [we did] many interviews in print media, television, [and on the] internet."<sup>89</sup> However, he also noted that since that push, "there has been no effort really to educate or inform that . . . [voters will] also need [their ID] for local elections."<sup>90</sup>

Many speakers were concerned that New Hampshire was not doing enough to educate the public. Ms. Ashwell of the League emphasized that, "Education in New Hampshire is particularly important because the election laws in New Hampshire are very complicated. They're more complicated than the election laws in almost any other state."<sup>91</sup> "[T]he simple fact is that when election law changes, and the public is confused, democracy is damaged . . . [but] [t]he law that passed early in 2012 contained only minor directives for Secretary of State to conduct a public education campaign."<sup>92</sup> It does not include any funding for educating the public. Based on questions the League received and outreach efforts to the community, they felt that "confusion reigned."<sup>93</sup>

Ms. Tentarelli did not consider the media effort alone to be sufficient given the options available to states in conducting voter education. "I'm not sure that newspaper articles are the way to reach much of the voting public," she said, "[T]here are many other states that direct a lot of effort in the 30 days leading up to an election to voter education. Some states distribute voter guides, some states send out sample ballots. We don't do that in New Hampshire."<sup>94</sup>

The League and the Granite State Progress Education Fund, among other nonprofits, have helped educate voters in recent elections. The League "issued press releases, letters to the editor encouraging voters . . . [and] explaining the ID requirements. . . . [They] also published fliers in Spanish."<sup>95</sup> The League trained people to give presentations on registering and voting, and went

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<sup>89</sup> 2013 Transcript (statement by Scanlan) at 199.

<sup>90</sup> 2014 Transcript (statement by Scanlan) at 14.

<sup>91</sup> 2013 Transcript (statement by Ashwell) at 184.

<sup>92</sup> 2013 Transcript (statement by Tentarelli) at 176.

<sup>93</sup> *Id.* at 174.

<sup>94</sup> 2013 Transcript (statement by Tentarelli) at 177.

<sup>95</sup> *Id.* at 174.

around the state giving presentations on election procedures to groups as small as two and as large as 60 people. They also held a webinar with 52 towns to present a power point presentation with a template for these towns to create voter information webpages.<sup>96</sup> They feel, however, that these public outreach efforts should be the responsibility of the state. The Granite State Progress Education Fund created a website that educates voters about their rights and provides a short public service announcement video in English, Spanish, and French.<sup>97</sup>

There is currently no federal requirement for New Hampshire to publish any voter information in any language other than English. Under VRA Section 203, states and political subdivisions that have over 5 percent of voting age citizens from a single language minority group must provide language assistance for these groups.<sup>98</sup> This percentage is taken from the most recent census data and published in the federal register. As of October of 2011, none of New Hampshire's jurisdictions fell into this requirement.<sup>99</sup>

Ms. Gale discussed the growing need for language assistance in New Hampshire to accommodate an increasing population of color in certain areas. "Demographically over the past 25 to 30 years there have been a rapidly increasing number of Spanish-speaking individuals and famil[ies] moving into the greater Nashua area, relocating from more than 24 different countries throughout South, Central, and Latin America and the Caribbean. At this time, some would estimate that as many as 17 percent of Nashua families with school-aged children speak primarily Spanish at home."<sup>100</sup>

New Hampshire is experiencing similar diversification statewide. In 2000, only 1.7 percent of New Hampshire's general population was Hispanic or Latino, 1.3 percent Asian, and 0.7 percent Black.<sup>101</sup> By 2012, Hispanics comprised 3 percent of the population, followed by Asians at 2.4

<sup>96</sup> 2014 Transcript (statement by Tentarelli) at 126-27.

<sup>97</sup> See "You have a Right to Vote," *Granite State Progress Education Fund*, [www.NHvoterprotection.org](http://www.NHvoterprotection.org) (last accessed July 2, 2014).

<sup>98</sup> See Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a (1975).

<sup>99</sup> Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198, 63602 (Oct. 13, 2011), <https://www.gpo.gov/fdsys/pkg/FR-2011-10-13/pdf/2011-26293.pdf>.

<sup>100</sup> 2014 Transcript (statement by Gale) at 89-90.

<sup>101</sup> U.S. Census Bureau, *Census 2000 Summary File*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_00\\_SF1\\_DP1](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF1_DP1) (last visited July 2, 2014).

percent and Blacks at 1.4 percent.<sup>102</sup> Currently, the Secretary of State's office does not provide language assistance on its own accord. If such population trends continue, however, certain areas of New Hampshire will become subject to the VRA's federal language assistance requirement, possibly by the next census in 2020.

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<sup>102</sup> U.S. Census Bureau, *2008-2012 American Community Survey*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05) (last visited July 2, 2014).

## Observations and Conclusions

For the purposes of guaranteeing equal access to voting, New Hampshire does a tremendous amount right. The Committee is encouraged by New Hampshire's consistently high turnout and commitment towards making sure everyone's vote is counted on Election Day. Nonetheless, the Committee finds five areas in which New Hampshire voting procedures could be improved: voter identification, voter registration, voting absentee, training of election officials, and public awareness.

### 1. Voter ID Laws

The Committee notes the polarizing character of voter ID laws and is aware that the New Hampshire legislature is still, to some extent, experimenting with the limits of these laws to find the most effective and least burdensome way of preventing voter fraud. The Committee is also encouraged to hear that, in the aggregate, the voter ID requirements did not greatly affect voter turnout between the 2008 and 2012 presidential election. Nonetheless, the Committee has found no evidence that voter fraud is being perpetrated in New Hampshire and questions whether the law as it stands is an efficient use of resources. This concern will be even more pressing in upcoming elections starting in 2015, when photographic evidence will be required as part of the affidavit for voters without an ID. The Committee questions whether, in light of little evidence, it is worth the fiscal cost to New Hampshire to purchase cameras that run the risk of potentially intimidating or dissuading voters from coming to the polls.

### 2. Voter Registration

The Committee finds that certain registration procedures are inefficient and cumbersome, and could potentially impact the ability of voters from being able to vote on Election Day.

The Committee recommends updating New Hampshire's centralized voter registration database to facilitate "the purge" and to allow for a mobile voter registration system. Residents of New Hampshire who move close to Election Day should not be forced to reregister in order to vote, especially if moving within the same county. As mentioned above, New Hampshire is the only state that requires voters to register in person. Requiring residents to do so close to the time of an election while they are in the process of moving from one place to another is too burdensome.

There should be, at a minimum, a mail in option for residents and ideally, the ability for residents to update their registration online.

### 3. Voting Absentee

Obtaining an absentee ballot in New Hampshire can only be done in very particular circumstances. Loosening such requirements may improve voter turnout.

### 4. Training of Elected Officials

The Committee is concerned with New Hampshire's training requirements for election officials, particularly in light of its rapidly changing election laws. Although it is encouraged by the training available to election officials through government and non-government agencies, the lack of any mandatory training for these officials creates risk of misinforming the public about voting requirements and, at worst, makes voters believe they cannot vote.

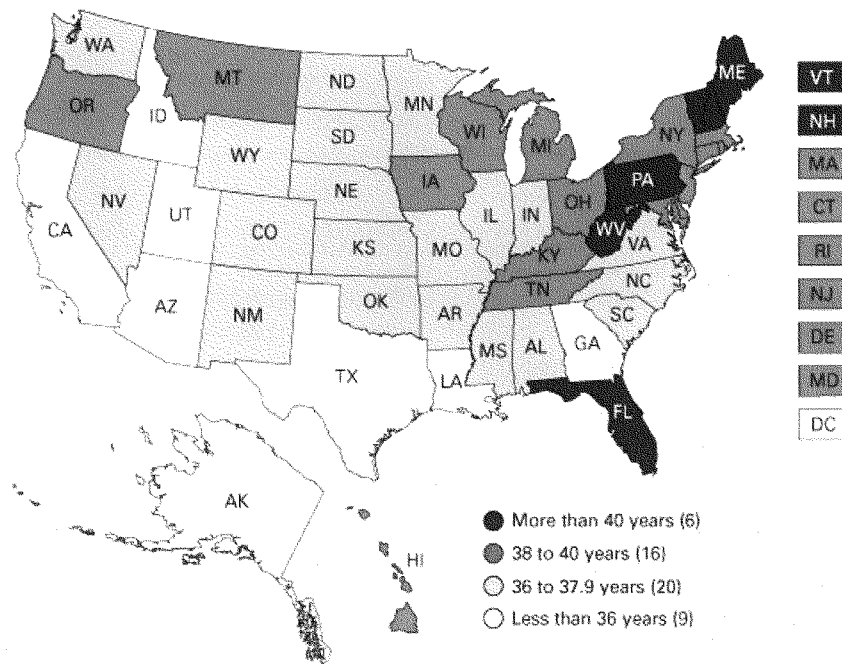
### 5. Public Education

The Committee is concerned with two issues pertaining to public education: first, whether the general public is being appropriately informed of the changes to New Hampshire election laws in a timely and clear manner and second, whether there is equal access for non-English speaking New Hampshire voters to these education materials.

The Committee finds that the Secretary of State's media outreach is insufficient to keep up with changing election laws, particularly close to election times.

The Committee recommends that the Secretary of State's office offer all election procedure explanatory documents and training materials in both Spanish and English to account for the state's shifting demographics, and be open to publishing these same materials in other languages as needed.

## Appendix A:

**Median Age by State: 2010**

According to the 2010 census, New Hampshire has the fourth oldest median age in the country of 41.1 years. It follows Maine, 42.7 years; Vermont, 41.5 years; and West Virginia, 41.3 years. The median age for the United States is 37.2 years.<sup>103</sup>

<sup>103</sup> U.S. Census Bureau, *2010 Census Summary File 1*, available at <https://www.census.gov/2010census/news/press-kits/summary-file-1.html> (last visited July 2, 2014).

**Advisory Memorandum**

**To:** The U.S. Commission on Civil Rights  
**From:** The Indiana Advisory Committee to the U.S. Commission on Civil Rights  
**Date:** May, 2018  
**Subject:** Voting Rights in Indiana

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The following advisory memorandum results from the testimony provided during the March 02, 2018 meeting of the Indiana Advisory Committee, as well as a web hearing, two community forums, and related testimony submitted to the Committee in writing during the relevant period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on concerns of disparate impact regarding voting rights. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on May 21, 2018.

**Background**

The right to vote is one of the most fundamental components of democracy—so important, in fact, that the United States Constitution includes four amendments protecting it.<sup>1</sup> Additionally, the Constitution of the State of Indiana<sup>2</sup> includes 5 sections protecting and defining the right to vote in Indiana:

Article 2. Section 1. All elections shall be free and equal.

Article 2. Section 2.

(a) A citizen of the United States who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election.

(b) A citizen may not be disenfranchised under subsection (a), if the citizen is entitled to vote in a precinct under subsection (c) or federal law.

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<sup>1</sup> U.S. Const. amend. XV, XIX, XXIV, XXVI. The U.S. Constitution specifies that the right to vote shall not be abridged or denied on account of race, color, or previous condition of servitude (Amend XV); sex (Amend XIX); by any reason of failure to pay poll tax or other tax (Amend XXIV); or on account of age for all citizens age 18 or older (Amend XXVI). More information available at Legal Information Institute, Cornell University School of Law: U.S. Constitution. <https://www.law.cornell.edu/constitution/overview>.

<sup>2</sup> Ind. Const. art. II, § 1, 2.

(c) The General Assembly may provide that a citizen who ceases to be a resident of a precinct before an election may vote in a precinct where the citizen previously resided if, on the date of the election, the citizen's name appears on the registration rolls for the precinct.

Article 2. Section 4. No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

Article 2. Section 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

Article 2. Section 14. (c) The General Assembly shall provide for the registration of all persons entitled to vote.

In 1965, the United States Congress passed the Voting Rights Act (VRA).<sup>3</sup> Among its key provisions, the VRA prohibits public officials from developing political processes “leading to nomination or election in the State or political subdivision,” which are not “equally open to participation by members of a [protected] class of citizens...”<sup>4</sup> It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” – this is, the approval of the United States Attorney General, or a three-judge panel of the District Court of the District of Columbia—prior to implementing any changes in their local legislation.<sup>5</sup> With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens”.<sup>6</sup> In 1982, the Act was again extended, and amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”<sup>7</sup> In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

In 1993, Congress enacted the National Voter Registration Act (NVRA),<sup>8</sup> which was designed to further protect voting right by making it easier for all Americans to register to vote and to maintain their registration.<sup>9</sup> The Act requires states to allow citizens to register to vote at the

<sup>3</sup> Voting Rights Act, Pub. L. 89-110, 79 Stat. 437

<sup>4</sup> 52 U.S.C. § 10301(b) (previously codified as 42 U.S.C. § 1973 to 1973aa-6)

<sup>5</sup> Voting Rights Act, Pub. L. 89-110, 79 Stat. 437. Note: Indiana was not named as one of these “preclearance” jurisdictions.

<sup>6</sup> 52 U.S.C. § 10503 (previously codified as 42 USC 1973aa-1a); *See also*: The U.S. Dep’t of Justice, “The History of Federal Voting Rights Laws,” June 16, 2017, <https://www.justice.gov/crt/history-federal-voting-rights-laws>. (last accessed July 19, 2018)

<sup>7</sup> *Id.*

<sup>8</sup> National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77

<sup>9</sup> U.S. Department of Justice, Civil Rights Division, “About the National Voter Registration Act,” <https://www.justice.gov/crt/about-national-voter-registration-act> (last accessed July 19, 2018) *Hereafter* cited as: *DOJ: About the National Voter Registration Act*.



same time they apply for their driver's license, or seek to renew their license; it also requires the state to then forward the voter's completed registration application to the appropriate election official.<sup>10</sup> In addition, the NVRA requires voter registration support for individuals with disabilities and those seeking public assistance; it requires the option for voters to register by mail; sets forth requirements for how states maintain their voter registration applications; and under certain circumstances, protects citizens' right to vote regardless of a change in address.<sup>11</sup>

In 2002, Congress passed the Help American Vote Act (HAVA)<sup>12</sup> following the 2000 Presidential Election. The law created mandatory minimum standards in key areas of election administration such as allowing for provisional voting, upgrading voting equipment, and establishing statewide voter registration databases.<sup>13</sup> It also provides funding to meet these new standards.<sup>14</sup> The Election Assistance Commission (EAC) was also established as a result of the new law.<sup>15</sup> EAC is charged with assisting states regarding HAVA compliance, creating voter system guidelines, and maintaining the National Voter Registration form among other responsibilities.<sup>16</sup>

Despite these protections encoded at the state and federal levels, civil rights advocates have alleged a number of voting rights problems in Indiana: mandatory, strict photographic identification; unequal access to early voting; cancellation or deactivation of voter registration; and violations of voter privacy.<sup>17</sup> In April 2008, the U.S. Supreme Court ruled<sup>18</sup> to uphold an Indiana law requiring voters to provide photographic identification at the polls. Since this time, the state of Indiana has faced several additional lawsuits regarding its voting laws:

- On May 02, 2017, private counsel, William Groth, suit against the Marion County Election Board on behalf of Common Cause Indiana and the Greater Indianapolis Branch of the NAACP alleging that voters in the county, which has the largest population of African Americans in Indiana, has had unequal access to early voting citing a violation of

<sup>10</sup> National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77, §5

<sup>11</sup> National Voter Registration Act, Pub. L. 103-31, 107 Stat. 77. *See also: DOJ: About the National Voter Registration Act.*

<sup>12</sup> Help America Vote Act, Pub. L. 107-252, 116 Stat. 1666.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at §201

<sup>16</sup> *Id.* *See also:* U.S. Assistance Commission, "Help America Vote Act," <https://www.eac.gov/about/help-america-vote-act/> (Last accessed May 21, 2018).

<sup>17</sup> Described throughout the testimony and findings of this memorandum.

<sup>18</sup> *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). *See also:* Robert Barnes, "High Court Upholds Indiana Law on Voter ID," *Wash. Post* (April 29, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042800968.html>. (last accessed June 21, 2018)

the First and Fourteenth Amendments to the Constitution and Section 2 of the Voting Rights Act of 1965.<sup>19</sup>

- On April 25, 2018, a federal judge ordered the Marion County Election Board to “establish at least two early satellite voting precincts in time for the November General Election.”<sup>20</sup>
- On August 11, 2017, the Indiana State Conference of the NAACP and the League of Women Voters of Indiana filed a lawsuit against the Indiana Election Division and the Indiana Secretary of State to “prevent unlawful removal of voters from the registration rolls”.<sup>21</sup> The lawsuit is still ongoing.
- On July 11, 2017, the Brennan Center and co-counsel filed a lawsuit on behalf of the League of Women Voters of Indiana, the Indiana NAACP, and Joselyn Whitticker to prevent Connie Lawson, the Indiana Secretary of State from sharing voter registration information to the Presidential Advisory Commission on Election Integrity.<sup>22</sup> The Presidential Advisory Commission on Election Integrity was terminated on January 3, 2018 by President Donald Trump thus ending the lawsuit.<sup>23</sup>

In this context, the Indiana Advisory Committee submits this report to the Commission detailing the present state of voting rights in Indiana, as the Commission revisits this topic of national importance.

### **Overview of Testimony**

While cognizant of the ongoing voting rights issues raised by civil rights advocates, the Committee approached this project from a neutral posture. During the public hearings and community forums, the Committee heard from academics, legal professionals, government officials, party representatives, community advocacy organizations, and members of the

<sup>19</sup> *Common Cause v. Marion County Election Board*, No. 1:17-cv-01388-SEB-TAB, 2018 WL 1940300, at 1) (S.D. Ind. Apr. 25, 2018).

<sup>20</sup> Dave Stafford, “Judge Orders Early Satellite Voting Precincts for Marion County,” *Ind. Lawyer*, <https://www.theindianlawyer.com/articles/46807-judge-orders-early-satellite-voting-precincts-for-marion-county> (last accessed June 22, 2018).

<sup>21</sup> *NAACP. NAACP Files Lawsuit against Indiana for Unlawful Voter Purges*, Aug 24, 2017 <http://www.naacp.org/latest/naacp-files-lawsuit-indiana-unlawful-voter-purges/> (last accessed June 21, 2018).

<sup>22</sup> Brennan Center for Justice, “League of Women Voters of Indiana, Indiana NAACP, et. al. v. Connie Lawson, et. al.,” May 2, 2018, <http://www.brennancenter.org/legal-work/league-women-voters-indiana-indiana-naacp-et-al-v-connie-lawson-et-al> (last accessed June 21, 2018).

<sup>23</sup> Michael Tackett and Michael Wines, “Trump disbands Commission on Voter Fraud,” *N.Y. Times*, January 3, 2018, <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html> (last accessed June 21, 2018)

community on the status of voting rights in the state of Indiana. In addition, the Committee received a number of written statements offering supplemental information on the topic.

### **Findings**

The following findings result directly from the testimony received, and reflect the views of the cited panelists. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

#### **Voter Administration**

1. Indiana's strict voter ID requirements may disenfranchise otherwise eligible voters who do not possess the proper photo ID, requiring prohibitive amounts of time and money to obtain the required identification.<sup>24</sup> Such disenfranchisement may have a disproportionate impact on the basis of race, color, and other federally protected classes.
  - a. Indiana's voter ID law may disproportionately impact people of color, particularly African Americans and Latinos.<sup>25</sup> A 2006 Brennan Center study found that 11 percent of American citizens did not have government issued ID's.<sup>26</sup> The Government Accountability Office found that imposing a strict photo ID law decreased turnout overall by two to three percent and that the negative effect was slightly larger among African Americans than Whites.<sup>27</sup>

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<sup>24</sup> Joe Micon, Executive Director, Lafayette Urban Ministry Indiana, *Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, March 2, 2018, pp. 1-3. (hereinafter cited as Micon Statement). Note: all written statements are included in Appendix B of this memorandum.

<sup>25</sup> Bennion Testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Webcast*, Feb. 12, 2018, transcript, p. 7 lines 7-25, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155655\\_transcript\\_\(2018-03-29-02-27-30\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155655_transcript_(2018-03-29-02-27-30).pdf) (hereinafter cited as *Meeting Transcript I*) Patricia Avery, testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Evansville, IN*, Feb. 17, 2018, transcript, p. 4 lines 24 – p. 5 line 20, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155670\\_transcript\\_\(2018-04-04-04-46-42\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155670_transcript_(2018-04-04-04-46-42).pdf) (hereinafter cited as *Meeting Transcript II*) Steven Monroy, testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Indianapolis, IN*, Mar. 2, 2018, transcript, p. 97 line 16 – p. 98 line 18, [https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155674\\_transcript\\_\(2018-04-05-04-51-15\).pdf](https://facadatabase.gov/download.aspx?fn=Meetings/2018-266-155674_transcript_(2018-04-05-04-51-15).pdf) (hereinafter cited as *Meeting Transcript III*)

Fraga Testimony, *Meeting Transcript III*, p. 159 lines 8-13

<sup>26</sup> Mensz Testimony, *Meeting Transcript III*, p. 30 lines 13-15 see also Brennan Center for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf). (last accessed June 22, 2018).

<sup>27</sup> Groth Testimony, *Meeting Transcript III*, p. 11 lines 21-24 Bolling-Williams Testimony, *Meeting Transcript III*, pp. 33 lines 10-12, 34 lines 3-7 Micon Statement at 2.

- b. While voters without proper ID may cast a provisional ballot, voters may not be clear about what additional steps they need to take in order for their vote to be counted.<sup>28</sup>
  - c. Indiana's voter ID laws have disenfranchised students because many of them cannot use their student ID to vote. Some public universities have changed their student ID to include an expiration date, thus meeting the criteria for voting; however because qualified IDs must be government-issued, students at private schools have no remedy.<sup>29</sup>
  - d. Absentee voters who vote-by-mail are not required to produce a valid, government-issued photo ID.<sup>30</sup> This was found to be an unexplained inconsistency in the state's voter ID requirements.<sup>31</sup>
2. The use of the inter-state Crosscheck Program to identify voters who may be registered in more than one state may disenfranchise otherwise eligible voters.<sup>32</sup>
- a. One study found that it is not statistically uncommon for two people have the same name and date of birth—a situation which would give rise to a “false hit” in the Crosscheck database.<sup>33</sup>
  - b. Some studies suggest that certain racial and ethnic minorities may be disproportionately susceptible to such a “false hit” in the Crosscheck Program, given such populations are more likely to have the same first and last name.<sup>34</sup>
  - c. A newly amended state law now allows immediate removal of voters; thus, voters are no longer required to receive notification before they are labeled “inactive” if they appear in the Crosscheck Program as registered in more than one state.<sup>35</sup>

<sup>28</sup> Avery Testimony, *Meeting Transcript II*, p. 4 line 24 – p. 5 line 20.

<sup>29</sup> Hollis Testimony, *Meeting Transcript III*, pp. 227 lines 24-25, 228 lines 1-7 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 243 lines 18-24.

<sup>30</sup> Indiana Sec. of State, Election Division. Voter Information Portal, *Absentee voting*. Available at: <https://www.in.gov/sos/elections/2402.htm> (last accessed June 26, 2018). See also: Gerard Testimony, *Meeting Transcript II*, p. 27 line 1.

<sup>31</sup> Indiana Sec. of State, Election Division, “Photo ID Law,” <https://www.in.gov/sos/elections/2401.htm> (last accessed June 26, 2018)

<sup>32</sup> Mensz Testimony, *Meeting Transcript III*, p. 26 line 1 – p. 29 line 21. Note: The Secretary of State's Office submitted comment to the Committee on April 03, 2018 noting it believes there has been a “great deal of misinformation and exaggeration concerning routine, NVRA mandated voter list maintenance.”

<sup>33</sup> Mensz Testimony, *Meeting Transcript III*, p. 26 line 15 – p. 27 line 3.

<sup>34</sup> *Ibid.* p. 27 lines 4-13 Amy Gandhi, Director of Voting Rights and Civic Engagement, Chicago Lawyers' Committee for Civil Rights and Matthew J. Owens, Miner Barnhill & Galland, P.C., Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights, April 2018, at 6-7. (*hereinafter cited as Chicago Lawyers' Committee Statement*).

<sup>35</sup> Mensz Testimony, *Meeting Transcript III*, p. 27 line 22 – p. 28 line 19. Chicago Lawyers' Committee Statement at 6-7. Hoyer Testimony, *Meeting Transcript III*, p. 75 lines 11-14. S.B. 442, 120th Leg., 1st Sess. (Ind. 2017).

## 3. Voter registration

- a. In 2010, Indiana expanded access to voter registration by becoming one of the first few states to implement online voter registration.<sup>36</sup> There are now 37 states total that have implemented online voter registration.<sup>37</sup>
  - b. Indiana is one of thirty-three states that does not have same day voter registration.<sup>38</sup> Currently in Indiana, voter registration closes 29-days before each election with the exception of overseas voters and military voters.<sup>39</sup>
4. Indiana has the shortest voting hours allowed by federal law, from 6 A.M. to 6 P.M.; only two other states (Kentucky and Hawaii) close their polls that early.<sup>40</sup> Short voting hours are especially burdensome for certain demographics potentially resulting in smaller voter turnout.<sup>41</sup>
- a. Short voting hours may disproportionately impact citizens with less flexible work schedules or citizens needing to pick up children from school or childcare.<sup>42</sup>
  - b. Indiana has no “Time off Work” law requiring employers to allow employees to leave work in order to vote or to pay employees who must take time off work to

<sup>36</sup> H.B. 1346, 116th Leg., 1st Sess. (Ind. 2009). National Council of State Legislatures, *Online Voter Registration. Overview*. Available at: <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx#table> (last accessed June 26, 2018).

<sup>37</sup> *Ibid.*

<sup>38</sup> National Council of State Legislatures, “Same Day Voter Registration,” <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last accessed June 26, 2018)

<sup>39</sup> Groth Testimony, *Meeting Transcript III*, p. 13 lines 20- p. 14 line 2

<sup>40</sup> Ballotpedia, *State Poll Opening and Closing Times (2018)* Available at: [https://ballotpedia.org/State\\_Poll\\_Opening\\_and\\_Closing\\_Times\\_\(2018\)](https://ballotpedia.org/State_Poll_Opening_and_Closing_Times_(2018)) (last accessed June 26, 2018) Groth Testimony, *Meeting Transcript III*, p. 14 line 19 - p. 15 line 15 Vaughn Testimony, *Meeting Transcript III*, p. 84 line 23 – p. 85 line 7.

<sup>41</sup> Groth Testimony, *Meeting Transcript III*, p. 15 lines 6-7. Hoyer Testimony, *Meeting Transcript III*, p. 75 lines 6-7, p. 85 lines 1-2. Darian Collins Testimony, *Indiana Advisory Committee to the U.S. Commission on Civil Rights Meeting, Gary, IN, Mar. 31, 2018*, transcript, p. 23 lines 2-8, <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155693&cid=247> (hereinafter cited as *Meeting Transcript IV*) *Meeting Transcript IV*.

<sup>42</sup> Groth Testimony, *Meeting Transcript III*, p. 15 lines 1-7 Monroy Testimony, *Meeting Transcript III*, p. 98 lines 20-23 Celestiano-Horseman Testimony, *Meeting Transcript III*, p. 238 lines 15-24 Maguire Testimony, *Meeting Transcript III*, p. 247 lines 14-19. *Note:* The Secretary of State’s Office submitted comment on April 3, 2018 noting that it is unaware of conclusive evidences that polling place hours coupled with opportunities for early voting and absentee voting by mail serves as an impediment to voting or have a discriminatory impact.

vote.<sup>43</sup> The lack of this law may make it especially difficult for low-income voters.<sup>44</sup>

5. Access to early voting in Indiana, especially in-person early voting, raised concern for many panelists. Early voting has long been a critical tool for fair access to the polls, particularly for communities of color and low-income communities.<sup>45</sup>
  - a. In Marion County specifically, before late-April 2018, there was only one early voting location for over 700,000 registered voters leading to exceptionally long wait times.<sup>46</sup> This made it challenging for voters to cast an early ballot. However, on April 26, 2018 a federal judge ruled that Marion County needed to open at least two early voting sites before the November 2018 election.<sup>47</sup>
  - b. While Indiana state law requires that each three person election board unanimously approves satellite voting in each county, Marion County, the county with the largest African American population in Indiana, had one member who continuously voted against opening an additional early voting location even though the surrounding counties had a much lower ratio of early voting polling places to registered voter.<sup>48</sup>
  - c. Not all voters are eligible to vote-by-mail in Indiana. Existing criteria include having a disability, being above the age of 65, being confined due to illness or injury, or having limited access for transportation to the polls, among others.<sup>49</sup>

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<sup>43</sup> Groth Testimony, *Meeting Transcript III*, p. 18 lines 3-5.

<sup>44</sup> The Secretary of State's Office submitted comment on April 3, 2018 noting that it does not believe that the unavailability of "time off for voting" either serves as an impediment to voting or has a discriminatory impact.

<sup>45</sup> Chicago Lawyers' Committee Written Statement at 7-8.

<sup>46</sup> Hollis Testimony, *Meeting Transcript III*, p. 230 lines 17-25 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 239 lines 4-9 Harper Testimony, *Meeting Transcript III*, p. 14 lines 4-9.

<sup>47</sup> Matt Reynolds, *Federal Judge Orders New Early Voting Sites in Indianapolis*, Courthouse News Serv. (Apr. 26, 2018), <https://www.courthousenews.com/federal-judge-orders-new-early-voting-sites-in-indianapolis/>

<sup>48</sup> Groth Testimony, *Meeting Transcript III*, p. 16 lines 16-25 Vaughn Testimony, *Meeting Transcript III*, p. 83 lines 13-19, 21-23 Hollis Testimony, *Meeting Transcript III*, pp. 229 lines 21-25, 230 lines 10-14 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 239 lines 10-14. The Indiana Secretary of State's Office submitted comment on April 03, 2018 noting it believes that county clerks and election boards are best suited to determine and agree on places for voting and that neither past nor future opportunities for early voting in Marion County serve as an impediment to voting or have a discriminatory impact.

<sup>49</sup> Indiana Secretary of State. Indiana Election Division, "Absentee Voting, 2018 Election Calendar," <https://www.in.gov/sos/elections/2402.htm>; Hollis Testimony, *Meeting Transcript III*, p. 229 lines 3-8 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 240 lines 8-23 Robinson-Ungar Testimony, *Meeting Transcript II*, p. 11 lines 7-8. The Secretary of State's Office submitted comment on April 03, 2018 noting it does not believe "no-excuse" absentee voting by mail either serves as an impediment to voting or has discriminatory impact.

6. Voting Centers received positive feedback from both panelists and voters who testified as making it more convenient to vote.
  - a. Voting centers allow registered voters to vote at any of the voting centers in their county.<sup>50</sup> This option provides flexibility for voters to access polls closest to either their homes or workplaces.
  - b. Election expenses may be reduced due to the decreased need for staff, saving the county money.<sup>51</sup>
  - c. The election board must unanimously approve any county effort to adopt the voting center model.<sup>52</sup>
  - d. Voting centers may be particularly helpful for voters who are disabled as it allows them to choose the most easily accessible location.<sup>53</sup>
7. Despite the success of voting centers, in August of 2017, SB 200 required Lake County, and only Lake County, to consolidate polling centers that had 600 or fewer active voters assigned to the location.<sup>54</sup>
  - a. Lake County has the second largest African American population and the largest Latino population in the state of Indiana in terms of percentage, raising serious concerns about disparate impact.<sup>55</sup> The Indiana state conference of the NAACP has filed a lawsuit that is still pending.<sup>56</sup>
  - b. The consolidation of polling places in Lake County not only created confusion for voters who were no longer sure where to vote, but required voters who otherwise were able to walk to their polling place, to find some other form of transportation.<sup>57</sup> The transient community as well as citizens dependent on public transportation were especially burdened.<sup>58</sup>
8. Accurate and consistent training of poll workers is critical to ensuring accessibility and voting procedures are uniform throughout the state. Poll workers who are trained

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<sup>50</sup> Clifton Testimony, *Meeting Transcript III*, p. 225 lines 2-10

<sup>51</sup> Gordon Testimony, *Meeting Transcript I*, p. 7.

<sup>52</sup> Clifton Testimony, *Meeting Transcript III*, p. 225 lines 13-14.

<sup>53</sup> Emlay Testimony, *Meeting Transcript II*, p. 18 lines 9-11.

<sup>54</sup> Bolling-Williams Testimony, *Meeting Transcript III*, p. 38 line 11 – p. 39 line 22

<sup>55</sup> Fraga Testimony, *Meeting Transcript III*, p. 155 lines 8-10 Freeman-Wilson Testimony, *Meeting Transcript IV*, p. 4 line 5-15 and p. 5 lines 20-24 Harper Testimony, *Meeting Transcript III*, p. 14 lines 17-24 Bolling-Williams Testimony, *Meeting Transcript IV*, p. 25 lines 23-26 Chicago Lawyers' Committee Statement at 8-9.

<sup>56</sup> Bolling-Williams Testimony, *Meeting Transcript III*, p. 38 lines 12-23.

<sup>57</sup> Freeman-Wilson Testimony, *Meeting Transcript IV*, p. 3 lines 28-39.

<sup>58</sup> Newsome Testimony, *Meeting Transcript IV*, p. 7 lines 21-26

incorrectly may unintentionally disenfranchise voters by denying them access to the polls or not counting their ballot. Examples include:

- a. Accessible voting machines being in an open space depriving the voter of privacy.<sup>59</sup>
  - b. Accessible voting machine not being plugged in or charged.<sup>60</sup>
  - c. Poll workers not being trained on how to use the accessible voting machine.<sup>61</sup>
  - d. During the 2016 presidential election, many poll workers were instructed to prioritize counting or checking the absentee lists first before accommodating citizens who turned out to vote in person. At some polling places, this caused long wait times.<sup>62</sup>
9. Redistricting in Indiana may have a negative impact on the integrity of elections by limiting the competitiveness of Indiana elections.<sup>63</sup>
- a. Research indicates that the current redistricting plan in Indiana may create a bias that disproportionately benefits Republican candidates.<sup>64</sup> When districts are drawn to benefit a particular party, it undermines the democratic process, so much so, that some incumbents run unopposed.<sup>65</sup>
  - b. While a local Elections Committee exists to oversee the redistricting process and ensure its fairness, the Committee has reportedly refused to review challenges to some of the proposed redistricting plans, undermining voters' faith in the electoral process.<sup>66</sup>

<sup>59</sup> Adams Testimony, *Meeting Transcript III*, p. 69 lines 17-23

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> Vaughn Testimony, *Meeting Transcript III*, p. 102 lines 2-3 Chicago Lawyers' Committee Statement at 3-4.

<sup>63</sup> Vaughn Testimony, *Meeting Transcript III*, p. 87 lines 6-11 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 13-18 Maguire Testimony, *Meeting Transcript III*, p. 248 lines 15-25 Bolling-Williams Testimony, *Meeting Transcript IV*, p. 25 lines 13-15 Locker Testimony, *Meeting Transcript II*, p. 8 lines 18-24 Robinson-Ungar Testimony, *Meeting Transcript II*, p. 10 line 23 – p. 11 line 2 Professor Justin Levitt, Associate Dean for Research, Loyola Law School, Written Statement for the Indiana Advisory Committee to the U.S. Commission on Civil Rights, Apr. 30, 2018 (*hereinafter cited as Levitt Statement*) at 4.

<sup>64</sup> Vaughn Testimony, *Meeting Transcript III*, p. 87 lines 6-14 Groth Testimony, *Meeting Transcript III*, p. 20 lines 6-11 Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 3-6.

<sup>65</sup> Celestino-Horseman Testimony, *Meeting Transcript III*, p. 245 lines 2-6 Maguire Testimony, *Meeting Transcript III*, p. 249 lines 9-13 Levitt Statement I Justin Levitt, testimony, *Hearing Before the Census Data Advisory Committee*, Sept. 29, 2009, p. 2-3 (*hereinafter cited as Census Hearing*) Levitt Statement at 4.

<sup>66</sup> Hoyer Testimony, *Meeting Transcript III*, pp. 79 lines 15-20, 119 line 17 – 120 line 5.



- c. Panelists emphasized that as the next census approaches, it is important for the State of Indiana to get an accurate count of the size and location of minorities and minority communities to ensure fair representation.<sup>67</sup>
  - d. Reforming the redistricting process has never occurred through the legislative process and has only been successful through the ballot initiative.<sup>68</sup>
10. Panelists emphasized the importance of being able to verify the accuracy of election outcomes and to audit election records.
- a. In February 2018, the Center for American Progress released a report<sup>69</sup> on election security in all 50 states; Indiana received an “F.” The justifications given for the failing letter grade included that “the voting machines do not provide a paper record and fail to mandate robust post-election audits that test accuracy of election outcomes.”<sup>70</sup>
  - b. The Indiana Secretary of State’s Office is currently piloting a multifactor authentication mechanism as advised by the FBI and Department of Homeland Security to prevent vulnerabilities in the future.<sup>71</sup> The state also maintains a decentralized statewide system for tabulating ballots and machines are not connected to each other or the Internet.<sup>72</sup>
11. The Indiana State Police investigation of the Indiana Voter Registration Project (IVRP), an organization that initiated a registration drive in Indiana in 2016 targeting underrepresented African American communities, may have delayed or hampered legitimate voter registration efforts and incited fear among voters.<sup>73</sup> In response to this finding, the Secretary of State’s Office reported that this investigation resulted in a finding of suspicious voter registration applications and related arrests.<sup>74</sup>
- a. The Committee heard testimony from an individual who tried to register to vote at the Genesis Center in Gary, IN shortly before registration forms were seized in

<sup>67</sup> Monroy Testimony, *Meeting Transcript III*, p. 97 lines 4-6.

<sup>68</sup> Vaughn Testimony, *Meeting Transcript III*, p. 122 lines 5-10.

<sup>69</sup> Danielle Root, Liz Kennedy, Michael Sozan, Jerry Parshall, “Election Security in all 50 States,” *Center for American Progress*, February 12, 2018, <https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/> (last accessed June 26, 2018)

<sup>70</sup> Locker Testimony, *Meeting Transcript II*, p. 9 line 26 – p. 10 line 3

<sup>71</sup> Clifton Testimony, *Meeting Transcript III*, p. 221 lines 9-18.

<sup>72</sup> *Ibid.* p. 220 lines 7-10.

<sup>73</sup> Chicago Lawyers’ Committee Statement at 4-6; Pema Levy, “Pence’s Perch atop Trump’s Voter Fraud Commission at Suppression Efforts,” *Mother Jones*, May 12, 2017, <https://www.motherjones.com/politics/2017/05/how-will-trump-turn-voter-fraud-accusations-voter-suppression/>. (last accessed June 27, 2018).

<sup>74</sup> Comment submitted by the IN Secretary of State’s Office on April 3, 2018.

Marion and Lake County.<sup>75</sup> By the time she checked to see if her registration was processed and learned it was not, it was too late to register and she was unable to vote in the 2016 presidential election.<sup>76</sup>

## 12. Access to Information

- a. Education level is an important characteristic in terms of predicting voter turnout.<sup>77</sup> College youth are much more likely to be registered to vote than non-college youth, thus, there is a need to reach people in high school.<sup>78</sup>
- b. While Indiana does have a civic education requirement for high school graduation, civics is not subject to a statewide assessment, nor is there a standard curriculum.<sup>79</sup> Thus, while many schools take initiative to include civic education on their own, there is a lack of uniformity.<sup>80</sup> Children who do not have access to high quality civic education programs that have been tested and proven effective may not have the same likelihood of political participation.<sup>81</sup>
- c. Research suggests that minority groups including first- or second generation immigrants, Latinos, African American students, and students of low socioeconomic status may benefit most from high quality civics education.<sup>82</sup>
- d. Research suggests that some communities, particularly immigrant communities, are most likely to participate in the electoral process when they feel both a potential political threat and a sense of possible policy opportunity that can improve the status quo of their community.<sup>83</sup>

13. Classroom based registration drives are an effective way to get young people registered to vote especially because the registration happens in-person.<sup>84</sup> Voter mobilization literature finds that the more personalized the approach, the more effective it is to get people to the polls; this applies to seniors in high school, college students, or other demographics.<sup>85</sup>

<sup>75</sup> Spange Testimony, *Meeting Transcript IV*, p. 27 lines 1-26.

<sup>76</sup> *Ibid.*

<sup>77</sup> Bennion Testimony, *Meeting Transcript I*, p. 21 lines 7-8.

<sup>78</sup> *Ibid.* p. 14 lines 13-23.

<sup>79</sup> Indiana Department of Education, "Civics Education," <https://www.doe.in.gov/standards/civics-education>. (last accessed June 25, 2018); Indiana Kids' Election, "Curriculum Overview," <http://inkidselection.com/about-the-indiana-kids-election/curriculum-overview/> (last accessed June 25, 2018).

<sup>80</sup> Bennion Testimony, *Meeting Transcript I*, p. 15 lines 5-21 Campbell Testimony, *Meeting Transcript III*, p. 190 lines 10-14.

<sup>81</sup> Bennion Testimony, *Meeting Transcript I*, p. 15 lines 5-21.

<sup>82</sup> Campbell Testimony, *Meeting Transcript III*, pp. 187 lines 1-3, 190 lines 1, 18-20.

<sup>83</sup> Cruz-Nichols Testimony, *Meeting Transcript III*, pp. 172 lines 15-18, 173 lines 4-17.

<sup>84</sup> Bennion Testimony, *Meeting Transcript I*, p. 8-9.

<sup>85</sup> Bennion Testimony, *Meeting Transcript I*, p. 10 Hollis Testimony, *Meeting Transcript III*, pp. 235 lines 20-25, 236 lines 1-4

**Recommendations:**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>86</sup> In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Indiana Advisory Committee submits the following recommendations to the Commission. The Committee recommends that the U.S. Commission on Civil Rights consider these findings and recommendations in their 2018 Statutory Enforcement Report to Congress and the President.

1. As a part of their 2018 statutory enforcement report on voting rights, the U.S. Commission on Civil Rights should:
  - a. Conduct an analysis of the accuracy of the interstate “Crosscheck” Program currently used by the Indiana Secretary of State to identify voters who may be registered in more than one state. The analysis should also seek to understand whether minority voters are disproportionately falsely identified as being double-registered in the system.
  - b. Review all findings and recommendations contained within this report.
  - c. Further investigate areas of concern within their jurisdiction and take appropriate action to address them.
2. The U.S. Commission on Civil Rights should issue the following formal recommendation to Indiana’s Secretary of State:
  - a. Suspend use of the Crosscheck Program until a more accurate method for identifying voters registered in multiple locations is identified.
  - b. Collaborate with the Indiana Department of Corrections to develop a process by which eligible inmates can register to vote and cast a ballot while incarcerated.
  - c. Encourage County Election Boards throughout the state to increase minority language access at the polls where significant numbers of bilingual or non-English speaking voters reside, even if the population does not yet meet the minimum threshold to require language access under Section 203 of the Voting Rights Act.
3. The U.S. Commission on Civil Rights should issue a formal recommendation to the Indiana Department of Corrections that the Department collaborate with the Indiana Secretary of State to develop a process by which eligible inmates can register to vote and cast a ballot while incarcerated.
4. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Indiana Department of Education:

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<sup>86</sup> 45 C.F.R. § 703.2.(a)

- a. The department should identify and implement civic education standards regarding voting and the electoral process uniformly in public education systems throughout the state.
5. The U.S. Commission on Civil Rights should issue the following formal recommendation to the Indiana Legislature:
  - a. The legislature should establish a bi-partisan committee to draw redistricting lines to ensure a more fair and democratic voting process.
  - b. In the redistricting process, the legislature should count incarcerated individuals at their last known address, rather than in the jurisdiction where they are temporarily, involuntarily confined.
  - c. The legislature should expand voter identification options to include non-government issued IDs. Examples of acceptable identification may include student ID, work ID, or ID from a different state.
  - d. The legislature should expand absentee voting to allow all registered voters to vote by mail if they choose.
  - e. The legislature should extend voting hours until 7 PM to allow more flexibility for eligible voters with more stringent schedules.
6. The U.S. Commission on Civil Rights should issue a formal recommendation to the U.S. Census Bureau to remove all questions regarding citizenship status on the decennial Census until rigorous testing is conducted to determine the impact of such a change.
7. The U.S. Commission on Civil Rights should issue a letter to the Indiana Governor, the Indiana Legislature, and the Indiana Secretary of State's Office urging them to:
  - a. Review the findings and recommendations contained within this report.
  - b. Further investigate areas of concern within their jurisdiction and take appropriate action to address them.

**APPENDIX**

**A. Hearing Transcripts**

1. Transcript I: February 12, 2018 Public Hearing (web-based)
2. Transcript II: February 17, 2018 Evansville, IN Community Forum
3. Transcript III: March 2, 2018 Public Hearing, Indianapolis, IN
4. Transcript IV: March 31, 2018 Gary, IN Community Forum

**B. Written Testimony**

1. Joe Micon, Executive Director, Lafayette Urban Ministry
2. Ami Gandhi and Matthew J. Owens, Chicago Lawyer's Committee for  
Civil Rights
3. Jerold Bonnett, General Counsel, Office of the Indiana Secretary of State
4. Kyle Hupfer, Chairman, Indian Republican Party
5. Justin Levitt, Professor of Law, Loyola Law School Los Angeles
6. John Coco, Social Worker, IN Citizen

**Indiana Advisory Committee to the  
United States Commission on Civil Rights**



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**U. S. Commission on Civil Rights Contact**

USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 230 S. Dearborn, Suite 2120 Chicago IL, 60604 (312) 353-8311
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*This advisory memorandum is the work of the Indiana Advisory Committee to the U.S. Commission on Civil Rights. The memorandum, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this memorandum and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.*

# **Voting Rights in Texas**



An Advisory Memorandum of the  
Texas Advisory Committee to the  
U.S. Commission on Civil Rights

July 2018

**Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.



*Letter of Transmittal***Texas Advisory Committee to the  
U.S. Commission on Civil Rights**

The Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this advisory memorandum regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin. The Committee submits this advisory memorandum as part of its responsibility to study and report on voting rights concerns and to supplement the U.S. Commission on Civil Rights' 2018 statutory enforcement report. The contents of this advisory memorandum are primarily based on testimony received during a public meeting on March 13, 2018, held in Houston.

This advisory memorandum begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from testimony, and recommendations for addressing related civil rights concerns directed to the U.S. Department of Justice, Texas Secretary of State and Elections Division, Texas Legislature, and County Elections Administrators. In recognition of the U.S. Commission on Civil Rights' continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers findings and recommendations for addressing voting rights issues in Texas.

**Texas Advisory Committee to the  
U.S. Commission on Civil Rights**

Mimi Marziani, *Chair, Texas Advisory Committee*, Austin

Joni Baker, College Station

Cecilia Castillo, Buda

Josh Blackman, Houston

Bobby Lydia, Duncanville

Charles Burchett, Kirbyville

Merrill Matthews, Coppell

Rogene Calvert, Houston

Christina Sanders, Houston

Frances Carnot, San Antonio

Ronald Smeberg, San Antonio

Jason Casellas, Houston

Barbara Walters, Plano

**Advisory Memorandum**

**To:** The U.S. Commission on Civil Rights  
**From:** The Texas Advisory Committee to the U.S. Commission on Civil Rights  
**Date:** May 30, 2018  
**Subject:** Voting Rights in Texas

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On March 13, 2018, the Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin.

The following advisory memorandum results from the testimony provided during the March 13, 2018, meeting of the Committee, as well as related testimony submitted to the Committee in writing during the thirty-day public comment period. It begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on potential barriers to voter registration, access to and administration of polling locations, and language access. While other important topics surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on May 30, 2018.

The Committee is comprised of a group of Texans who strove to approach this project from an open-minded and neutral posture. To that end, the Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives, from voting rights advocacy groups to the Office of the Secretary of State. The Committee made many outreach attempts over several months to conservative-leaning lawmakers and advocacy groups, including the Texas Attorney General, Senator Brian Birdwell, Senator Paul Bettencourt, Representative Jodie Laubenberg, Representative Joe Straus, Senator Joan Huffman, True the Vote, and Direct Action Texas, to solicit their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. Regrettably, after multiple attempts by numerous Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable to participate is attached in Appendix F.

**Background**

The Fourteenth and Fifteenth Amendments to the Constitution guarantee citizens the right to

vote free of discrimination. There has, however, been a history of efforts across the U.S. to circumvent this guarantee through a variety of techniques. As a result of these practices, the Voting Rights Act (VRA) passed the U.S. Congress and was signed into law by President Lyndon B. Johnson in 1965.<sup>1</sup> Among its key provisions, the VRA prohibits public officials from imposing voting practices and procedures that “deny or abridge the right to vote of any citizen of the United States to vote on account of race or color.”<sup>2</sup> It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” — that is, the approval of the U.S. Attorney General or a three-judge panel of the District Court of the District of Columbia — prior to implementing any changes in their current voting laws.<sup>3</sup> With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens” bringing more jurisdictions, including Texas, under its preclearance requirements.<sup>4</sup> In 1982, the VRA was again extended, and amended, to provide that a violation of the VRA’s nondiscrimination section could be established “without having to prove discriminatory purpose.”<sup>5</sup> In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

The VRA’s language minority provision, Section 203, states that counties are required to provide bilingual election information if more than five percent of the population, or 10,000 voting age citizens, belong to a single language minority, have depressed literacy rates, and do not speak English very well.<sup>6</sup> In Texas, there are 88 counties that fall under the provisions of Section 203—the most counties in any state in the nation.<sup>7</sup> Among these counties, Harris County has the most language minority groups in need of election information in the Spanish, Chinese, and Vietnamese languages.<sup>8</sup>

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed to further protect voting rights by making it easier for all Americans to register to vote and to maintain their registration.<sup>9</sup> The NVRA requires states to allow citizens to register to vote at the same time they apply for their driver’s license or seek to renew their license; it also requires a range of social service agencies to offer voter registration in conjunction with their services.<sup>10</sup> The NVRA contains requirements with respect to the administration of voter registration by

<sup>1</sup> 42 U.S.C. §§ 1973 to 1973aa-6 (1965).

<sup>2</sup> 52 U.S.C. 10301 (2018).

<sup>3</sup> 52 U.S.C. § 10304 (2018).

<sup>4</sup> Voting Rights Act Amendments, Pub. L. 94-73, 89 Stat. 400 (Aug. 6, 1975).

<sup>5</sup> Voting Rights Act Amendments, Pub. L. 97-205, 96 Stat. 131 (Jun. 29, 1982).

<sup>6</sup> 52 U.S.C. § 10503 (2018).

<sup>7</sup> Bureau of the Census; Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532 (Dec. 5, 2016); *see also* Appendix A.

<sup>8</sup> *Ibid.*

<sup>9</sup> 52 U.S.C. §§ 20501-20511 (2018).

<sup>10</sup> 52 U.S. Code § 20506 (2018).

states, requiring states to implement procedures to maintain accurate and current voter registration lists,<sup>11</sup> and mandates the use and acceptance of a standardized voter registration form.<sup>12</sup>

Despite the numerous laws and constitutional amendments established to protect equal access to voting, problems persist. *Shelby County v. Holder*, which was decided on June 25, 2013, by the U.S. Supreme Court, ruled that the formula used to determine which states should be subjected to “preclearance” requirements under the VRA was outdated and thus unconstitutional.<sup>13</sup> This ruling effectively nullified the preclearance requirement, a core component of the VRA, until such time as Congress agrees upon a new formula.

Prior to the *Shelby County v. Holder* decision, Texas was subject to the preclearance restrictions found in Section 5 of the VRA.<sup>14</sup> Since the decision, Texas has made a variety of changes to its voting and elections procedures at multiple levels of government, from the county-level to the Texas Legislature.<sup>15</sup> Several court decisions, discussed below, have held that these changes violate Section 2 of the VRA, by discriminating against racial minorities.<sup>16</sup>

Garnering the most national attention is the Texas voter ID law, or SB 14, which altered the identification requirements for voting. This law requires most voters to present government-issued photo identification when appearing to vote at the polls such as a driver’s license, a personal ID card, U.S. military ID, U.S. citizenship certificate, U.S. passport, or a concealed handgun license.<sup>17</sup> Voters with disabilities and those voters who qualify to vote by mail were exempted from this requirement.<sup>18</sup> Federal preclearance was denied with respect to the Texas voter ID law because it failed to prove the law would not have a discriminatory effect on

<sup>11</sup> 52 U.S.C. §§ 20507(b) (2018).

<sup>12</sup> 52 U.S.C. §§ 20507(a)(1A-D).

<sup>13</sup> See *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013).

<sup>14</sup> 40 Fed. Reg. 43746 (Sept. 23, 1975).

<sup>15</sup> Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (2016), p.11, available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>; Beth Stevens, Mimi Marziani, Cassandra Champion, *Texas Election Protection 2016: An overview of the challenges faced by Texas voters in the presidential election*, TEXAS CIVIL RIGHTS PROJECT (2017), p.10, available at <http://texascivilrightsproject.org/wp-content/uploads/2018/05/EP-Report.pdf>.

<sup>16</sup> Indeed, the Fifth Circuit (*en banc*) struck down the 2011 Texas voter ID law in July 2016, finding that it discriminated against Black and Latino Texans in violation of Section 2 of the VRA. See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016). While, more recently, the Fifth Circuit upheld a modified version of the ID law passed by the Texas Legislature in 2017, its findings on the discriminatory effect of the original law remain undisturbed. See *Veasey v. Abbott*, 17-40884, 2018 WL 1995517 (5th Cir. Apr. 27, 2018). Moreover, in 2017, a three-judge panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory in violation of Section 2, and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power. *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>17</sup> SB 14 § 1. Tex. Election Code § 63.0101.

<sup>18</sup> SB 14 § 1. Tex. Election Code § 82.002-82.003.

minority voters.<sup>19</sup> However, just days after the *Shelby County v. Holder* decision, the law went into effect<sup>20</sup> and has been embroiled in litigation since. Early court rulings concluded that the law has a discriminatory effect on minorities.<sup>21</sup> However, SB 5, the most recent iteration of the law, was upheld in the U.S. Court of Appeals Fifth Circuit on April 27, 2018.<sup>22</sup>

In a related issue, Texas' congressional and state legislative maps have been the subject of litigation since original passage in 2011. Initially, Texas maps did not receive preclearance under Section 5 of the VRA because the maps abridged minority voting rights by using "deliberate, race-conscious method[s]" to "manipulate" outcomes.<sup>23</sup> In 2013, the Texas Legislature adopted interim maps drawn by a district court in Texas and the U.S. Supreme Court vacated and remanded the D.C. panel's opinion, in light of the *Shelby County v. Holder* decision.<sup>24</sup> Since then, the 2011 and 2013 maps have been litigated before a three-judge district court panel in San Antonio, including claims that the maps violate Section 2 of the VRA and the Equal Protection Clause.<sup>25</sup> Most notably, in 2017, the panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power.<sup>26</sup> At the end of the 2017-2018 term, however, the U.S. Supreme Court issued a decision largely rejecting the finding of racial discrimination.<sup>27</sup>

By removing the preclearance requirement and allowing for unmitigated changes, the *Shelby County v. Holder* decision affected local election law and practices in Texas. For example, following *Shelby County*, the city of Pasadena changed how it elected city council members by adopting at-large elections rather than the district election method it previously utilized. In 2017, a court found this change to be intentionally discriminatory against Latino voters, as it illegally diluted their voting strength.<sup>28</sup> Moreover, hundreds of polling locations were closed in

<sup>19</sup> *Texas v. Holder*, 888 F. Supp. 2d 113, 143-44 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013).

<sup>20</sup> "Voter ID Laws Passed Since 2011," *Brennan Center for Justice*, <https://www.brennancenter.org/analysis/voter-id-laws-passed-2011>.

<sup>21</sup> *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017). *See also* Robert Barnes, *After Losses on Voting Laws and Districting, Texas Turns to Supreme Court*, THE WASHINGTON POST, Aug. 27, 2017, available at [https://www.washingtonpost.com/politics/courts\\_law/after-losses-on-voting-laws-and-districting-texas-turns-to-supreme-court/2017/08/27/cf68fea8-89bc-11e7-a94f-3139abce39f5\\_story.html?utm\\_term=.a629779fd2d](https://www.washingtonpost.com/politics/courts_law/after-losses-on-voting-laws-and-districting-texas-turns-to-supreme-court/2017/08/27/cf68fea8-89bc-11e7-a94f-3139abce39f5_story.html?utm_term=.a629779fd2d).

<sup>22</sup> *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612, 197 L. Ed. 2d 78 (2017).

<sup>23</sup> *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012).

<sup>24</sup> *Texas v. United States*, 133 S. Ct. 2885 (2013); *see also Texas v. United States*, 49 F. Supp. 3d 33 (D.D.C. 2014).

<sup>25</sup> *See Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>26</sup> *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>27</sup> *Abbott v. Perez*, No. 17-586 (2018), [https://www.supremecourt.gov/opinions/17pdf/17-586\\_o7kq.pdf](https://www.supremecourt.gov/opinions/17pdf/17-586_o7kq.pdf).

<sup>28</sup> *Patino v. City of Pasadena* 230 F. Supp. 3d 667 (S.D. Tex. 2017); *see also* Ernest Herrera, Staff Attorney, MALDEF, Public Meeting on Texas Voting Rights: Briefing before the Texas Advisory Committee to the U.S. Commission on Civil Rights, briefing transcript, p. 59-60 (2018), available at [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t00000005oEA/0wRuvO54YrXaNWxKSmv.eZuS.75z9\\_Jph2yx5uia.c0](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t00000005oEA/0wRuvO54YrXaNWxKSmv.eZuS.75z9_Jph2yx5uia.c0) (hereinafter *Transcript*).

Texas before the 2016 presidential election, significantly more both in number and percentage than any other state.<sup>29</sup>

### **Findings**

The section below provides findings received and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the topics at hand.

#### **Findings regarding voter registration:**

1. With only 68 percent of eligible voters actually registered, Texas ranks as the 44<sup>th</sup> worst state for voter registration in the 2016 election.<sup>30</sup> Moreover, as discussed below, the current Texas electorate does not adequately represent the State's citizen voting age population. Instead, those currently registered to vote are more likely to be Anglo (*i.e.*, non-Hispanic Caucasian) and more likely to be older than those who are not on the rolls.
2. Testimony from numerous organizations and individuals indicated that low, disparate registration rates are at least partially due to the State's restrictions on third-party voter registration activities, such as voter registration drives.<sup>31</sup> The following examples demonstrate specific challenges:
  - a. Volunteer Deputy Registrars (VDR) must be separately certified for each county in which they want to register voters.<sup>32</sup> This acts as a deterrent for voter registration and impedes large-scale voter registration efforts, particularly because it is a criminal offense to register a person to vote from a county where one is not deputized.<sup>33</sup>
  - b. The State's VDR training program, in practice, vary greatly among counties.<sup>34</sup> For example, in Harris County, VDR trainings are available in Spanish and

<sup>29</sup> Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND 4 (2016), available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

<sup>30</sup> Saenz, *Transcript* at 14; Rivera, *Transcript* at 168.

<sup>31</sup> Tex. Elec. Code Ann. § 276.011 (West 2017); *see also* Tex. H.B. 1735, 85th Leg., R.S. (2017) § 62, amending § 276.011 of the Texas Election Code (noting that in Texas, it is a crime to register another person to vote unless one has been certified as a Volunteer Deputy Registrars (VDR) and adheres to a complicated and burdensome regulatory regime. The laws regarding VDRs and their duties comprise the harshest restrictions on voter registration drives and related community outreach in the nation).

<sup>32</sup> Harris-Bennett, *Transcript* at 143.

<sup>33</sup> Tex. Elec. Code Ann. § 13.044; Harris-Bennett, *Transcript* at 143; Rivera, *Transcript* at 172.

<sup>34</sup> *See* Mimi Marziani & Robert Landicho, *What Starts in Texas Doesn't Always Stay in Texas: Why Texas's Systematic Elimination of Grassroots Voter Registration Drives Could Spread*, THE AMERICAN CONSTITUTION SOCIETY 8 (2018), [https://www.acslaw.org/sites/default/files/What\\_Happens\\_In\\_Texas.pdf](https://www.acslaw.org/sites/default/files/What_Happens_In_Texas.pdf).

English and has yielded in deputizing a high number of VDRs.<sup>35</sup> In Bexar County, one training is offered one day per month and only during business hours.<sup>36</sup> Additionally, the law dictates that VDR certifications expire every two years, meaning the entire certification and training process must be repeated at the beginning of every odd year, regardless of how recently a volunteer was trained.<sup>37</sup>

- c. There are severe criminal penalties associated with failure to comply with VDR requirements, including not submitting completed registration application forms within 5 days of their collection or accidentally registering a voter who lives in another county where the VDR is not deputized.<sup>38</sup>
  - d. Despite the NVRA's requirement that registration forms be accepted by mail, VDR rules require in-person submission.<sup>39</sup>
  - e. While the law requires that VDRs issue a receipt every time they complete a VDR transaction, there are no standardized procedures for doing so. As a result, each county has a separate receipt process and, typically, a separate voter registration form that it requires. This adds to the complication of conducting large-scale registration drives and prevents the use of the federal form prescribed by the NVRA.
  - f. One result of the burdensome requirements is low numbers of VDRs to support Texas' growing population. For example, in Bexar County for the 2016 election, there were approximately 1,000 VDRs registering voters in a city with a population of more than 1.5 million people.<sup>40</sup>
3. While the number of eligible Latino voters in Texas has grown dramatically in the last four decades, from 1.5 million people in 1980 to 5.2 million in 2016,<sup>41</sup> Latinos are less likely to be registered to vote in comparison to other voter groups.<sup>42</sup> Testimony indicated the following barriers to registration that may have a disparate impact on Latino voters:

<sup>35</sup> Rave, *Transcript* at 25; Harris-Bennett, *Transcript* at 120-121.

<sup>36</sup> Rivera, *Transcript* at 171-172; Stevens, *Transcript* at 216.

<sup>37</sup> Tex. Elec. Code § 13.031; *see also* Rivera, *Transcript* at 172.

<sup>38</sup> Tex. Elec. Code § 13.042 (noting that failure to return applications by 5:00 p.m. on the 5th consecutive day will result in a Class C misdemeanor if unintentional and a Class A misdemeanor if intentional); Tex. Elec. Code Ann. § 13.043(a)-(b) (West 2017) (noting that in 2017, Texas passed a law that further increases criminal penalties for certain violations of the VDR law); Rivera, *Transcript* at 173; Stevens, *Transcript* at 217.

<sup>39</sup> Tex. Elec. Code § 13.042 (c).

<sup>40</sup> Rivera, *Transcript* at 172.

<sup>41</sup> Saenz, *Transcript* at 12-13; *see also* Appendix E.

<sup>42</sup> Herrera, *Transcript* at 89.

- a. While voter registration materials are provided in Spanish by the Secretary of State, not all counties are making these readily available to the public or VDRs.<sup>43</sup>
  - b. VDR training is not always provided in Spanish, even in counties that are bound by Section 203 requirements, such as Harris County which implemented its first Spanish VDR training in 2017 despite having Section 203 requirements.<sup>44</sup>
  - c. Low registration rates among Latinos have been associated with mistrust and fear due to public discourse concerning voter fraud and immigration.<sup>45</sup>
  - d. Low Latino registration may be associated with apathy as a result of not having adequate representation among elected representatives. For instance, more than 1.3 million Latinos in Texas live in cities or counties with no Latino representation on their city council or commissioners' courts.<sup>46</sup>
4. There is widespread confusion and misinformation among citizens about voter registration.
- a. Information regarding registration deadlines are 30 days before Election Day, are too often not clearly available on county websites.<sup>47</sup>
  - b. Citizens moving from one county to another is a common reason that individuals fail to meet registration requirements. Voters do not realize they need to update their registration information after they move – sometimes, voters do not realize they now reside in a different county given that most Texas metropolitan areas span more than one county.<sup>48</sup>
  - c. Registration forms are not readily accessible or available for certain populations including individuals with a disability, the elderly, and individuals with limited English proficiency.<sup>49</sup>

<sup>43</sup> Keith Ingram, Elections Division Director, Office of the Secretary of State, Written Statement Submitted to the Texas Advisory Committee to the U.S. Commission on Civil Rights, p. 1 (2018), available at <https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gvj0/a/t000000050EB/1SI6EgzkdGRK1qnAW1qvfwTfk65zS3C6x4ha02YG0Q> (hereinafter *Written Testimony*); Herrera, *Transcript* at 65.

<sup>44</sup> Harris-Bennett, *Transcript* at 122.

<sup>45</sup> Herrera, *Transcript* at 89; Jackson, *Transcript* at 79-80.

<sup>46</sup> *Ibid* at 61; Duarte, *Transcript* at 102; Jeremy Schwartz & Dan Hill, "Silent Majority: Texas Booming Hispanic Population Deeply Underrepresented in Local Politics," *Statesman*, Oct. 21, 2016, available at <https://consulmex.sre.gob.mx/austin/images/Prensa/2016/Silent-Majority.pdf>.

<sup>47</sup> Haltom, *Transcript* at 152; Weatherby, *Transcript* at 184; Herrera, *Transcript* at 64.

<sup>48</sup> Haltom, *Transcript* at 151-152; Jackson, *Transcript* at 49-50.

<sup>49</sup> Herrera, *Transcript* at 63; Vattamala, *Transcript* at 74; Broadway, *Transcript* at 108; Harris-Bennett, *Transcript* at 139; Gulamali, *Transcript* at 182.



5. State voter registration procedures are not compliant with the National Voter Registration Act (NVRA).
  - a. Texas Department of Public Safety (DPS) allows online renewal and modification of driver's licenses but does not also allow users to register to vote or update their registration online, potentially affecting at least 1.5 million eligible voters who use DPS' online driver's license services each year.<sup>50</sup> A federal judge recently ruled that this practice violates the NVRA and the Equal Protection Clause of the U.S. Constitution.<sup>51</sup>
  - b. As the U.S. Commission on Civil Rights noted in a past report,<sup>52</sup> the processes on the Texas DPS website are misleading and confusing. Individuals wishing to update their registration when they update their driver's license information must actually take additional steps offline to successfully register. There is confusion on what steps are necessary, and thousands of individuals who think they have registered discover on election day they are not on the registration rolls.<sup>53</sup>
6. There are specific barriers to registration for young voters. For example:
  - a. Texas law mandates that all high schools, both public and private, must offer voter registration to eligible students at least twice a year through a designated High School Deputy Registrar.<sup>54</sup> Testimony from several stakeholders indicated this law was not being enforced by the Secretary of State's office and thus not being implemented in a uniform manner across the State, with most schools not in compliance.<sup>55</sup> The result is that too few of the roughly 330,000 young people who graduate from Texas public schools each year are getting registered to vote.<sup>56</sup>
  - b. The widespread noncompliance with the State's high school voter registration mandate is due to lack of knowledge and confusion about requirements and

<sup>50</sup> Stevens, *Transcript* at 215.

<sup>51</sup> See *Stringer v. Pablos*, 274 F. Supp. 3d 588 (W.D. Tex. 2017); see also Stevens, *Transcript* at 215.

<sup>52</sup> U.S. Commission on Civil Rights, *Increasing Compliance with Section 7 of the National Voter Registration Act*, (May 7, 2016), at 59, 79, <http://www.usccr.gov/pubs/NVRA-09-07-16.pdf>.

<sup>53</sup> Weatherby, *Transcript* at 187; Rivera, *Transcript* at 175; Stevens, *Transcript* at 215; Stevens, *Written Statement* at 2-3.

<sup>54</sup> Tex. Elec. Code § 13.046.

<sup>55</sup> Saenz, *Transcript* at 19; Rivera, *Transcript* at 171; Saldivar, *Transcript* at 103; Duarte, *Transcript* at 116; Stevens, *Written Testimony* at 7-8.

<sup>56</sup> Stevens, *Transcript* at 216; see also Beth Stevens, Brendan Downes, Mimi Marziani, Cassandra Champion, "The High School Vote: How Texas fails to engage the next generation of voters," Texas Civil Rights Project, 2017, <http://texascivilrightsproject.org/wp-content/uploads/2018/02/HSVR-Report.pdf>.

procedures.<sup>57</sup> This is likely confounded by the strict VDR rules, which govern voter registration drives within high schools that are conducted by anyone other than the school's designated High School Deputy Registrar.

- c. For the 2016 general election, only 48 percent of Texans ages 18 to 24 were registered to vote, while 78 percent of Texans over the age of 65 were registered. This is 7 percentage points lower than the national average rate for eligible voters ages 18-24.<sup>58</sup>

**Findings regarding access to and administration of polling places:**

1. College students face barriers to accessing polling locations because there is a shortage of polling locations accessible or convenient to college campuses.<sup>59</sup>
2. Testimony indicated that polling places are sometimes located in intimidating locations such as a sheriff's office or other law enforcement offices that may discourage marginalized communities from voting.<sup>60</sup>
3. Testimony indicated that polling locations and voting procedures in Texas have changed significantly following the *Shelby County v. Holder* decision and may have disenfranchised certain voters. The following examples demonstrate these changes:
  - a. Texas Election Code, now the only law governing polling place changes in Texas, requires just a 72-hour notice of polling location changes; in recent elections, last-minute changes have greatly increased confusion on where voters are required to vote.<sup>61</sup>
  - b. Hundreds of polling locations were closed in Texas before the 2016 presidential election, significantly more both in number and percentage than any other state, with the highest volume of closures in counties that have a history of VRA violations while still under preclearance.<sup>62</sup>

<sup>57</sup> Stephanow, *Transcript* at 147; Carlos Duarte, *Transcript* at 103.

<sup>58</sup> Jay Jennings and Emily Einsohn Bhandar, "2018 Texas Civic Health Index," *Annette Strauss Institute for Civic Life*, 2018, p. 5, [https://moody.utexas.edu/sites/default/files/2018-Texas\\_Civic\\_Health\\_Index.pdf](https://moody.utexas.edu/sites/default/files/2018-Texas_Civic_Health_Index.pdf).

<sup>59</sup> Jackson, *Transcript* at 53.

<sup>60</sup> Bledsoe, *Transcript* at 90.

<sup>61</sup> Tex Elec. Code § 43.06; Rave, *Transcript* at 26.

<sup>62</sup> Rave, *Transcript* at 26; Scott Simpson, "The Great Poll Closure," *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting 403 total poll closures. Texas has five of the top ten counties with poll closures in the nation and seven of the top ten counties for percentage of polls closed).

- c. Polling relocations that were denied under VRA preclearance requirements were then implemented after the *Shelby County v. Holder* decision and were found by the Department of Justice to be discriminatory for African American and Latino voters.<sup>63</sup>
- 4. Testimony indicated considerable confusion regarding elections administration, including confusion about the voter ID law and provisional ballot procedures.
  - a. In the 2016 election, there was widespread confusion surrounding voter ID requirements. Voters without proper ID were not consistently informed about the “reasonable impediment” exception to the ID law, or offered provisional ballots; as a result, some were improperly turned away by misinformed poll workers.<sup>64</sup>
  - b. Voters who cast a provisional ballot were not always given proper instructions on how to cure their ballot following the election.<sup>65</sup>
  - c. In the new version of the ID law, passed by the Texas Legislature in 2017, there are intimidating criminal sanctions associated with incorrectly executing the affidavit necessary to claim the “reasonable impediment” exception to the ID law and stakeholders are concerned that this will deter voters who in fact fall under the ID law’s exception from casting a ballot.<sup>66</sup> Without sufficient poll worker training on the ID procedures, this may disenfranchise voters.
- 5. Poll workers are not given adequate training and have significant discretion that can have discriminatory consequences.
  - a. Poll workers are not given adequate training on how to address the needs of individuals with disabilities.<sup>67</sup>
  - b. Instances of discrimination, disparate treatment, and hostility at polling locations were reported by several stakeholders and appear often to be the result of poll worker discretion or misinformation.<sup>68</sup>

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<sup>63</sup> Bledsoe, *Transcript* at 86; Rave, *Transcript* at 27; Scott Simpson, “The Great Poll Closure,” *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting the city of Galveston closed 16 percent of its polling locations with a plan that was rejected under VRA preclearance before *Shelby County v. Holder* due to discriminatory repercussions).

<sup>64</sup> Herrera, *Transcript* at 62; Harris-Bennett, *Transcript* at 124; Haltom, *Transcript* at 156; Rivera, *Transcript* at 203.

<sup>65</sup> Harris-Bennett, *Transcript* at 129.

<sup>66</sup> Bledsoe, *Transcript* at 90; Haltom, *Transcript* at 157.

<sup>67</sup> Broadway, *Transcript* at 112; Garrison, *Transcript* at 191.

<sup>68</sup> Bledsoe, *Transcript* at 86; Jackson, *Transcript* at 88; Saldivar, *Transcript* at 105.

- c. There is little to no recourse or accountability for mistakes made or discriminatory conduct by poll workers.<sup>69</sup> Although the Texas Secretary of State and most counties offer some avenue for complaint,<sup>70</sup> testimony suggested that the current procedures are unresponsive and difficult to navigate.<sup>71</sup>
  - d. There is currently no easily accessible way to gather statewide data about how many Texans experienced problems at the polls and were unable to cast a regular ballot, because there are no statewide records of provisional ballots cast. In addition, there is no mechanism for tracking how many people were turned away without being offered a provisional ballot.<sup>72</sup>
6. According to testimony, many polling locations may not be in compliance with the Americans with Disabilities Act (ADA) and may disenfranchise voters with disabilities. For example:
- a. Many polling locations are inaccessible because of parking lots that are not stable, firm, level, and slip resistant; an insufficient number of reserved parking spaces; and/or unstable or nonexistent ramps.<sup>73</sup>
  - b. Few counties in Texas are effectively implementing curbside voting, which creates a significant barrier for voters with limited mobility.<sup>74</sup>
  - c. Adaptive voting equipment that is required under the ADA is frequently not present at polling locations.<sup>75</sup>
  - d. When adaptive voting equipment is present at polling locations, it is frequently not set-up properly or no poll workers have been trained how to operate it.<sup>76</sup>

<sup>69</sup> Gulamali, *Transcript* at 180; Rivera, *Transcript* at 169; Haltom, *Transcript* at 154.

<sup>70</sup> Harris-Bennett, *Transcript* at 124; *See also* the Texas Secretary of State's election complaint form: <http://www.sos.texas.gov/elections/forms/complaintform-sos.pdf>

<sup>71</sup> Gulamali, *Transcript* at 204.

<sup>72</sup> Haltom, *Transcript* at 154.

<sup>73</sup> Broadway, *Transcript* at 112; United States Access Board, Chapter 3: Building Blocks, <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards/chapter-3-building-blocks#302%20Floor%20or%20Ground%20Surfaces> (noting that over 500 parking lots were composed of material that does not meet ADA standards such as gravel or grass). The ADA Accessibility Guidelines state that both parking spaces and access aisles must comply with § 302 requirements that floor and ground surfaces is "stable, firm, and slip resistant." ADA Accessibility Guidelines, Ch. 3 § 302.1. Additionally, access aisles must be level with their parking spaces. ADA Accessibility Guidelines, Ch. 5 § 502.4.

<sup>74</sup> Garrison, *Transcript* at 191; Craft, *Transcript* at 211.

<sup>75</sup> Garrison, *Transcript* at 191.

<sup>76</sup> *Ibid.*

**Findings regarding language access:**

1. There are widespread inadequacies in providing language assistance at polling locations.
  - a. Numerous counties appear to be failing to comply with the requirements of Section 203 of the VRA, such as failing to provide the mandated ballots or translators.<sup>77</sup>
  - b. There is widespread confusion based on the terminology voters must use to receive language assistance by an individual of their choice. Semantic differences can determine if a voter will receive the language assistance they prefer or be denied.<sup>78</sup> For example, voters who referred to their “assister” as an “interpreter” have been denied language assistance due to the Texas Election Code’s requirement that all interpreters be registered to vote in the county in which they are assisting a voter.<sup>79</sup> While recent litigation has resolved this issue as a matter of law, testimony indicates that confusion at the local level is likely to persist without adequate training.

**Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise federal agencies (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>80</sup> In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Texas Advisory Committee respectfully submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the U.S. Department of Justice to:
  - a. Enforce and monitor the requirements of the Voting Rights Act, particularly Section 203.
  - b. Enforce the National Voter Registration Act.

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<sup>77</sup> Vattamala, *Transcript* at 74.

<sup>78</sup> *Ibid.* at 74-76.

<sup>79</sup> *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); Asian American Legal Defense and Education Fund has recently litigated this issue in Texas. The court ruled that Texas Election Code requiring interpreters to be registered in that county is in violation of the Voting Rights Act.

<sup>80</sup> 45 C.F.R. § 703.2 (a).

- c. Further investigate the findings within this memorandum over which it has jurisdiction and take appropriate action.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Secretary of State and its Elections Division to:
- a. Increase accountability for poll workers and polling place administration, including verifiable paper trails and a more accessible and responsive complaint system. Specifically, all complaints should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
  - b. Implement more accessible registration forms by including forms in all Section 203 covered languages spoken in each county, in Braille, and in large print.
  - c. Ease the certification requirements for Volunteer Deputy Registrars by clarifying existing interpretations of the law and allowing Volunteer Deputy Registrar certification in one county to be accepted in all counties; standardizing training opportunities statewide, including by establishing, at minimum, weekly Volunteer Deputy Registrar training sessions in all counties with a population over 250,000; and requiring the standardized use of statewide registration forms and receipt systems.
  - d. Establish best practices and minimum standards for counties' election administration. These should include standardized information to be included on county websites, encouragement of voting centers, better training for poll workers (including training on the use of provisional ballots), and improved implementation of curbside voting and other ADA accommodations.
  - e. Increase the public education campaign regarding voter ID requirements and further encourage efforts in raising public awareness by partnering with community groups. This includes information on what ID is required to vote, as well as the "reasonable impediment" exception to the ID law.
  - f. Improve procedures for voting by mail for the elderly and disabled by making request forms and ballots easier to understand and more accessible.
  - g. Establish more uniform and consistent standards for poll worker training, including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance requirements.

- h. Create a mechanism to track and enforce the high school voter registration law, including providing clearer information about its requirements and best practices.<sup>81</sup>
  - i. Implement a mechanism to better track provisional ballot use across the State. Statistics on issuance of provisional ballots and whether they were accepted or rejected should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
  - j. Establish early voting and Election Day polling places on all college and university campuses with an enrollment of at least 5,000 students.
  - k. Take measures to guard against acts of discrimination and intimidation at the polling place, including by implementing diversity and inclusion training into the standard poll worker training.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Legislature to:
- a. Implement a secure online voter registration system to make voter registration easier and more accessible and to better comply with the National Voter Registration Act.
  - b. Create a bipartisan commission to study voter registration and election administration and make recommendations to the Texas Legislature as to how to make voter registration and voting secure, easy and equally accessible for all eligible Texas voters.
  - c. Lessen legal repercussions and penalties for Volunteer Deputy Registrars in a manner that encourages voter registration efforts.
  - d. Improve Volunteer Deputy Registrar procedures and better comply with the National Voter Registration Act by allowing more time to return completed forms and the ability to return completed forms by mail.
  - e. Require use of Election Day voting centers in all counties with a population over 250,000.

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<sup>81</sup> Harris-Bennett, *Transcript* at 121; Duarte, *Transcript* at 103.

- f. Amend existing law to set an extended notice period for polling place changes of no less than 30 days.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Texas County Elections Administrators to:
- a. Establish more uniform and consistent standards for poll worker training including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance procedures.
  - b. Strengthen implementation and enforcement of Section 203 of the VRA in the 88 counties that require it.<sup>82</sup>
  - c. Track compliance and progress of high school voter registration efforts by providing high school-specific Volunteer Deputy Registrar numbers and increasing outreach efforts to high schools.<sup>83</sup> The Committee recognizes that enforcement is the responsibility of the Secretary of State, but county administrators can play an integral part by coordinating enforcement and facilitating partnerships with local school districts.
  - d. Provide improved and more convenient trainings for Volunteer Deputy Registrars including greater availability of trainings, trainings in more languages, online training, and reciprocity agreements with adjacent counties.
  - e. Ensure more awareness of voter ID requirements through public awareness campaigns, partnerships with local organizations and businesses, and displaying clearer signage at polling locations.
  - f. Take measures to guard against acts of discrimination and intimidation at the polling place, including implementing diversity and inclusion training into the standard poll worker training.

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<sup>82</sup> See Appendix A for specific counties.

<sup>83</sup> Thomas, *Transcript* at 138.



**Appendix**

- A. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations  
Under Section 203 – Texas Counties Subject to Section 203 Compliance
- B. Briefing Agenda & Minutes
- C. Briefing Transcript
- D. Written Testimony
- E. Presentation Slides by Rogelio Saenz
- F. List of Individuals and Organizations Invited, But Were Unable to Participate in March  
13, 2018, Briefing

**Appendix A**

Texas Counties Subject to Section 203 Compliance

	County	Language Minority Group
1	Andrews	Hispanic
2	Atascosa	Hispanic
3	Bailey	Hispanic
4	Bee	Hispanic
5	Bexar	Hispanic
6	Brooks	Hispanic
7	Caldwell	Hispanic
8	Calhoun	Hispanic
9	Cameron	Hispanic
10	Castro	Hispanic
11	Cochran	Hispanic
12	Crane	Hispanic
13	Crockett	Hispanic
14	Crosby	Hispanic
15	Culberson	Hispanic
16	Dallam	Hispanic
17	Dallas	Hispanic
18	Dawson	Hispanic
19	Deaf Smith	Hispanic
20	Dimmit	Hispanic
21	Duval	Hispanic
22	Ector	Hispanic
23	Edwards	Hispanic
24	El Paso	American Indian (Pueblo)
		Hispanic
25	Floyd	Hispanic
26	Fort Bend	Hispanic
27	Frio	Hispanic
28	Gaines	Hispanic
29	Garza	Hispanic
30	Glasscock	Hispanic

31	Hale	Hispanic
32	Hansford	Hispanic
33	Harris	Chinese <sup>84</sup>
		Vietnamese
		Hispanic
35	Hockley	Hispanic
36	Hudspeth	Hispanic
37	Jeff Davis	Hispanic
38	Jim Hogg	Hispanic
39	Jim Wells	Hispanic
40	Jones	Hispanic
41	Karnes	Hispanic
42	Kenedy	Hispanic
43	Kinney	Hispanic
44	Kleberg	Hispanic
45	Knox	Hispanic
46	La Salle	Hispanic
47	Lamb	Hispanic
48	Live Oak	Hispanic
49	Lynn	Hispanic
50	Martin	Hispanic
51	Matagorda	Hispanic
52	Maverick	American Indian <sup>85</sup>
		Hispanic
53	McMullen	Hispanic
54	Medina	Hispanic
55	Menard	Hispanic
56	Midland	Hispanic
57	Moore	Hispanic
58	Nolan	Hispanic
59	Nueces	Hispanic
60	Ochiltree	Hispanic
61	Parmer	Hispanic
62	Pecos	Hispanic

<sup>84</sup> Including Taiwanese<sup>85</sup> All other American Indian Tribes

63	Presidio	Hispanic
64	Reagan	Hispanic
65	Reeves	Hispanic
66	Refugio	Hispanic
67	San Patricio	Hispanic
68	Schleicher	Hispanic
69	Scurry	Hispanic
70	Sherman	Hispanic
71	Starr	Hispanic
72	Sterling	Hispanic
73	Sutton	Hispanic
74	Swisher	Hispanic
75	Tarrant	Hispanic
		Vietnamese
76	Terry	Hispanic
77	Titus	Hispanic
78	Travis	Hispanic
79	Upton	Hispanic
80	Uvalde	Hispanic
81	Val Verde	Hispanic
82	Ward	Hispanic
83	Webb	Hispanic
84	Willacy	Hispanic
85	Winkler	Hispanic
86	Yoakum	Hispanic
87	Zapata	Hispanic
88	Zavala	Hispanic

63	Presidio	Hispanic
64	Reagan	Hispanic

**Appendix B**

Briefing Agenda and Minutes

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DGel>

AAG

**Appendix C**

Briefing Transcript

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DGel>

AAG

**Appendix D**

Written Testimony

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DGel>

AAG

**Appendix E**

Presentation Slides by Rogelio Saenz

<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000000DGel>

AAG

**Appendix F**

List of Individuals and Organizations Invited, But Were Unable to Participate in March 13, 2018, Briefing

- |                                                     |                                                                   |
|-----------------------------------------------------|-------------------------------------------------------------------|
| • Aaron Harris, Direct Action Texas                 | • Grant Hayden, Southern Methodist University                     |
| • Ana Hernandez, Texas House of Representatives     | • Joan Huffinan, Texas Senate                                     |
| • Brian Birdwell, Texas Senate                      | • Jodie Laubenberg, Texas House of Representatives                |
| • Casey Thomas, City of Dallas City Council         | • Joe Straus, Texas House of Representatives                      |
| • Catherine Engelbrecht, True the Vote              | • John Alford, Rice University                                    |
| • Celia Israel, Texas House of Representatives      | • Joseph Fishkin, University of Texas Law                         |
| • Chad Dunn, Brazil & Dunn                          | • Ken Paxton, Texas Attorney General                              |
| • Daron Shaw, University of Texas at Austin         | • Marc Veasey, U.S. House of Representatives                      |
| • Derrick Osobase, Communication Workers of America | • Michael Adams, Texas Southern University                        |
| • Diana McRae, Walker County                        | • Nina Perales, Mexican American Legal Defense & Educational Fund |
| • Direct Action Texas                               | • Paul Bettencourt, Texas Senate                                  |
| • Drew Galloway, MOVE San Antonio                   | • Rodney Ellis, Harris County Commissioner                        |
| • Empower Texans                                    | • Ross Ramsey, Texas Tribune                                      |
| • Franklin Jones, Texas Southern University         |                                                                   |
| • Grace Chimene, League of Women Voters             |                                                                   |

- Senfronia Thompson, Texas House of Representatives
- Stan Stanart, Harris County Clerk
- Texas Organizing Project
- Tom Brunell, University of Texas Dallas
- True the Vote



## 61 FORMS OF VOTER SUPPRESSION

### ABSTRACT

Voter suppression is more than just photo ID laws. Barbara Arnwine has been discussing the existence of voter suppression and the urgency of fighting it since 2011. Known for using visual representations such as her iterations of the "Map of Shame", Barbara now presents her 2019 list of the 61 forms of voter suppression.

*Print your own copy or view online at*  
[VotingRightsAlliance.org](https://VotingRightsAlliance.org)

By Barbara R. Arnwine  
*President & Founder*  
*Transformative Justice Coalition*  
*Author, 2011 Voting Rights Map of Shame*

## 61 Forms of Voter Suppression



By Barbara R. Arnwine, [Barnwine@tjcoalition.org](mailto:Barnwine@tjcoalition.org)  
 President & Founder  
 Transformative Justice Coalition  
 Author, 2011 Voting Rights Map of Shame

Print your own copy or view online at [VotingRightsAlliance.org](http://VotingRightsAlliance.org)

1. Strict voter photo ID laws
2. Closing of DMV's in strict voter ID law states
3. Failure to accept government-issued state university and college student ID's
4. No early voting
5. Early voting cuts
6. No Sunday Souls to the Polls Early Voting
7. Harsh requirements/punishments for voter registration groups
8. Tough Deputy Registrar Requirements
9. Harsh voter registration Compliance Deadlines
10. Failure to timely process voter registrations
11. Cuts to Election Day (Same Day) registration
12. Polling place reductions or consolidations
13. Polling place relocations
14. Inadequate or poorly trained staffing at polls
15. Inadequate number of functioning machines, optical scanners or electronic polling books
16. Running out of ballots at polling sites
17. No paper ballots
18. Failure to accept Native American tribal IDs.
19. Barring Native American voters through residential address requirements for Native American lands which have PO Boxes
20. Failure to place polling sites on Native American lands
21. Refusal to place polling sites on college campuses
22. Lack of available public transportation to polling sites
23. Excessive Voter purging

- 24. Disparate racial treatment at polling sites
- 25. Student voting restrictions
  - Residency
- 26. Ex-felon disenfranchisement laws
- 27. Requiring Payment of Fines or Fees As Condition of Vote Restoration
- 28. Failure to Inform Formerly Incarcerated Persons of Their Voting Rights or Eligibility to Vote
- 29. Excessive Use of Inactive voter lists
- 30. No Public Outreach or Notification to Voters Placed on Inactive Lists
- 31. Language discrimination
  - Failure to accommodate
- 32. Lack of language-accessible materials
- 33. Failure to accommodate voters with disabilities
- 34. No disability accessibility
- 35. No curbside Voting
- 36. Not enough disability accessible voting equipment
- 37. Barriers to assistance by family members or others for voters
- 38. Deceptive practices
  - Flyers
  - Robocalls
- 39. Voter intimidation
  - Impersonating law enforcement personnel or immigration officers
- 40. Police at polling places
- 41. Racial gerrymandering
- 42. Creating polling place confusion by splitting Black precincts
- 43. Partisan gerrymandering
- 44. Barriers for homeless voters to voter registration
- 45. Voter caging
  - Use of One-Time Post cards/Mailers
- 46. Voter challengers at polls
- 47. Voter challenges to voter registration lists



- 48. Use of Suspense lists
- 49. Absentee Ballot Short Return Deadlines
- 50. Exact match requirements for signatures or other information
- 51. Complicated Absentee Ballot Requirements
- 52. Proof of Citizenship Laws
- 53. Out-of-precinct = no vote counted requirements
- 54. Failure to pre-register 17 year olds
- 55. Restrictions on straight-party voting
- 56. Interstate voter registration Crosscheck system
- 57. Jailed persons' preconviction: denied right to register and/or vote
- 58. DOJ demanding voter records
- 59. Employers not providing time off or enough time
- 60. Failure to assist or accommodate voters displaced by natural disasters
- 61. Long lines



## About Us

The Racial Equity Anchors Collaborative is a collaborative of nine leading national racial equity anchor organizations generously supported by the [W. K. Kellogg Foundation](#).


# We Vote, We Count:


THE NEED FOR CONGRESSIONAL ACTION TO SECURE  
THE RIGHT TO VOTE FOR ALL CITIZENS

GILDA DANIELS

TYSON KING-MEADOWS

LOREN HENDERSON

Organization	Description
 Advancement Project National Office	Advancement Project is a next generation, multi-racial civil rights organization. Rooted in the great human rights struggles for equality and justice, we exist to fulfill America's promise of a caring, inclusive and just democracy. We use innovative tools and strategies to strengthen social movements and achieve high impact policy change.
 Asian Pacific Islander American Health Forum	APIAHF influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders.
 Demos	We are a dynamic "think-and-do" tank that powers the movement for a just, inclusive, multiracial democracy.
 Faith In Action	Faith In Action is a national community organizing network that gives people of faith the tools that they need to fight for justice and work towards a more equitable society.
 <b>NAACP</b> National Association for the Advancement of Colored People	The mission of the National Association for the Advancement of Colored People (NAACP) is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons.
 National Congress of American Indians	The National Congress of American Indians, founded in 1944, is the oldest, largest and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities.
 <b>National Urban League</b> National Urban League	The National Urban League is a historic civil rights organization dedicated to economic empowerment in order to elevate the standard of living in historically underserved urban communities.
	Race Forward catalyzes movement building for racial justice. In partnership with communities, organizations, and sectors, we

Race Forward	build strategies to advance racial justice in our policies, institutions, and culture.
 UnidosUS	<p>Since 1968, UnidosUS - formerly known as NCLR - has remained a trusted, nonpartisan voice for Latinos. We serve the Hispanic community through our research, policy analysis, and state and national advocacy efforts, as well as in our program work in communities nationwide. And we partner with a national network of nearly 300 affiliates across the country to serve millions of Latinos in the areas of civic engagement, civil rights and immigration, education, workforce and the economy, health, and housing.</p>

## About the Authors

**Gilda R. Daniels** is an Associate Professor at the University of Baltimore School of Law and the Litigation Director for Advancement Project, a multicultural, next generation civil rights organization. She served as a Deputy Chief in the Department of Justice, Civil Rights Division, Voting Section in the Bill Clinton and George W. Bush administrations. Her scholarship focuses on the intersections of race, law, and democracy. Her law review articles have appeared in *George Washington University Law Review*, *Cardozo Law Review*, *Indiana University Law Review* (Indianapolis), *Denver Law Review*, and *New York University Journal of Legislation and Public Policy*. Her writings have also been published in the *Huffington Post*, the *Baltimore Sun* and various other publications. She has appeared on MSNBC, NPR and other media outlets. Daniels has specialized in voting rights/election law for more than two decades. She has litigated voting rights cases under the Voting Rights Act, including those involving single and multimember districts, language requirements and compliance with other voting rights statutes, such as the National Voter Registration Act. She has also conducted settlement negotiations and sought legislative remedies. She has testified before United States House and Senate Judiciary Committees on voting rights and election law issues. Her book, *Uncounted: The Crisis of Voter Suppression in the United States* (NYU Press) will be released in January 2020.

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## Executive Summary

From “We the People” to “We Vote, We Count” involves a tumultuous journey involving the fundamental right to vote and the herculean efforts to deny that right to people of color. The United States has historically limited access to the ballot and enacted laws that disenfranchised people of color. Paradoxically, the country was founded as a democracy, yet forces have constantly sought to suppress the electoral efforts of people of color. The federal government would periodically respond with hard fought and long awaited federal voting rights protections that were necessary for democracy to prevail. One of the most effective pieces of legislation was the passage of the Voting Rights Act of 1965 (VRA or “the Act”), which provided access to the ballot for people of color and required segregation’s forces to seek approval of voting changes prior to implementation. Nonetheless, structural racism remains pervasive not just throughout the South but the entire United States. The VRA remains necessary for combating widespread voter suppression, which includes, but is not limited to, registration restrictions and penalties against voter registration drives, voter purges, redistricting, reduction in polling places, restrictive voter ID laws, exorbitant fees for formerly incarcerated people to re-register and proof of citizenship laws. Communities of color, in large scale, bear the brunt of voter suppression. Asian American, Native Hawaiian, Pacific Islander (AANHPI), African American, Hispanic<sup>1</sup> and American Indian communities from sea to shining sea have felt the pain of voter suppression.

Over the past 75 years, rising political participation among voters of colors, along with increasing immigration has motivated states to implement voter suppression measures. This phenomenon is not new, but reflects similar trends occurring during Reconstruction and the Pre-Civil War era. Current efforts to diminish and disenfranchise people of color during this and other important times in our country’s history is not an accident, but a pervasive and effective effort to prevent or dissuade people of color from freely participating in the political process. Without question, these attempts and successes to suppress the vote resemble practices of voter suppression during the civil rights era, prior to passage of the Voting Rights Act. A notable blow to federal efforts to curb suppression occurred in 2013 when the United States Supreme Court in *Shelby County v. Holder* found parts of the VRA unconstitutional. Since *Shelby*, states and other jurisdictions have implemented modern methods of disenfranchisement that are far reaching and have real impact on communities of color and their ability to access the franchise.

The Racial Equity Anchor Collaborative (Anchors) embarked on a grassroots effort to lift up the voices of voters of color and their experiences accessing the right to vote. We conducted “People’s Hearings” in select states over several months in 2019 and gathered first-hand accounts of voter suppression through those hearings and lawsuits to protect voting rights. Witnesses testified to the erosion of equal access to voting and voter registration and to the ferocity of post-*Shelby* election-related discrimination in Alabama, North Carolina, Ohio, North Dakota, South Dakota, Georgia, Florida and Texas. Witnesses attested to, among other things, having to wait in long lines to cast a ballot, being denied bilingual ballot language assistance,



having to restore their registration status after an illegal voter purge, and having to stand up against last-minute changes to polling locations and hours of operation. Additionally, voters have had to adjust to increasingly scarce polling places with ever-changing locations, which present a huge burden for those without easy access to transportation and inflexible work schedules. Witnesses further testified to:

- An increase in the number voting rights violations since the *Shelby* decision
- An increase in the costs and burdens to access the right to vote
- An increase in the costs of litigating Voting Rights Act violations
- Strong evidence of discrimination in voting
- A need for transparency, notice and federal protection for the right to vote.

In conducting the People's Hearings, we found that witnesses framed the right to vote in primarily two ways: 1) the right to be regarded and recognized as an eligible voter and 2) the right to cast a ballot without undue burden.<sup>ii</sup> These frameworks were prevalent themes throughout stories collected via the congressional and People's Hearings, and our [website](#). Indicating that, for communities of color, the right to be recognized as an eligible voter and the right to vote without undue burden are the components of the concept of the "right to vote" most severely contested or undermined in the modern day fight to vote.

This report seeks to elevate the voices of affected communities across the country and provide important insights on the quest to vote. *We Vote, We Count* addresses three primary issues:

1. The impact of voting rights violations and litigation since the landmark *Shelby County v. Holder* decision
2. Evidence of continued discrimination in voting and the ongoing need for federal protection
3. The need for increased transparency and protecting the right to vote.

The members of the Racial Equity Anchors Collaborative--Advancement Project, Asian & Pacific Islander American Health Forum, Demos, Faith in Action, National Association for the Advancement of Colored People, National Congress of American Indians, National Urban League, Race Forward, and UnidosUS--are a collaborative dedicated to a voting system that is free and allows all people the right to vote regardless of race, ethnicity or language ability. The stories contained in this report illustrate the need for action to ensure that the right to vote remains a central part of the democratic system. Efforts to destroy the right to vote have escalated since *Shelby*. However, the determination of these racial equity groups, and many other allies, has also increased to fight for the unfettered right to vote.

The current levels of voter suppression unduly burden this fundamental right and disproportionately disenfranchise voters of color. This report provides testimony from African Americans, Asian Americans, Native Hawaiian, Pacific Islanders, Latinos, and Native Peoples, whose first-hand accounts provide a glance into the inner workings of voter suppression in states across the country. The effort to add the voices of the people to the process has unearthed a symphony of witnesses that are worthy of attention. The people are declaring that We Vote! We Count!

## I. Introduction

The right to vote is fundamental. Yet, significant attacks and restrictions, especially in communities of color, on this right are widening. Long-standing discrimination and suppression tactics have only increased in the aftermath of the Supreme Court decision in *Shelby County, Alabama v. Holder* (2013). In that decision, the Court's majority declared unconstitutional the coverage formula (Section 4(b)) that empowered Section 5 of the Voting Rights Act, which allowed for federal oversight of election administration decisions in some states and localities. Emboldened by the removal of oversight, state lawmakers and election administrators enacted and implemented stringent restrictions on access to the ballot which disproportionately disenfranchised voters of color. The combination of these new stringent restrictions and longstanding violations of the right to vote have had a devastating negative impact on the ability to exercise the right to vote in low income communities and, in particular, for communities of color.

Many of the laws and procedures emerging after *Shelby* were rehashed/retooled versions of measures that initially did not survive scrutiny, or which were unlikely to survive scrutiny under pre-*Shelby* "preclearance", wherein certain states and localities would have to present and defend proposed reforms before the Department of Justice or the United States District Court for the District of Columbia. The *Shelby* decision invalidated the coverage formula, outlined in Section 4 of the Voting Rights Act, which determined the jurisdictions that were subject to the federal preclearance regime, outlined in Section 5, and who would have to pause enactment of proposed reforms until their potential effects could be evaluated. By invalidating the coverage formula and essentially shuttering federal oversight prior to the implementation of voting laws in Section 5 covered jurisdictions, the *Shelby* decision eliminated the most important protective dimensions of preclearance and reprimanded Congress for failing to modernize the coverage formula in order to capture jurisdictions which the Supreme Court theorized had a more recent record (as of Congress' reauthorization action in 2006) of abetting election-related discrimination. Surprisingly, the Court admitted that discrimination continued to exist in voting; yet, it removed the tools that helped to diminish discrimination. Despite the Supreme Court's decision that the need for federal protection had passed, communities of color continue to experience difficulties exercising their right to vote and accessing the ballot. Indeed, this widespread suppression of voters of color has been a mainstay in our democratic process.

This report begins with a brief history of voting discrimination in America impacting people of color, government action to protect voting rights, challenges to government action, and discusses the ferocity and speed at which jurisdictions adopted restrictive voting laws and discriminatory practices after *Shelby*, including restrictive voter ID laws, reductions of in-person registration and voting sites, and illegal voter purges. For the contemporary illustrations of voter suppression, this report draws from testimonies given by affected persons during both the 2019 field hearings and listening sessions conducted by the U.S. House of Representatives' Committee on House Administration Subcommittee on Elections, chaired by Representative Marcia Fudge of Ohio, and the 2019 People's Hearings held by the Anchors, recent court cases, to document the ongoing discrimination experienced by voters of color and community groups, as well as, stories collected on the *WeVoteWeCount* website.

Likewise, this report summarizes witness testimony to document voter encounters with restrictive voting laws, discriminatory election administration practices, and persistently indifferent state officials who deny voters' claims that laws and practices are racially discriminatory by intent, racially discriminatory by effect, or both. Additionally, the report includes voter accounts of how restrictive voting measures impact the right to vote, how advocacy groups and affected communities have tried (unsuccessfully in most cases) to track suspicious election reforms and to thwart constitutional violations through litigation, and how persistent socioeconomic disparities have strengthened secondary barriers to electoral participation. Finally, this report addresses the current state of federal efforts to protect the right to vote, the ongoing need for Congress to address the racial inequities that remain in the voting process, and the solutions proposed by witnesses to thwart continued assaults on the right to vote. The voices of impacted people cry out for a robust and comprehensive solution to long-standing disenfranchisement, both in previously covered jurisdictions under Section 5 of the Voting Rights Act, and in jurisdictions throughout this country where the right to vote is compromised due to race, ethnicity and/or language ability.

## **II. The Fight to Vote in the United States**

The Preamble of the Constitution proclaimed our Founding Fathers' intent to redefine governance.<sup>iii</sup> Instead of power flowing from the top, it would flow from the people of the United States. This phrase, "we the people", confers the hope of inclusion and empowerment in the ability for its people to participate freely in the political process. Through voting and political participation, the people could shape the government. This was a noble desire. However, from the outset, the Founding Fathers determined that the linchpin of the democratic process, i.e., the vote, was reserved for only certain inhabitants.

"We the people" still proves to be a revolutionary concept. Those in power have defined the contours of who constitutes "the people." From the Founding to the new millennium, those in power construct the political and electoral realities that continue to deny people of color access to the ballot box. Interestingly, the United States Constitution did not originally define who could access the fundamental right to vote. The Founders of this great republic would explicitly craft the three-fifths compromise in an attempt to ensure that the rights of people of color would not equal the rights of whites. With few exceptions, women were largely prohibited from voting, as were men without property, and non-white Americans and indigenous people. The absence of constitutional language protecting the right to vote allowed each state to determine who was eligible to vote, fragmenting the concept of "we the people." Indeed, before the ratification of the Fourteenth Amendment, the Constitution did not explicitly define citizen, merely referring to "Citizen[s] of the United States" and "Citizens of each State. Consequently, slaves and indigenous people, on whose homelands the new country was founded, were not considered citizens and were denied the rights given to white men in this country, including the right to vote. It would take a war that divided the country to put the pieces of our democratic government back together into a system that slightly resembled democracy.

After the Civil War, the period of Reconstruction constituted a seismic shift towards inclusion with passage and ratification of the Fourteenth and Fifteenth Amendments. The latter provides that voting rights cannot be denied or abridged based on "race, color, or previous condition of servitude."<sup>iv</sup> This essentially granted the right to vote to all male citizens regardless

of color or previous condition of servitude, sparking a wave of African American men becoming involved in the political process not only as voters but also as elected officials at the local, state, and national levels. For the first time in American history, some, but not all, people of color could have a voice in how the government was run.

#### **A. Jim Crow Laws and Disenfranchisement**

In the face of a more representative electorate, states across the nation adopted new constitutions and enacted laws that made it harder for people to register to vote. These laws in the Jim Crow era<sup>v</sup> were used to directly disenfranchise non-white voters and poor white voters through poll taxes, literacy tests, and grandfather clauses. These disenfranchising devices were implemented in a discriminatory manner at the local level. Effectively, local election administrators were choosing who could register to vote and who could not. Literacy tests, and the like, were used as a means to discriminate against individuals based on their race, religion, or national origin with the express intent of reserving access to the ballot box for white male voters. While Jim Crow laws and the effects of exclusionary election administration were not limited to the south, it was in southern states that the harmful effects could be seen so acutely. In Louisiana, for example, more than 130,000 black voters had been registered in 1896, but in 1904 only 1,342 Black people were registered to vote due to the systematic targeting of non-white communities through laws, tests, and outright terrorist tactics.<sup>vi</sup>

Notably, indigenous people, who were not considered American citizens as a matter of birth, were still largely excluded from the franchise. The Supreme Court addressed the question of the 14<sup>th</sup> Amendment's application to Native Americans in 1884, holding that Indians were "not . . . citizen[s] of the United States under the Fourteenth Amendment."<sup>vii</sup> Likewise, Native Americans faced barriers similar to African Americans in the South and Latinos in the Southwest. Native Americans were disenfranchised using a plethora of avenues including "[m]any states employed facially neutral measures, such as poll taxes or literacy tests, intended to avoid the proscriptions of the Fifteenth Amendment — techniques mirroring those deployed against African American voters throughout the Jim Crow South. Further, drawing on Native Peoples' "unique status of citizenship at four levels of government" (federal, state, local, and tribal) and the complex history out of which that status arises, states deployed distinct methods of disenfranchising Native Peoples. Mirroring the Three-Fifths Clause and the Fourteenth Amendment, some states explicitly excluded "Indians not taxed." Others passed statutes defining residency to exclude Native Peoples living on reservations. Additionally, some states imposed tribal relation limitations, extending the franchise only to American Indians who had terminated their tribal relations and were deemed sufficiently "civilized." Finally, finding support in Chief Justice Marshall's pronouncement that the relationship of Indians "to the United States resembles that of a ward to his guardian," states disenfranchised American Indians on account of their alleged under-guardianship status."<sup>viii</sup>

Around the same period, following the Mexican-American War in 1848, the U.S. had annexed over half of Mexico--what is now the states of Arizona, Colorado, California, New Mexico, Nevada, Utah, and portions of Kansas, Oklahoma, and Wyoming, plus Texas, annexed in 1845. Mexicans who resided in those territories and stayed were allowed to choose U.S. citizenship. Nonetheless, remaining meant they faced violence, and laws and practices similar to those experienced by African and Native Peoples, which codified segregation, unequal treatment,

and exclusion from the political process through poll taxes, literacy and English tests, and outright intimidation.

Laws and practices to keep African Americans from voting, had similar impacts on or were also pursued against Latino and Asian American communities, especially in states or localities where there was a sizable community of color. The US Commission on Civil Rights heard testimony that Texas has been and continues to serve as the “disenfranchiser in chief” for communities of color, especially African American and Latinx communities. Texas’s efforts to disenfranchise people of color extend to the 1800s.<sup>ix</sup> For some time, “[w]hen Mexican Americans tried to register in one town, they were told the register ran out of printed forms. Polling places were located in “white only” spaces. There were instances where Mexican American ballots were challenged for no cause. There was also evidence in later testimony of Mexican American voters and activists suffering economic punishment, losing their jobs and bank loans, and even suffering violence as a result of running for office.”<sup>x</sup> Aiming to prevent African Americans from fully participating in the political process, “Texas banned African Americans from voting in 1923 by codifying all-white primaries. The law was not overturned until 1944 in *Smith v. Allwright*--one of 4 Texas cases challenging the all-white primaries.”<sup>xi</sup> All-white primaries also excluded Latinos from participating.

Similarly, passage of the Indian Citizenship Act of 1924 did not result in full enfranchisement of Native American voters. Many states continued to deny Native Peoples the right to vote in state and federal elections through the use of poll taxes, literacy tests, and intimidation.<sup>xii</sup> It took nearly forty years for all fifty states to recognize the Native American right to vote. For years, Arizona denied Native Peoples access to the franchise because they were “under guardianship,” placing all indigenous Arizonians on par with convicted felons, the mentally incompetent, and the severely mentally incompetent.<sup>xiii</sup> In other places, Native Peoples were denied the right to vote unless they could prove they were “civilized” by moving off the reservation and renouncing their tribal ties.<sup>xiv</sup>

Questioning one’s citizenship, or outright preventing people from becoming citizens in the first place, also has a long history in this country. Asian American, Native Hawaiian, and Pacific Islander (AANHPI)s were denied the ability to vote for most of the country’s existence as Asian immigrants were barred from becoming citizens via federal policy until 1943 and subject to racial criteria for naturalization until 1952.<sup>xv</sup> In fact, many legislative efforts prevented Asian immigrants from even entering the country and becoming citizens.<sup>xvi</sup> Asian immigrants were also prohibited from voting and owning land as they were legally identified as aliens “ineligible for citizenship.”<sup>xvii</sup> Further, current US Civil Rights Commissioner Karen Narasaki noted that one of the primary ways to prevent persons in the immigrant community from voting “was simply by not being allowed to be a citizen.”<sup>xviii</sup> She further noted, “..., both Native Americans ...and then also my grandmother, who for over 50 years after she immigrated was not allowed to become a citizen because she came from Japan. So, I think that it’s important to note that there are many ways, and ever-inventive ways that unfortunately this country has sought to keep all of its people from being able to vote.”<sup>xix</sup>

Today, U.S. Citizen and Immigration Services (USCIS), the government entity that processes applications for citizenship, has been embroiled in controversy over creating delays, backlogs, and other barriers to citizenship that have the effect of delaying new Americans’ ability to participate in the voting process. “According to data available from USCIS, as of

March 2019, the number of pending citizenship applications at the agency is more than 713,000 – double the amount compared to 2015. These delays persist, despite the fact that fewer people are applying for citizenship.<sup>xx</sup> Changes to the Immigration and Nationality Act in 1965,<sup>xxi</sup> helped to change “America’s racial landscape ... from a nation in which immigration was carefully controlled by national quotas and roughly 90% of immigrants came from Europe to a nation in which immigration rates are booming and about 85% came from Latin America and Asia. Today, Latinos are the largest nonwhite group in America.”<sup>xxii</sup> While the Latino community is the largest, the Asian community is the fastest growing community of color. In a seminal report, the Pew Research Center found that the Asian American population grew from 1% of the U.S. population in 1990 to approximately 6% in 2010.<sup>xxiii</sup> Further, the report projects that Asian Americans will increase to almost 10% of the U.S. population before 2050.<sup>xxiv</sup> These communities, however, have been burdened with the same barriers to the ballot box as other communities of color.

## **B. Congressional Efforts to Remove Barriers to the Ballot**

More than half a century after the end of Reconstruction, when the states openly and systematically worked to deny people of color their fundamental right to vote, the federal government passed the Civil Rights Act of 1957. The Act established the United States Commission on Civil Rights and the United States Department of Justice, Civil Rights Division. Congress charged the United States Commission on Civil Rights with the responsibility of investigating, reporting on, and making recommendations concerning civil rights issues in the United States.<sup>xxv</sup> Similarly, the United States Department of Justice, Civil Rights Division was charged with enforcing federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin. These federal institutions were created to enforce and protect the right to vote at the federal level and showed a growing commitment to protecting the civil rights of people in the United States. With this legislation, Congress took a step towards ensuring the promise of the Reconstruction Amendments.

Although the Civil Rights Act of 1957 helped empower courts to remedy violations of federal voting rights, the Act failed to meaningfully expand the right to vote. In *United States v. Atkins*,<sup>xxvi</sup> the Court found that despite the congressional action, registrars continued to deny African Americans an opportunity to equally participate in the electoral process. Its findings are exemplary of other parts of the country: “Dallas County [Alabama] had a voting-age population of 29,515, of which 14,400 were white persons and 15,115 were Negroes; 8,597 of the whites and 242 of the Negroes were qualified voters. Between January 1952 and December 1960, ten different individuals served as members of the Board of Registrars of Dallas County. Between those dates, 4,500 whites and only 88 Negroes were registered. Only 14 Negroes were registered from June 1954 to December 1960. The district court found that from 1954 to 1961 many unqualified whites were registered, whereas many qualified Negroes were rejected. Although the number of Negro applications which were rejected and the identity of the applicants are not known, testimony showed that among those rejected were two doctors, six college graduates, and two persons with some college education.”<sup>xxvii</sup>

While a step in the right direction, the Civil Rights Act of 1957 did not immediately move the needle on all citizens’ ability to register to vote and cast a meaningful ballot. Congress passed

additional legislation in 1960 and 1964 that included voting rights provisions, but it used a jurisdiction-by-jurisdiction approach that was costly, time-consuming, and ineffective.<sup>xxviii</sup>

### 1. The Voting Rights Act of 1965

Throughout the early twentieth century, people of color were constantly barred from exercising their right to vote. Passed after the increased visibility of police violently shutting down voter registration efforts and non-violent protests in places like Selma, Alabama, no single piece of legislation was more impactful toward the expansion of the right to vote than the Voting Rights Act of 1965 (VRA). The VRA was designed to enforce the power given to Congress in the Fourteenth and Fifteenth Amendments to the Constitution.

Sections 2 and 5 of the Act. The VRA provided nationwide protections for voting rights. It had two primary enforcement provisions: Section 2 and Section 5. Importantly, Section 2 prohibits the imposition of any voting law that results in discrimination against racial or language minorities.<sup>xxix</sup> Accordingly, it created the ability to challenge any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.<sup>xxx</sup> A 1980 decision, *Mobile v. Bolden*,<sup>xxxi</sup> restricted the reach of Section 2, and made it harder to bring an action challenging voter discrimination.<sup>xxxii</sup> This was a very difficult standard to meet, because it required a finding of intentional discrimination, which is extremely difficult to prove. In 1982, while amending the VRA, Congress broadened Section 2, so that showing intent was no longer the only avenue towards a remedy. Importantly President Ronald Reagan referred to the VRA as “the crown jewel of American liberties” when he signed the 1982 extension into law.<sup>xxxiii</sup> After the 1982 amendment, a plaintiff can now establish a violation under Section 2 if the evidence shows that in the context of the “totality of the circumstance of the local electoral process,” the action being challenged has the result of denying a racial or language minority an equal opportunity to participate in the political process.<sup>xxxiv</sup> Therefore if a person, community, or an organization wishes to bring a Section 2 suit, they must meet these standards which cost enormous amounts of money and time to establish, and only provide a remedy **after** the harm has already been committed. Compare this provision, however, to Section 5 of the Act, which required certain jurisdictions to seek federal approval prior to implementation.

The Section 5 preclearance requirement was an even more powerful tool for preventing discrimination in the voting process. Before passage of the Voting Rights Act, all other remedies for voting rights discrimination did not allow for a solution until after the harm was done. The ineffectiveness of piecemeal litigation led in large part to the passage of Section 5 to address the need for a comprehensive remedy to the constantly changing ways that people of color witnessed barriers to the franchise. In fact, in *South Carolina v. Katzenbach*,<sup>xxxv</sup> a case challenging the constitutionality of the Voting Rights Act, the Supreme Court noted that previous voting rights legislation did not go far enough finding:

In recent years, Congress has repeatedly tried to cope with the problem by facilitating *case-by-case litigation* against voting discrimination. The Civil Rights Act of 1957 authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Further, the Civil

Rights Act of 1960 gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.<sup>xxxvi</sup>

With the passage of the VRA, specifically the Section 4(b) preclearance formula and the Section 5 preclearance requirement, Congress finally attempted to stop voter discrimination and voter disenfranchisement before it occurred, at least in some jurisdictions. Section 5 of the VRA prohibited jurisdictions covered by Section 4(b) from implementing any change affecting a person's ability to vote without receiving preapproval from the U.S. Attorney General or the United States District Court for the District of Columbia.<sup>xxxvii</sup> This part of the Act only applied to jurisdictions encompassed by the Section 4(b) "coverage formula". The coverage formula in Section 4(b) was originally designed to encompass jurisdictions that engaged in systemic voting discrimination in 1965.<sup>xxxviii</sup>

Essentially, the "preclearance" requirement of Section 5 stopped the harm to the act of voting before it could happen. In *Allen v. State Board of Elections*, the Supreme Court determined that the coverage of Section 5 should be given a broad interpretation, meaning even apparently minor or indirect changes to voting rights required approval.<sup>xxxix</sup> For example, if a state subject to the preclearance formula wanted to change a polling place location or other law affecting voting, it was required to submit the potential change for review and wait for approval. In many jurisdictions this prevented harsh voter laws from going into effect, stopped the constant moving of polling locations, and halted the continued shrinking of early voting periods, which all too often disproportionately affected people of color.

Language Access Provisions. The poll taxes, violence and economic intimidation regularly used to disenfranchise African American voters, also impacted other people of color. The primary provisions of the VRA, Sections 2 and 5, attempted to address those ills and enabled communities of color in large part to access the ballot. However, Latino and Asian American voters experienced harassment and denials at the polls due to their language ability. For example, New York State had an English language literacy requirement from 1921 to the mid-1960s, which effectively denied the right to vote for Spanish speaking Puerto Rican-born U.S. citizens residing in the state. Congress addressed this inequity in section 4(e) of the VRA. However, in the 1966 case, *Katzenbach v. Morgan*, registered voters in New York City sued to prevent compliance with Section 4(e).<sup>xl</sup> While the VRA sought to expand the right to vote to more Americans, lawsuits and other actions followed seeking to challenge or overturn these provisions.

In addition to Section 4(e), when Congress reauthorized the VRA in 1975, it added Sections 203 and 208, which required translated election materials in certain states and localities and the ability for voters to choose the person who will assist them.

Sec. 203 of the Voting Rights Act provides:

"The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition, they have been denied equal



educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language...In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.<sup>xli</sup>

Organizations such as Southwest Voter Registration Education Project (SVREP), launched in San Antonio, TX, were instrumental in getting the 1975 Voting Rights Act passed. The new legislation required that voting materials be offered in the language of any language-minority population that was greater than 5 percent in a state or smaller political subdivision. Alarming, Congressional testimony found that Latinos experienced financial and physical retribution for civic engagement.

Section 203 has proven to be monumental in insuring access to the ballot for persons with limited English proficiency. However, federal intervention and enforcement is sorely needed. For example, poll monitoring by Asian Americans Advancing Justice and Asian American Legal Defense and Education Fund for many decades has shown that noncompliance abounds in Section 203 jurisdictions, with unknowledgeable and unhelpful poll workers, unavailable and/or improperly displayed translated materials, and a general lack of bilingual poll workers, often resulting in Asian American voters being denied requested assistance.<sup>xlii</sup> Similar problems have also been documented for Latino and Native People voters in previously covered jurisdictions.<sup>xliii</sup>

## **2. Other Federal Voting Rights Laws**

The VRA succeeded in expanding the franchise and helped those originally locked out of the political process gain access into the electorate.<sup>xliv</sup> While the Voting Rights Act was monumental in its impact, additional measures were needed to ensure that citizens were not denied opportunities to register, cast a ballot, or have their ballots properly counted. Indeed, the passage and strong enforcement of the Voting Rights Act did not signal the end of voter disenfranchisement or the end of processes and practices which discouraged citizens from actively and consistently participating in the electoral process. With the urgency to act, Congress passed more laws to ensure all eligible voters retained the right to register to vote and cast their ballots.

National Voter Registration Act of 1993. The National Voter Registration Act of 1993, also known as the Motor Voter Act, requires state governments to allow mail-in voter registration and to provide voter registration opportunities to any eligible person through drivers' license agencies, public assistance agencies, and disability agencies. It also prohibits states from removing registered voters from the voter rolls unless certain protections are followed. Voting rights organizations were forced into extensive litigation to ensure that states fully comply with the National Voter Registration Act.<sup>xlv</sup>

Uniformed and Overseas Citizens Absentee Voting Act. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), requires that all U.S. states and U.S. colonies allow certain U.S. citizens to register to vote and to vote by absentee ballot in federal elections. The act

does not apply to non-federal elections, although some states and territories also allow citizens covered by the UOCAVA to register and vote in state and local elections as well.

Help America Vote Act of 2002. In the wake of controversy surrounding election results and ballot design in Florida and in other places during the 2000 election cycle, Congress passed the Help America Vote Act of 2002. This law mandates that all states and localities upgrade many aspects of their election procedures, including their voting machines, registration processes and poll worker training. The specifics of implementation have been left up to each state, which allows for varying interpretations of the federal law.

### C. Challenges to Federal Enfranchisement Laws

Time after time, states and local actors have attempted to retain power by limiting who is included in “we the people.” Consequently, the courts have found themselves at the epicenter of the fight to access the franchise. Since the passage of the Voting Rights Act of 1965, and subsequent legislation, there have been many challenges to federal actions that ensure the right to vote for everyone. For example, shortly after its passage, *South Carolina v. Katzenbach*, challenged the constitutionality of the Act.<sup>xlv</sup> The Supreme Court found that the measures that Congress adopted were necessary to combat the widespread voter suppression and disenfranchisement that existed.<sup>xlvii</sup> Additionally, *Katzenbach v. Morgan*, attempted to challenge Section 4(e) of the VRA as a violation of federalism.<sup>xlviii</sup> However, the court found Section 4(e) to be a valid use of Congress’ power under the Fourteenth Amendment.<sup>xlix</sup> This was a major victory for voting rights advocates, reinforcing the notion that Congress does indeed have the power to stop discrimination at the state level. However, *Katzenbach* did not truly resolve the underlying debate over the degree to which federalism constrained the federal government in the arena of voting rights. The *Crawford v. Marion County Election Board* case brought the issue of federalism again to the forefront when Indiana challenged the extent to which the Help America Vote Act (HAVA) constrained state election practices.<sup>1</sup> The Supreme Court concluded that the voter ID requirement at issue was closely related to Indiana’s legitimate state interests in preventing voter fraud<sup>ii</sup>. The decision in *Crawford* opened the door for more states to implement restrictive voter ID laws.

Recent history has proven there is still an urgent need for federal action in the face of systemic and particularized voter discrimination. Additionally, there have been many direct and indirect attacks on the VRA, from passing restrictive voting ID laws at the state level to an increase in policies that disenfranchise formerly incarcerated people. Those opposed to the expansion of voting rights challenged the constitutionality of the VRA in *Northwest Austin v. Holder*.<sup>iii</sup> While in this case, the Court declined to rule on the constitutionality of the VRA, it was only a few years later that another case challenging the constitutionality of the VRA made its way to the Court.

The Court in *Shelby County, Alabama v. Holder* ruled the preclearance formula in Section 4(b) of the VRA to be unconstitutional, not because discriminatory voting practices ceased, but because the formula relied on old data about voter discrimination which could not justify continued federal oversight. Effectively, this decision set aside the preclearance provision for those covered jurisdictions until Congress could pass (and the President could enact) another

coverage formula. But since Congress has not acted, the *Shelby* ruling essentially gave a green light to jurisdictions previously covered by the preclearance formula to start implementing racially discriminatory barriers to voting.

Now, with the preclearance provision set aside and effectively eliminated, restrictive voter ID laws, moving polling locations, and other changes that would have been stopped by the preclearance provision have come back with a vengeance to disenfranchise people of color. For example, in less than two months after the decision in *Shelby*, North Carolina enacted HB 589, which instituted a strict ID requirement, curtailed early voting, eliminated same day registration, and eliminated the authority of county boards of elections to keep polls open for an additional hour.<sup>liii</sup> The U.S. Court of Appeals for the Fourth Circuit struck down the law three years later, finding that it targeted “African Americans with almost surgical precision.”<sup>liv</sup>

This law would have been subject to the Section 5 preclearance provision of the VRA if jurisdictions in the state had remained covered. The law would not have gone into effect and the people of color in North Carolina would not have had their vote kept from them in the subsequent elections that took place while this law was being litigated. It took three years for the blatantly racist voter ID law in North Carolina to be struck down, which is three years too many when a fundamental right is at stake.

North Carolina has not been the exception in the post- *Shelby* world we live in, it has become the rule. At least 23 states have enacted newly restrictive statewide voter laws since the *Shelby* decision.<sup>lv</sup> We can look to Texas for a snapshot of the impact the VRA has on communities of color. It is important to note that “[t]he VRA also has contributed to increased political representation for Latinos, African-Americans, Asian-Americans and other under-represented minority groups in Texas. For example, in 1973, there were 565 Latino elected officials in the state. By 1984, the number had grown to 1,427. In January 2005, the number had increased to 2,137 Latino elected officials, nearly four times the number in 1973. The growth of Latino elected officials elected to Congress and to the Texas Legislature has been particularly significant. Between 1984 and 2003, the number of Latino Members of Congress doubled from three to six, and the number of state-level elected officials increased from twenty-five to thirty-eight. Additionally, between 1970 and 2001, the number of African-American elected officials in Texas rose from twenty-nine to 475, including two members of Congress (up from zero in 1970). Despite these substantial gains, Latinos and African-Americans continue to be vastly underrepresented at every level of federal, state and local government.”<sup>lvi</sup> Texas’ failure continues into this millennium emboldened by its restrictive voter ID law found intentionally discriminatory by several federal courts.<sup>lvii</sup>

Texas and North Carolina are by no means the only perpetrators of political disenfranchisement. Many other states are adopting laws that adversely impact people of color’s ability to access the ballot. Indeed, states acted with speed and ferocity to enact discriminatory changes to election laws and administrative practices following the 2013 Supreme Court decision, *Shelby County, Alabama v. Holder*. The Court determined that Congress had relied on old evidence of election-related discrimination, which was found inadequate to justify extraordinary federal oversight of election procedures in specific states and local jurisdictions. In an ironic twist of circumstances, voters now face an increasingly burdensome and complex array

of barriers to exercising their constitutional right to vote and to petition the government for a redress of grievances. As a start, Congress must act and fully restore the Voting Rights Act to completely address the modern attacks on voting rights illustrated in this report and protect the inclusive meaning of “we the people.”

### III. Telling Our Stories

In this era of voter disenfranchisement, voters of color confront renewed barriers to casting a ballot. Witnesses described a grave situation in twenty-first century America.<sup>lviii</sup> Unlike in the past, when states routinely enacted discriminatory laws and procedures to expressly deny all people of color the franchise based on the color of their skin, states in the post-*Shelby* era are enacting reforms that while “facially” neutral are indeed designed to block voters of color from the ability to exercise the franchise. In other words, while the *language* of laws affecting voting rights under the Jim Crow Era may be different to that used in the post-*Shelby* Era, the impact is the same. Years after enactment of high-profile, far-reaching, bipartisan efforts to protect the right to vote, voters of color confront barriers to electoral participation and empowerment that Americans thought were eliminated or at least kept in check by legislation and judicial precedent. Repeated problems experienced by voters underscore the massive impact of restrictive voting laws and discriminatory actions. Problems reported to the Subcommittee on Elections and during the People’s Hearings, as well as in court cases, include restrictive voting ID laws, illegal voter purges, reduced access to the ballot, diminished equal opportunity to elect candidates of choice, and increased costs associated with thwarting constitutional violations. Despite being well-aware of these repeated problems experienced by voters, state lawmakers and election administrators in many parts of the country continue to enact new voting rules that create more barriers and decrease access.

#### A. Impact of Voting Rights Violations

The new barriers to casting a meaningful ballot put into place after *Shelby* are, in many instances, exact replicas of proposed election reforms that would have been rejected under the Section 5 preclearance procedures.<sup>lix</sup> In other instances, these new barriers are also more aggressive versions of their predecessors.

Voter ID. Photo voter ID laws emerged as a classic example of the new barriers affecting voters. Take, for instance, North Carolina’s voter identification law enacted in 2013 – what one witness in the field hearings called “the strictest discriminatory photo voter ID law in the nation”<sup>lx</sup> and what another witness in the field hearings called the “monster voter suppression law”<sup>lxi</sup> – which might not have survived under preclearance. Witnesses to the field hearings testified that North Carolina lawmakers exploited the *Shelby* decision to pass the controversial law because the state could not successfully defend the law against challenges (levied by civil rights organizations, attorneys in the DOJ Civil Rights Division or by litigants before the U.S. District Court for the District of Columbia) that the law was racially discriminatory in its effect. Witnesses further testified that not only did North Carolina enact its controversial voter ID law, but that the state simultaneously eliminated same day registration, safeguards to protect out-of-

precinct voting, and a week of early voting. Moreover, they also underscored that while these changes diminished the ability of all voters to cast a ballot and to have it properly counted, the effects of these changes were borne disproportionately by poor people and people of color.

Similar stories offered in Alabama and Florida during the People's Hearings highlighted how voter ID laws created conditions eerily analogous to circumstances in the Jim Crow era. Commissioner Sheila Tyson, for instance, testified that "Alabama passed a strict ID requirement, hurting over 300,000 voters. Did not care that a fourth of those 300,000 people did not have cars. They knew exactly what they were doing when they did it."<sup>lxii</sup> Commissioner Tyson continued, "When they closed down the 31 ID spots, it wasn't just an ID or voter's ID, it was a driver's license. You have to drive four hours to get a driver's license but you can't vote without a driver's license or some type of state ID. But then you turn around and close [the voter ID offices]."<sup>lxiii</sup> Other field hearing testimony pointed out that Alabama's closure of "thirty-one DMV offices" could not be separated from issues of race and class.<sup>lxiv</sup>

*Place Daily Show meme with Carol Anderson here.*

Witnesses explained that many of the closed facilities were in primarily black and primarily poor counties and that "confusion among poll workers over what constituted proper identification" added other burdens to voters seeking to comply with the strict voter ID law.<sup>lxv</sup>

Other witnesses pointed out that strict voter identification laws enabled Jim Crow era practices to be resurrected outside of the traditional South. In North Dakota, a burdensome voter ID law was enacted that required voters to show photo identification that includes their name, birth date, and residential street address. This law disproportionately impacted Native voters living on reservations where they do not have residential street addresses. Witnesses at the field hearings reported that poll workers were rejecting "life-long" Native voters that they had known "their entire lives", and whom they were previously permitted to vouch for if questions arose about the identity of the voter. Witnesses characterized the North Dakota voter ID law as carrying an "anti-Indian undertone," objecting to certain forms of identifications in a manner that was "incorrect as a matter of law." Witnesses reported, for example, that poll workers had rejected federal passports and military identifications as inadequate photo-based proof of a voter's identity.<sup>lxvi</sup> Complying with voter identification requirements is especially challenging to Native Americans. For those living on reservations in rural areas, it may be difficult to supply proof of residence because they lack street addresses. Additionally, "the number of Native Americans who have electricity, phone lines, or bank accounts to provide the requisite documentation is much less on average than the overall U.S. average."<sup>lxvii</sup> Native voters also report being unduly burdened by the cost of traveling long distances, particularly given the high poverty rates on many reservations to obtain state identification. In North Dakota, for example, Charles Walker, the Judicial Committee Chairman of the Standing Rock Sioux Tribe, noted that the "(f)amily poverty rate in Sioux County, North Dakota alone is 35.9 percent ... that the nearest driver's license site is about 40 miles away .... [and] that a tribal ID is still going to cost money.

Many states do not accept tribal identification as an acceptable form of voter identification. On our [We Vote We Count](#) website; we received this account from Jenifer Van Schuyver discussing her experience in St. Louis in 2016:

I was standing in line at my local voting place in St. Louis, taking a selfie and hash tagging #rockthenativevote, ...

I'm Native and proud in a city that doesn't see me. Coming from Oklahoma I never had to explain my heritage, how much 'blood' I had, or what the hell a CDIB card was (a complicated relationship with a piece of plastic #smh.) To vote in Missouri you just need your voting slip, or a federal photo ID. I handed her my CDIB card (because I can) and she immediately said, "that's not a real ID." I attempted to argue, the long line behind me became frustrated, and then I pulled out my driver's license. For my local elections last year, I didn't even try to use it.

The federal government demands that my particular ethnicity should carry around a card to be proven legit and then people who work for the same government do not even know what it is.

For some Indigenous people this card is the only free piece of plastic with a picture on it. It's the key to recognition in a world that keeps telling us we're less than. I should be free to wonder around this whole damn country using it with having to explain it. Especially when it comes time to vote...<sup>lxviii</sup>

Here, as in the past, state actions and persons acting under the auspices of state law can effectively undermine the protections contained in the Fourteenth and Fifteenth Amendments and create often insurmountable barriers to the ballot box.

Method of Election. Enactment of strict voter ID laws was not the only way localities resurrected Jim Crow Era laws. Many jurisdictions returned to anachronistic election procedures known to disadvantage voters of color. For example, in Texas, a witness reported that the City of Odessa passed a charter amendment to reinstate at-large voting and to add an at-large seat to the city council, a change that coincided with the growing voting strength of communities of color.<sup>lxix</sup> The witness juxtaposed the charter amendment reform alongside the gains made of people of color through the city's single-member districts, which the City of Odessa only adopted in response to litigation, initially started in 1985, that challenged at-large voting, and alongside the "looming" possibility of people of color control over the city.<sup>lxx</sup> In short, witnesses testified that states were resurrecting rejected reforms from a bygone era and retooling these reforms to work with changes that appear neutral in anticipation (or in full knowledge) that the effects would have a disproportionate impact on certain communities.<sup>lxxi</sup>

Other witnesses remarked how the *Shelby* decision emboldened assaults on voters' equal opportunity to elect candidates of their choice. Those assaults include attempts to reinstitute at-large elections in place of districting systems and attempts to resurrect or institute redistricting schemes that would dilute the voting power of protected groups. Testimony about egregious

incidents involving redistricting were especially illustrative. For example, North Dakota State Representative (District 27) Ruth Buffalo testified about Native Peoples' experience with vote dilution. Buffalo said, "Tribal citizens make up 31.8% of the district [4] despite there being a sizeable Native American population. 5,632 members currently live on the Fort Berthold Reservation, with another 3,655 living in close proximity, yet there are no majority Native American districts."<sup>lxxii</sup> For Buffalo, the absence of a majority district devalued the Native American community: "If maps were drawn another way, Native Americans could easily support their own district. In fact, the dilution of the Native vote is even more outrageous if you look at the counties. There are six counties that intersect the Fort Berthold Reservation, ensuring no Native American representation among county seats."<sup>lxxiii</sup>

Witnesses provided similar stories from North Carolina about the impact of packing and cracking on black electoral empowerment. Patricia Timmons-Goodson, Vice Chair of the United States Commission on Civil Rights, discussed comments from a community member about the ways in which the equal opportunity to vote was hampered. Timmons-Goodson recalled that the community member blamed "racial gerrymandering [which] prevented black political power through packing" and "cracking."<sup>lxxiv</sup> Timmons-Goodson testified that the community member recollected that the General Assembly "split" a majority black voting precinct "down the middle."<sup>lxxv</sup> That precinct was located in North Carolina Agricultural and Technical State University, a historically black college with a deep history of civil rights activism. "One part of the campus was in one district and the other part in another part of the district," recalled the community member.<sup>lxxvi</sup>

The comments of Rios perhaps best encapsulate witness testimony about what happened in Texas during the 2010-2011 battles over redistricting as potential indicators of problems to come. Rio remarked,

"Also, judicial findings of intentional discrimination have increased since *Shelby*. A court declaring a state action as intent to discriminate was a rare occurrence in this country. Courts usually attempt to resolve voting litigation without getting into constitutional findings. For example, in 2011, Texas's congressional redistricting plan split the African-American and Hispanic communities in the Dallas/Fort Worth area into seven different Anglo-controlled congressional districts. I have a map here, just to illustrate the point. The area outlined in the dark line is the minority area in the Dallas area. This minority area was split into one, two, three, four, five, six, seven different districts. So, they would be controlled by Anglo districts. This area here, the court called it a lightning bolt that went down here and picked up the Latinos from Tarrant County and put them up in Denton so that they couldn't have the right to vote. And congressional district 30, and we're familiar with congressional district 30, was already 81% Latino and African-American. And they increased it to 85%. Basically, eviscerating the minority community. This is the kind of outward and aggressive action that is continuing to occur. Finally, in the



[Paris] case, which is the congressional redistricting case, the court found that the map drawers acted with an impermissible intent to dilute minority voting strength. The court found intentional packing and cracking against minorities. Every decade since 1970<sup>lxxxvii</sup>

NVRA Compliance. Mimi Marziani, Chairwoman of the Texas Advisory Committee to the US Commission on Civil Rights, testified that “Texas has been refusing . . . to comply with federal voter registration law, namely the Motor Voter Act.”<sup>lxxxviii</sup> Marziani contextualized the impact of non-compliance as follows: “By not complying with the National Voter Registration Act when people go online to update their driver’s license, 1.5 million Texans annually are missing an opportunity to register to vote.”<sup>lxxxix</sup> The Chairwoman continued, “This, quite frankly, hits the entire population, but it hits frequent movers even harder because it means that as they move, they are no longer registered at their current address. Frequent movers tend to be poorer and younger, and therefore in Texas they are much more likely to be people of color.”<sup>lxxx</sup> Accordingly, frequent movers are often registered at addresses that differ from their current address.

#### **B. Burdening Access to the Right to Vote**

Denying voters an opportunity to acquire and to cast a (non-provisional) ballot in the language of their choice had a serious impact on voters’ experiences and attitudes toward government in the years since the *Shelby* decision. For example, Daniel Ortiz, Outreach Director for Policy Matters Ohio, testified that “the closure of polling locations and consolidation of precincts, combined with the lack of reliable transportation options and paid time off from work make it hard for many vulnerable communities to vote.”<sup>lxxxxi</sup> Ortiz also noted, “Since 2012, Ohio has closed more than 300 polling locations across the state: a disproportionate number in urban areas” and that “Cuyahoga County Board of Elections [reports] show in that time period there were closures that eliminated 78 polling locations in Ohio’s second largest county.”<sup>lxxxii</sup>

Similarly, testimony offered at the Ohio People’s Hearings placed into context the disproportionate impact of related decisions. Angela Woodson, Political Action Chair for the Cleveland Branch of the NAACP, for example, testified to the following: “It seems like every election cycle, at least two to three voting precincts move. We’re noticing this is very consistent in the governor’s race as well as the presidential election.”<sup>lxxxiii</sup> Woodson explained that the frequency was particularly troubling because the moves seemed to occur “in the low income African American wards” and that “...at least two to three precincts will shift to another location.”<sup>lxxxiv</sup>

Disability. Woodson also noted that certain polling locations failed to maintain Americans with Disabilities Act (ADA) compliance so that election resources were accessible for individuals who are blind or in wheelchairs.<sup>lxxxv</sup> Witnesses in Alabama mentioned that race and disability often shaped access to the ballot. Scott Douglas, Executive Director of Greater Birmingham Ministries, told the story of habitual voter Elizabeth Ware, an African American woman on Social Security disability benefits who had lost her non-driving photo ID and who had limited transportation and financial options available in order to obtain a photo ID in compliance with Alabama’s strict voter ID law.<sup>lxxxvi</sup> Ware’s disability made it painful for her to walk “the

five blocks” to the nearest bus stop, and she did not have reliable car transportation.<sup>lxxxvii</sup> Douglas remarked, “The nearest license commission where [Ware] could have gone to get an ID was not in walking distance, and a ride costs 20 bucks, a significant amount for somebody on her income. She was finally able to get a ride to the Board of Registrars where she attempted to get a free voter ID card. However, she was wrongly denied the ID by a staff member who had been improperly trained, and told her that she had had an ID in the past.”<sup>lxxxviii</sup> For Douglas, the struggles of Elizabeth Ware fully illustrated how the effects of poverty, location, and disability status extend into the ballot box. Alabama did not provide Ware with a free voter ID despite her economic circumstances or the fact that she previously had an ID. According to Douglas’ testimony, “after becoming a plaintiff in the case, challenging the photo ID law, Ms. Ware’s attorneys arranged for the Secretary of State’s office mobile unit to visit her home during her deposition. She had never heard of the existence of a mobile unit prior to litigation.”<sup>lxxxix</sup> Coupled with the closure of polling locations and consolidation of precincts, the denial of ballot access to disabled citizens is particularly troubling for voting rights advocates.

Likewise, in Florida, Warnell Vickers, Pastor of New Vision Christian Center Ministries, expressed a similar sentiment about the frightening parallel between today’s times and those of a bygone era, as he recounted the disenfranchisement experienced by one of his blind congregants. Vickers noted that his congregant was denied the ability to cast a ballot because of a discrepancy in her signature, which is connected to the need for a particular voter ID in the state. Vickers recalled, “She was participating in a state election and she was doing an absentee ballot. And her absentee ballot was not accepted because they would not accept her signature. Now, she’s legally blind, but she’s done this before, in terms of absentee ballot. It has been accepted, [in the past] as well.”<sup>xc</sup> Vickers believed that poll workers called attention to the discrepancy to hide their intent to illegally discriminate. He continued, “But in this case, here, I think it was during a primary within the state, ... they said they could not accept her absentee ballot because of her signature. And, again, being legally blind, signature’s not going to always be exactly the same. But nonetheless, she submitted the Florida ID, but in the process of time, her vote was not counted for that primary.”<sup>xci</sup> The result, Vickers explained, was a denial of that voter’s right to participate in the primary. He remarked, “And so she wasn’t able to vote until the final election. And so, it was unfortunate she was unable to participate as she desired. And after that, she was able to cast her ballot as an absentee voter.”<sup>xcii</sup>

Accessing Polling Place Locations. In one form or another, voters of color encountered myriad problems in their attempt to exercise their right to vote. For example, voters were forced to travel long distances to register or to cast a ballot; peripheral and habitual voters found that the state purged them from the rolls; inability to pay for a voter ID; and inadequately trained poll workers. Additionally, voters noted infrequently open registration and polling locations, and that election boards did not notify voters about changes to poll locations. Voters of color and low-income individuals are unduly burdened with changing polling locations because they are more likely to move than their counterparts. This leads to confusion, frustration, and the reduced likelihood of voting because of the difficulty in locating ones’ polling location..<sup>xciii</sup>

For many who testified, while any one of the aforementioned problems could constitute vote suppression, the combined effects of these circumstances was tantamount to outright vote

denial. Witnesses across the country also testified about changing polling locations. In Ohio, for instance, Mike Brickner, Ohio State Director for All Voting is Local, testified that between 2016 and 2018, Cuyahoga County “eliminated 41 polling locations and nearly 16% of all precincts changed location. While polling places were reduced county wide, a majority of black communities were particularly harmed.”<sup>xciv</sup> Brickner went on to note the effects on Cleveland, wherein eight (8) of the seventeen (17) wards are majority black and comprise between 72 and 98 percent of the population: “Of the city’s 45 precincts with polling place changes, the majority, 29, were in black majority wards, while only 16 were in black minority wards.”<sup>xcv</sup>

Witnesses also described confusion surrounding where they should vote given multiple changes and closures in polling locations. For example, an African American woman who testified anonymously during the Alabama People’s Hearings described feeling confused about where her polling location was located. She remarked, “Now the problem that I’m having is where to go vote, where to go register. That’s the problem that I’m having.”<sup>xcvi</sup> She continued, “I live in Trussville [a suburb of Birmingham]. When all this was going on I was living downtown so I changed. So now I’m in Trussville. So now the problem is where do you go vote. Do you go vote at the First Baptist Church? Do you go to the public library in Springville? Is it Springfield? Do you go to, do you go vote over there at the little park.”<sup>xcvii</sup> Many witnesses, like this African American woman, felt that lawmakers and election officials were deliberately sowing confusion among voters. And, for these witnesses, the combination of restrictive photo identification laws, questionable budgetary considerations, and ineffective management had thwarted voting rights. In other words, the financial and logistical burdens associated with voting in the post-*Shelby* era was especially troublesome for witnesses because it was clear that not all voters were equally impacted: the elderly, African Americans, veterans, Latino, students, people with disabilities, and lower income voters were all less likely to possess the required forms of identification and resources to overcome the cumulative effects of disparate policies.

For Native voters, the challenge accessing polling places can be extreme. Polling places and early voting locations are generally not established by state election officials on Indian reservations, even in areas where most registered voters live on tribal lands. Distance issues and lack of reliable transportation limit Native access to off-reservation sites, which can be hours away. Many states either have switched to an all vote-by mail system or impose that system in rural areas with fewer registered voters than urban areas. This creates a variety of problems for Native voters including: (a) non-traditional addresses prevent Native voters from registering or timely receiving ballots; (b) jurisdictions covered by Section 203 do not provide necessary language assistance for mail-in voting; (c) post offices and voting centers are located off-reservation or for reduced hours; (d) impoverished voters are required to pay for return postage, effectively a poll tax; (e) ballots may not be counted if other materials are not properly completed; and (f) eliminating in-person interactions that are culturally appropriate to Native voters, and the inability to learn if and why a ballot was counted or discarded, leads to greater distrust of government and can dissuade voting in future elections. Similar challenges exist with regard to voter registration. Voter registration sites are also often available only at the county seat or other places off-reservation that are several hours away by vehicle. Some states are moving to online voter

registration to save money, but are not taking steps to accommodate Native voters living in rural or isolated areas frequently lacking reliable and affordable broadband and access to computers.

Testifiers decried arguments that state actors were unaware that proposed and implemented electoral reforms would result in disparate access to the ballot. In Alabama, Bernard Simelton, President of the Alabama State Conference of the NAACP, testified that the state's photo ID law "prohibit[s] lots of individuals from being able to vote" and that it "[was] estimated at that particular time there was approximately 118,000 people who were immediately disenfranchised because they didn't have the photo ID required."<sup>xcviii</sup> In North Dakota, witness Oliver OJ Semans, Co-Director of Four Directions, testified to the extreme differences between Native people and whites in their ability to cast a ballot through early voting. To set the context, OJ explained that early voting in North Dakota "means that 14 days prior to the election, you can go and you can vote" and that even "[i]f you pass away, your vote still counts."<sup>xcix</sup> Semans continued, "Under this North Dakota law, over 400,000 this is from the census, over 400,000 of the white population has access to vote early, 14 days . . . [that is] two thirds of the white population."<sup>c</sup> By contrast, Semans pointed out, "Indian country, living on a reservation, zero. Now, you want to talk about unequal, that's about as unequal as you're going to get."<sup>ci</sup> Other North Dakota witnesses drew equally illustrative contrasts.

### C. Increased Litigation Costs

Advocacy groups and negatively affected voters must spend enormous financial and operational resources to track, study, and challenge proposed election reforms in a court of law. That is, in the absence of a Section 4 coverage formula, which gives operative force to the Section 5 preclearance regime, groups and voters seeking to protect voting rights must rely on Section 2 ("the totality of the circumstance of the local electoral process") to challenge proposed election reforms.<sup>cii</sup> Significantly, with Section 2, harm has to take place for litigation to proceed to try to ensure that no additional harm can take place. Section 5 was far more effective at eliminating harm at the onset, holding "covered jurisdictions" to "higher standards" prior to the passing of new laws or policies. The elimination of Section 5 therefore inevitably leads to more harm in certain areas, and places the burden of experiencing, naming or pursuing justice for that harm on the people most adversely affected, particularly communities of color. For the jurisdictions covered by the Section 4 formula, most pre-*Shelby* challenges were adjudicated via the preclearance administrative route, whereby staffers in the DOJ Civil Rights Division duly vetted proposed reforms, weighed comments and evidence provided by states and groups regarding the potential discriminatory effects of proposed reforms. This post-*Shelby* change is not without significant financial and operational costs.<sup>ciii</sup> The *Shelby* decision therefore placed the burden to track, study, and challenge proposed election reforms on the groups most likely to be negatively affected. Of course, not all jurisdictions were covered by the Section 4 coverage formula, and voters in many places have long had the burden of attempting to address voting rights violations through expensive post hoc litigation.

Testifiers underscored the costs associated with this burden. In North Dakota, for example, a field hearing witness for the Native American Rights Fund reminded the

Subcommittee that “the story of discrimination and disenfranchisement in North Dakota is not an isolated one” as it pertains to Native people, and that the “tremendous costs of litigating voting rights cases” often means that organizations are unable to respond to requests for assistance.<sup>civ</sup> Such was the case in Alabama. A testifier responded to a question about the cost of litigation of a hypothetical Section 2 case in the following fashion: “...when it came to polling place changes it would certainly cost [at] least hundreds of thousands of dollars if it were successful” and a gerrymandering case would cost “millions of dollars”, especially if the parameters of the case mirrored prior cases in which affected groups might have to challenge every legislative district in the state’s House and Senate.<sup>cv</sup> A similar sentiment was expressed by a testifier in North Carolina for Forward Justice. That witness testified that the plaintiff-side costs associated with a Section 2 case was “estimated [to be] more than \$10 million [dollars]”, a figure that excludes “the state’s cost and bringing in private counsel to represent the governor as well as the General Assembly”.<sup>cvi</sup> Furthermore, while advocacy groups and their partners pay all of the former costs, every state taxpayer in a state facing litigation pays a portion of the latter costs—certainly some subset of those state taxpayers effectively pay twice to defend or to launch a Section 2 challenge, which would have likely been resolved (if not prevented) under the pre-*Shelby* system.

In Ohio, a testifier noted that the 2016 lawsuit filed by the A. Philip Randolph Institute (APRI) to challenge the state’s “Supplemental Process” of removing certain registrants, specifically individuals who failed to vote in a two-year period and who did not send back a return postage prepaid “return card”, was not partially resolved until 2018 when the Supreme Court took up the case in *Husted v. A. Philip Randolph Institute*.<sup>cvi</sup> The costs associated with APRI’s protracted fight with Ohio have been substantial. The Supreme Court majority reversed the Sixth Circuit ruling, which found that Ohio had violated the Failure-to-Vote clause of the National Voter Registration Act (NVRA) of 1993, and the Supreme Court majority rejected evidence amassed by advocacy groups that Ohio’s process was not in compliance with the NVRA.<sup>cvi</sup> Substantive disagreements between Ohio and APRI have lasted well into 2019 as the two parties battled over what would constitute a proper final remedy—at a cost to APRI and to taxpayers alike.

The costs associated with the loss of Section 5 were placed on the shoulders of advocacy groups across the country. We received testimony attesting to a rise in the costs associated with litigating challenges to suspected constitutional violations. Witnesses asserted that the post-*Shelby* landscape had forced affected voters and community organizations to risk financial insolvency and organizational implosion in their efforts to protect the right to vote. For example, attorney James Blackshear of Alabama remarked, “In fact today it is impossible for private counsel like me to bring one of these lawsuits without substantial assistance, financial and legal from other big law firms.”<sup>cix</sup> For Blackshear, the need for assistance across multiple dimensions underscored the depth of the problem: the *Shelby* decision unleashed a horde of discriminatory reforms that touched upon every facet of the election process.<sup>cx</sup> He continued, “I mean, I’ve got four cases going on right now where I’m local counsel for the NAACP Legal Defense Fund, who’s challenging photo ID, for the Campaign Legal Center, who’s challenging the felon

disenfranchisement center, for the Lawyer's Committee with Civil Rights who's challenging that we had large election of the Alabama Supreme Court, and the SEIU's Service Employees International Union, challenge imminent. Those organizations are needed to bring the resources just to get the case started."<sup>cxix</sup>

Field hearing testimonies about litigating a Section 2 case in North Dakota, Alabama, and Georgia were equally revealing. Jacqueline De Leon of the Native American Rights Fund (NARF) remarked, "... I will pursue every case that I can, but as you [Representative Butterfield] mentioned, they're very expensive."<sup>cxii</sup> De Leon continued, "...and it is prohibitively expensive for a small organization like NARF to reach every single instance of discrimination that's happening across this country, and so we really urge you to take action."<sup>cxiii</sup> De Leon also highlighted the paradoxical ways in which media coverage and the outpouring of financial resources both helped and hurt organizations in their battles to challenge discriminatory reforms. De Leon remarked, "As the cameras move on from North Dakota, so do the resources that made the Herculean response to the ID law and this last election possible."<sup>cxiv</sup> In Alabama, Nancy Abudu, Deputy Legal Director of the Southern Poverty Law Center, remarked that it would "cost absolutely millions of dollars to bring [a lawsuit] today."<sup>cxv</sup> Abudu also described why organizations and affected voters might be risk averse about financing and initiating litigation. "It forces us into not only spending that much money, but also into a venue through the federal courts, unfortunately, that are becoming more and more hostile."<sup>cxvi</sup>

In Georgia, Stacey Abrams, former minority leader in the Georgia House of Representatives and 2018 Democratic gubernatorial candidate, highlight the inadequacy of Section 2 to protect voting rights because it largely relies on establishing a post-action record of discrimination. "Section 2 essentially says that a bad action can be used as a predicate to argue that if a new bad action cannot be taken. The challenge there is that you have to have someone disenfranchised before you could fight to make certain that someone else isn't disenfranchised," she explained.<sup>cxvii</sup> "But that means that someone lost their right to vote. That means that communities were disallowed from actually having a voice in their community," she remarked.<sup>cxviii</sup> Abrams also directly compared the retrospective nature of Section 2 in a post-*Shelby* era to the prophylactic nature of a pre-*Shelby* era coverage formula and preclearance regime. She noted the following: "The beauty of Section 5 said that before you commit harm you had to be held to a higher standard. Section 2 says once harm has been committed you have the ability to argue that it shouldn't be repeated. And therefore, it is insufficient standard for a nation that is grounded in the notion of democracy, and representative democracy is the way to push forward our thoughts and ideas as citizens."<sup>cxix</sup> Given the extensive and costly nature of Section 2 litigation, not to mention the retrospective nature of a Section 2 claim, no organization or community group can launch or sustain a "Herculean response" to every discriminatory reform. It can take months for a court to act on behalf of challengers (e.g., for a court to issue preliminary injunctions that pause implementation of an enacted reform), and it can take months for litigants to settle on a permanent relief plan.<sup>cxx</sup> And, in the absence of action by a court, disenfranchisement reigns.

Moreover, witness after witness underscored that it is risky for communities to focus solely or exclusively on litigation in their efforts to combat disenfranchisement. Witnesses, like Dr. Reverend Barber, a member of the National Board of the NAACP and President Emeritus of the North Carolina NAACP, testified that affected groups and their allies needed to use multi-pronged approaches that were sustainable over time.<sup>ccxi</sup> To illustrate, Barber testified that advocacy groups in North Carolina tried unsuccessfully to defeat the stringent voter ID bill while it was being considered in the General Assembly, and that advocacy groups filed suit “before the ink was dry” after the bill became law.<sup>ccxii</sup> Barber also noted that sustained battles take an emotional, financial, and operational toll on its combatants: “We have been battling for 2023 days today, five years, nine months and 24 days since the Voting Rights Act was gutted in 2013. This monster voter suppression law was the worst of its kind after *Shelby* in the nation, and it was only possible because ... the preclearance protection was no longer in place.”<sup>ccxiii</sup> “It, in fact, has been the worst we have seen since Jim Crow,” Barber explained.<sup>ccxiv</sup> He went on: “We heard the lawyer who was leading the effort say in court that retrogression was okay now that the Voting Rights Act was no longer in place.”<sup>ccxv</sup> Testimony by Barber and others confirmed that affected voters in North Carolina had to wait a long time until their ‘Herculean’ efforts yielded results.<sup>ccxvi</sup> On both scores, Barber explained: “Without the voting rights preclearance, it took us years of organizing and fighting. Finally, in July 2016, a unanimous panel of the U.S. Court of Appeals, the Fourth Circuit, held that the law, “[which] targeted African Americans with almost surgical precision, was, in fact, unconstitutional.”<sup>ccxvii</sup> That litigants challenging the North Carolina law eventually prevailed did not mean that they recouped all of the financial, emotional, and logistical costs they had incurred on their journey to defend voting rights.

Representative democracy is ill served by a post-*Shelby* system whereby our most vulnerable portions of the electorate – those citizens more likely to suffer the effects of the diminished right to vote – are burdened with the responsibility to locate, monitor, and finance litigation aimed at stopping potential constitutional violations. Absent a systematic way of tracking and reviewing proposed election reforms and of monitoring the implementation of approved election reforms, groups must protect voting rights through a costly litigation process which creates circumstances that democracy can ill afford.

Additionally, the burden of time (three years or more for litigation after harm has happened, rather than 60 days for federal approval or disapproval) and money for litigation has shifted, falling almost entirely on communities most affected by restrictive voting laws. These are far more, and far more prolonged, litigation processes because a post-*Shelby* environment enables deeply repressive voting laws to be enacted and repressive practices to unfold before challenges can even be brought forward, let alone push for reform. Accordingly, many more resources are needed for people of color to raise concerns about voting laws and practices, or to pursue litigation, including resourcing collaborations with numerous organizations. As a result, voters of color, in particular, face an immediate and steep increase in barriers to the polls.

In conclusion, witnesses emphasized three primary issues when addressing how *Shelby* is shaping the current state of voting rights litigation. First, litigation to thwart constitutional violations has become more time consuming, and more costly to organizations and affected

voters. Absent preclearance, groups with relatively limited human capital and financial resources must compete with more heavily resourced state actors and allies in their pursuit of justice. Secondly, affected communities must now attack a very different default position than one prior to *Shelby*: they have to prove that the state's proposed reforms have discriminatory effects even if they agree that the state's proposed reforms do not discriminate. Third, the sheer volume and complexity of cases needed to effectively litigate challenges to new restrictive laws was quite concerning to those who wanted to protect voting rights for poor communities and voters of color. The financial and logistical costs required organizations to both remain vigilant and to remain well-resourced for what would likely be a protracted battle. Moreover, victories were rarely permanent: even when a proposed piece of discriminatory legislation was rejected or struck down, lawmakers remained free to put forth another piece of discriminatory legislation. Simply put, the post-*Shelby* landscape, witnesses contended, places the burden of proof on the communities least able to afford the organizational, evidentiary, and financial burden of prosecuting constitutional violations.

#### IV. The Continuing Need for Federal Protection

Communities of color have been engaged in a perpetual fight to secure and safeguard their right to vote since the founding of our democracy. Since one of the most effective tools in this fight was gutted in the *Shelby* decision, the landscape of American election law has rapidly altered. In 2016, the first presidential election after *Shelby*, 14 states had imposed new voting restrictions, including in Ohio, Texas, and Alabama. By 2019, Arizona, Tennessee, Arkansas, Indiana, Montana, New Hampshire, North Carolina, and Wisconsin had enacted new restrictions.<sup>ccxviii</sup> These restrictive voting bills worked alongside new and existing administrative practices to further shape the composition of the electorate. Many of these new measures were either exact replicas of proposed election reforms that would have been rejected under the Section 5 preclearance procedure or were more aggressive versions of their predecessors. Without the strong protections of Section 5 of the Voting Rights Act, restrictive ID laws and voter purge initiatives in Ohio, Georgia, Texas, North Dakota, and North Carolina were proposed and signed into law. According to the Brennan Center for Justice, between 2012 and 2016, formerly covered “jurisdictions no longer subject to federal preclearance had purge rates significantly higher than jurisdictions that did not have it in 2013.”<sup>ccxix</sup> In sum, *Shelby* emboldened and in some cases enabled states to move with speed and impunity to implement barriers that circumscribed voters’ access to the ballot and that diminished citizens’ ability to petition the government for a redress of grievances.

Co-Director of Forward Justice, Caitlin Swain, testified how quickly and deliberately North Carolina implemented discriminatory changes in the wake of the *Shelby* decision. Swain remarked, “As soon as protections were lifted . . . the General Assembly of North Carolina enacted the most comprehensive voter suppression law seen since the Jim Crow era targeting African American access to the ballot with what the Court of Appeals has termed surgical precision.”<sup>ccxxx</sup> Swain also underscored the scope and range of such policies, explaining that North Carolina eliminated “same day registration, a week of early voting, the safeguard of out-



of-precinct voting, and pre-registration of 16 and 17 year old(s) . . . [and] enacting one of the strictest discriminatory photo voter ID laws in the nation.”<sup>xxxxi</sup> Below, this report provides a snapshot of witness testimony about Jim Crow 2.0 state reforms enacted following *Shelby* to further highlight the scope, magnitude, precision, and impact of these reforms.

### A. Vetting Voting Changes

Witnesses testified about many post-*Shelby* voting changes they believed to be discriminatory (or that were eventually deemed to be discriminatory by a court of law) would have been blocked by an operative Section 5. In that regard, the actions taken by the General Assembly of North Carolina were not atypical. According to Matthew McCarthy of the ACLU of Texas, for example, the state’s voter ID laws placed a hefty burden on citizens.<sup>xxxxii</sup> McCarthy testified that the law required that voters “present one of seven approved forms of government issued identification before being allowed to vote” and that voters “attest under penalty of perjury that there [was] a reasonable impediment to having one of those forms of approved IDs.”<sup>xxxxiii</sup> In characterizing the judiciary’s findings that Texas had unfairly circumscribed access to the ballot, McCarthy noted, “The voter ID laws were the subject of extensive litigation and were found by three district courts to have disproportionately burdened voters of color. And that was because of evidence that minorities are generally less likely to have one of the forms of approved ID, and also less able to obtain one of those forms of approved ID given the cost in terms of time and money in getting one. However, the current form of the ID law was ultimately approved by the Fifth Circuit Court of Appeals and was in place in time for the midterm elections last year.”<sup>xxxxiv</sup> The parallel between voter ID laws, which affects who appears on registration lists, and post-enrollment procedures, which affects who gets removed from registration lists, cannot be understated. Noting this, George Corbel remarked, “Well in some senses the voter ID law is a purge because what we’re doing is we’re essentially doing away with voter registration and changing it to driver’s licenses or Texas IDs.”<sup>xxxxv</sup> Corbel continued, “Now it doesn’t sound like that’s a big deal, but an awful lot of people have parking tickets or minor violations. They don’t want to go anywhere near the DPS because they’re going to get arrested and they’re going to spend time in jail. And so, we’re essentially purging” citizens duly entitled to cast a ballot.<sup>xxxxvi</sup>

Lawmakers in Alabama, like in North Carolina, also waited until the most opportune moment to strike at the right to vote. Alabama, for instance, enforced a photo ID law the state had initially enacted in 2011 but which was held in abeyance. According to Abudu, this was done deliberately to avoid likely denial under Section 5 preclearance. Abudu explained, “So the NAACP and the ministries that Mr. Douglas [Scott Douglas, Executive Director of Greater Birmingham Ministries] represents filed a lawsuit challenging the law as discriminatory based on their estimate that over 100,000 people, registered voters in Alabama, lack the necessary ID. So you’re talking about almost 5% of the registered voters in the state, who simply because of this photo ID law, essentially are losing their right to vote.”<sup>xxxxvii</sup> Jenny Carroll, Professor of Law at the University of Alabama School of Law, put the point about post-*Shelby* regulations on voting more strongly, asserting that “...while these regulations are facially neutral, they raise real concerns about the opportunity of enfranchisement among the very populations that the Voting Rights Act was designed to protect.”<sup>xxxxviii</sup> Under Jim Crow 2.0 policies that appeared racially

neutral often facilitated discriminatory effects. Carroll remarked, “The days of a sheriff standing in the doorway of the polling place may be a thing of the past. But the current voting regulations may produce the same effect on communities of color and poor populations in our state. The method may be softer, more subtle, but the results are exactly the same.”<sup>cxix</sup>

## B. Diminished Ability to Elect Candidates of Choice

Witnesses also testified about the ability of post-*Shelby* discriminatory reforms to limit the reach of pre-*Shelby* black political empowerment levels. Nancy Abudu, for instance, testified that white Alabama lawmakers used voter ID laws to undermine black elected officials. She remarked, “One of the mainstay senators who worked for over a decade as far as we can tell, to pass this voter ID law, was also quoted in media outlets as saying that his, ‘Photo ID law would undermine Alabama’s Black power structure’. That is a quote, and that, ‘The absence of a voter ID law,’ and again this is a quote, ‘benefits black elected officials.’”<sup>cxl</sup> Witnesses in Texas draw similar connections between electoral reforms and communities of color electoral power. Attorney Chad Dunn, for example, described what he witnessed in the Beaumont School district. After deliberately oversimplifying details to set the context, Dunn stated, “...essentially the district has been majority black in voting population since the 1980s, but it wasn’t an integrated school district until 1985, under *Brown v. Board of Education*. And it ultimately took a series of court decisions until the 1990s to give blacks legitimate right to vote for their school board.”<sup>cxi</sup> Dunn continued, “A majority of blacks served in that school board before *Shelby County* came down, but white citizens had managed to get a ballot initiative to force at large voting in the school district, and the state courts had ordered this school district to go to parcel at-large voting. This is what I have the results of putting the whites in charge of the school district despite it being majority black.”<sup>cxii</sup>

Dunn next explained why preclearance mattered for black political representation: “A federal court in Washington DC under Section 5 of the Voting Rights Act, and in a case I was involved in and joined that change, it made the school district stay as it had been ordered by previous federal courts. After *Shelby* all that was undone. And as we sit here today, the school board in Beaumont, still does not have, in my opinion, an elected board that represents its community.”<sup>cxiii</sup> Speaking to what happened in Beaumont and why it mattered, George Corbel explained that “[t]he Texas Education Agency (TEA) has the right to seize school districts and displace elected officials, take over school districts if they feel that there’s a problem.”<sup>cxiv</sup> Corbel continued, “Now under section 5, we almost completely prevented that from happening. Since the doing away with section 5, the TEA has been seizing these school districts, and Beaumont was one of them. They seized the school districts, and you end up, Beaumont had a black superintendent, black board members and now it’s controlled by the whites.”<sup>cxlv</sup>

Rolando Rios, a Texas voting rights attorney in private practice, successfully sued the city of Odessa in 1985 to challenge at-large elections where victory resulted in the creation of single-member districts. Rios explained that “this year, as the community became stronger and minority control was looming, the city passed a charter amendment reinstating at-large voting. This would never have happened before *Shelby*. The voter ID law was passed after *Shelby*, and

after years of litigation, was declared unconstitutional by the federal courts. This law would never have been passed in the first place by Texas before *Shelby*.”<sup>cxlvi</sup>

North Carolina Senate Minority Leader and former Speaker of the North Carolina House of Representatives Dan Blue made a similar point in his testimony. He remarked, “[I]n 1978, North Carolina had one of the lowest black participating voting rates. Over the next 30 years by 2008, North Carolina had one of the highest black participation rates in elections, and that was because of a series of laws that were enacted over that 30-year period to encourage voting and to remove the obstacles to minority voting, and we were successful at it.”<sup>cxlvii</sup> Blue continued, “One of the things that I’ve heard talked about earlier today was the monster law in 2013. I lived through it, I was in the Senate at the time, and it was designed to totally reverse the history that I just related to you. It was aimed at all of those measures that we had taken over the previous 30 years to ensure participation and access to the ballot for all of the citizens of this state.”<sup>cxlviii</sup>

### C. Inability to Combat Voting Changes

Throughout the People’s Hearings, we observed testimony regarding other examples of jurisdictions curtailing communities of color political empowerment that did not involve manipulating the composition of the electorate through gerrymandering. Mr. Dunn, a civil rights attorney from Texas, offered the following testimony: “In Jasper, the community decided to vote at large to remove a districted office. So, imagine for example, all citizens of the United States could vote to remove one of you. And they were successful because the city was majority white, a black city council person was removed.”<sup>cxlix</sup> Dunn blamed *Shelby*: “Because the Voting Rights Act has been so harmed by the Supreme Court and other judicial decisions, there was nothing we were able to do with that. This city council person was removed.”<sup>cl</sup> This type of “third generation” assault on the right to vote, more specifically the equal opportunity to elect candidates of choice, are far from unprecedented.<sup>cli</sup>

What is unprecedented is the absence of preclearance and a coverage formula. While the outward signs of segregation were not apparent, witnesses tacitly drew parallels between the discretion exercised by election administrators in the Jim Crow era and by election administrators in the current post-*Shelby* era. For example, witnesses testified about the dilatory effects of voter ID laws in North and South Dakota as being magnified by the behavior of poll workers. These workers were either intentionally discriminatory or were unintentionally incompetent.

Inadequate training for poll workers leads to mishandled polling sites, which often disproportionately affects marginalized communities. Sites run according to the discrimination or bias of the worker rather than trained protocols designed to eliminate unnecessary burdens or disenfranchisement of voters. Jacqueline De Leon, staff attorney for the Native American Rights Fund (NARF), testified that the organization received “a request for assistance [in 2014] regarding Native people in North Dakota that were being turned away from the polls.”<sup>clii</sup> The NARF investigation found that “veterans, school teachers, elders, and other lifelong voters were being rejected by poll workers that had known these individuals their entire lives.”<sup>cliii</sup> The investigation was a costly but worthwhile investment of the organization’s financial and

personnel resources. “NARF decided that this was a case worth investing our limited resources. I mention resources because the burden of proof in voting rights act and constitutional cases alleging voter discrimination is extremely high. Which means that in order to prevail in these cases, litigators must invest substantial resources. And unfortunately, NARF cannot address every injustice facing Native American voters today.”<sup>cliv</sup>

#### D. Lack of Notice

Prior to *Shelby*, community organizations would have rightly but not exclusively depended upon the preclearance regime to facilitate tracking and notice of proposed reforms. Witnesses, however, testified that election administrators used their discretion to deny communities adequate notice about proposed voting changes. Specifically, witnesses attested to three things on this score. First, *Shelby* emboldened administrators to take or to reclaim a hostile posture toward communities possibly affected by proposed reforms. Second, community groups found it nearly impossible to track proposed changes. Third, affected voters found elected officials to be less transparent about proposed changes and unconcerned about the dilatory effects of enacted changes. In other words, as an integrated management device, Section 4 and Section 5 helped community groups hold governments accountable in the face of the sheer number, complexity, and diversity of proposed election reforms. Not only was the burden of proof placed on the covered jurisdiction rather than on voters, the notification of a proposed change itself (as well as documentation of the resulting DOJ action or court ruling) acted as a signal to other jurisdictions about what was and what was not permissible.<sup>clv</sup>

Voters in large states, like Texas, were especially disadvantaged in their efforts to track proposed changes. George Corbel put it this way: “One of the advantages of Section 5 was that we got noticed that all this stuff was going on. The Department of Justice would publish a notice, I think weekly, of all the submissions they had gotten. So, we could look at and see where these polling place changes were made. Now none of that’s taking place. And you know how big Texas is, there’s no way that we can be in every one of our 254 counties, and except under Section 5 when we got this early notice.”<sup>clvi</sup>

*Shelby* dramatically shifted the “information costs” associated with learning about proposed electoral reforms and knowing what jurisdictions were doing to undermine the right to vote. For every proposed election reform, there was an underlying price for voter inaction and inattention. Chad Dunn encapsulated it this way: “So there’s redistricting, there’s voter registration, there’s countless polling place changes, and it’s scary to think, but there are scores of other changes we don’t even know about that can’t be done or dealt with because of the injury to the Section 5.”<sup>clvii</sup> Testimony by Patricia Timmons-Goodson, Vice Chair of the US Commission on Civil Rights, painted an even starker picture: “From the Civil Rights Commission’s perspective, it certainly has made tracking more difficult. At one point, there was a single source or a limited number of places that we could go to get the information, but when it’s left to individual citizens and organizations to do the filing, it makes it far more difficult to track them.”<sup>clviii</sup> However, requiring a state to provide notice to potentially affected voters does not mean that those voters will actually receive notice if they are not attentive. Put better, certain voters may be less attentive to information about proposed reforms precisely because their

communal and personal socioeconomic circumstances make them prioritize other information. In sum, in the aftermath of *Shelby*, not only does the burden to track, monitor, and evaluate proposed election reforms disproportionately fall on those citizens more likely to suffer the effects of diminished right to vote, the content and ferociousness of those election reforms eerily parallel previously rejected proposals reminiscent of a so-called bygone Jim Crow era.

#### **E. Increased Barriers to the Ballot**

Curtailed access to the ballot was the dominant theme in hearings across the country. Scores of witnesses affirmed that state officials deny voters with opportunities to register, to acquire a ballot, to cast a ballot (especially to cast a non-provisional ballot), to receive proper notice about changes to polling locations, and to receive appropriate language assistance. Witnesses also testified about voter experiences with state purge procedures and with attempting to secure re-enrollment after an illegal purge.

Many witnesses confirmed that voters were finding it difficult to deal with frequent changes to their polling locations, especially when those changes seemingly came without notice or when those changes were communicated in a language other than the one most preferred by the voter. In Ohio, Kimlee Sureemee, Senior Manager of Policy, Advocacy, and Development Programing at Asian Services in Action, testified that frequent changes were a “huge barrier” facing the Asian community, particularly since such changes were “not translated to our community members, and also they’re not communicated on a regular basis to community members when there are changes to polling locations.”<sup>clix</sup> Speaking from personal experience, Sureemee remarked, “For myself as an example, over the past three years I’ve had a change to my polling location every year when it came to the general election.”<sup>clx</sup> And, Sureemee continued, “I live in Lakewood and one year it was at a school, one year it was in a different gym/school, and this last year I had a new polling location as well. Changes in polling location is a huge barrier for communities, especially if they’re limited English proficient community members as well.”<sup>clxi</sup>

Testifiers also described the ways in which the “anti-election fraud rhetoric” had curtailed access to the ballot in the post-*Shelby* era.<sup>clxii</sup> North Carolina witness Dan Blue, for instance, asserted that state and local officials created “voter ID law[s] claiming that it’s going to prevent voter fraud and nothing has gone on in a discussion of what we do about voter harvesting.”<sup>clxiii</sup> Dan asserted, “The real cost of voter ID in the state, and we made this argument, is that this legislation that was enacted last year, this new amendment to our state constitution puts a tremendous burden on the state and local boards of election.”<sup>clxiv</sup> Blue continued, “Without the funding to backup these obligations, then it makes access to the ballot even less likely. You’ve heard the testimony of the distances that people travel, but as importantly, it will cost \$17 million to implement a photo ID requirement without any funding having been provided specifically for that.”<sup>clxv</sup> For some witnesses, state lawmakers had proffered claims about fighting voter fraud and promoting ballot security to hide their intentions to erect unconstitutional barriers to the ballot.

Anti-fraud Hoax. That the public can often be confused by the content of anti-election fraud rhetoric and can often be moved to support or to oppose discriminatory election reforms

was not lost on witnesses, especially those witnesses who underscored that poll workers are drawn from the public. For example, in Texas, field hearing witness Matthew McCarthy, of the ACLU of Texas, testified that poll worker confusion undermined voter access to the ballot.<sup>clxvi</sup> McCarthy testified, “As part of a coalition [involving the ACLU of Texas and the Texas Civil Rights Project] during the election last year to protect the right of Texans to vote...we had call centers, staffed by trained volunteer attorneys, taking calls from around the state, and we also had a number of field volunteers working at polling locations, assisting voters with queries.”<sup>clxvii</sup> That process, McCarthy explained, revealed “a significant amount of confusion and misinformation about the voter ID requirements.”<sup>clxviii</sup> For example, McCarthy noted that the coalition “heard reports of voters attending polling locations in rural Texas where election officials posted a sign saying, ‘Must have driver’s license to vote’” and that the coalition heard reports from “large metro areas [where] poll workers [were] telling folks who were lining up to vote, that you needed to have photo ID or you wouldn’t be permitted to vote.”<sup>clxix</sup> According to McCarthy, lawmakers should consider the enormous ripple effect that confusion and misinformation can have on the willingness of voters to cast a ballot vote.<sup>clxx</sup> He explained, “[what I described earlier] is plainly incorrect under the law and while we were able to address it, you do wonder how many voters saw that sign, or were given that information and simply turned away and didn’t exercise their right to vote.”<sup>clxxi</sup> And because context matters in all situations, McCarthy pointed out, “And that’s a particular concern in polling locations where there were long lines. People aren’t going to line up and vote if they think their vote won’t be counted.”<sup>clxxii</sup>

Seemingly speaking to the aforementioned ripple effect, Dan Blue asserted, “Now, voter suppression is also occurring through voter confusion.”<sup>clxxiii</sup> Blue testified that state entities seemed unconcerned about voter confusion.<sup>clxxiv</sup> Blue remarked, “That the recent bill put the unnecessary burden on voters mandating that they must comply with new photo ID requirements at the polls in just five months from now. Five months from now these are our local elections, and so we have a requirement for voter ID without any implementation for providing it. Of the 850 universities, colleges, government agencies and tribes, only 72 applied for their voter identification requirements to be approved.”<sup>clxxv</sup>

Language Assistance. That poll locations need additional bilingual ballot resources, including personnel, to assist limited-English proficient voters was echoed by Winnie Tang, President for Asian Services, during testimony at the Florida People’s Hearing. Tang praised certain organizations attempting to minimize the negative impact on affected voters. Tang explained, “So, what we are doing in the community to have translating. We’re in Chinese, then we bring the voter to interpreter in Chinese to have them to read it to vote so they can feel their power, so they will not feel reluctance in their own way. And why we are doing that, because what happens if you don’t vote? It doesn’t mean that you did not vote. If you don’t vote, that means you’re voting something that you don’t support, doesn’t support you. So, we want to make sure everybody to know about the vote is very important.”<sup>clxxvi</sup> Tang and other witnesses understood that a reduction in the number, training, or acumen of poll workers meant a reduction in access to the ballot. Ohio witness Suremee, further put the reduction into context when discussing “a bill that was introduced in 2017 to drop poll workers.”<sup>clxxvii</sup> Suremee explained that “this is one of our major concerns” and “we don’t want to see this bill introduced again.”<sup>clxxviii</sup> Suremee also testified to the following:

“Poll worker reductions is another big barrier to our community. We rely on our poll workers because we are looking for bilingual poll workers in areas where our community members are turning out to vote. In particular, here in the Asia town area, a couple of blocks from here, we rely and make sure that we have bilingual poll workers in those two polling locations for our Chinese community voters. With reductions to poll workers and reductions to access to poll workers at these polling locations, it makes it challenging, and it makes the lines longer.”<sup>clxxxix</sup>

Further, Hillary Lee spoke at the Georgia People’s Hearings about her challenges in the 2018 election in Atlanta, Georgia. She reported that “[o]ne issue that I saw was language access at the ballot. And so we met a elderly Korean man who approached our organization asking for help with interpretation at the polls because he was a American, is an American citizen, but doesn’t speak English fluently, and he and his wife both identify as limited English proficient. And so they needed someone who spoke Korean to help them vote in an informed ballot. And so they reached out to us and a staff member from our organization went to the polls with them and actually faced a lot of confusion on the polls.” He recalled further that “it actually delayed their right to vote by probably 15-20 minutes, maybe longer while the poll worker called the poll manager have to call other supervisors to clarify whether or not our staff member could even help him vote. And so all of this burden really raised the question for us who’s actually allowed to interpret for LEP voters, limited English proficient voters at the polls. And what we found out was there was actually a really old law on the books in Georgia that said that in state and local elections, your interpreter has to be someone who’s related to you, like directly related to you or a registered voter in your same precinct, which is pretty narrow. And it’s very, very narrow compared to the federal voting rights act, which says that anyone can help you as an interpreter in federal elections except for a representative of your employer or your union.”<sup>clxxx</sup>

Another speaker at the Georgia People’s Hearing provided another account “I think seeing the language access issues is particularly hard for me because my parents are immigrants from China and both of them had to learn English as a second language. And both of them still today struggle with English. And my mom is actually really insecure about her English and always tries to practice speeches with me and then ask me to review papers and stuff because it just scares her to have to be in front of someone like a group of people and speak a language that isn’t her first. And so thinking about these voters that are out there trying to vote, trying to exercise their civic duty, trying to be an engaged part of their community and like the barrier is something that so many immigrants and so many Asian-Americans and people I know struggle with was, was very personally hard for me.”

Poll Worker Training. Furthermore, although litigation aimed at challenging the enactment of large scale state statutes often garners public attention, the fight to stymie the discriminatory actions of poll workers is equally costly and further reveals how the operational, financial, and evidentiary burden to combat challenges disproportionately falls on organizations and affected voters. Testimony about voting rights litigation aimed at dealing with poll workers was quite revealing, ranging from suits to address the behavior and availability of poll workers to

suits challenging proposals to change how voters access polling locations. At each instance, witnesses remarked on the need to address poll workers as part and parcel of a larger post-*Shelby* landscape of discriminatory action. For example, witness Mimi Marziani, Chairwoman of the Texas Advisory Committee to the US Commission on Civil Rights, testified that Texas voters reported blatant discriminatory actions by poll workers. Marziani stated, “Finally, ..., I include some pretty horrific stories that voters experienced when they were seeking to vote. Many of them at the hands of election workers.”<sup>chxxxi</sup> The Chairwoman continued, “One I’ll highlight. A brown-skinned voter in Kingswood gave her driver’s license to a poll worker, who asked her how long she had been in the U.S. She responded that she was a naturalized citizen from Canada. The poll worker said, ‘welcome to America.’ He then asked the same question of the voter’s mom. But, then did not ask that question of any of the light-skinned people standing in line.”<sup>chxxxii</sup>

In Ohio, witness Elaine Tso, Interim Co-CEO of Asian Services In Action, testified that Ohio lawmakers did not properly consider how a legislative proposal to reduce the number of poll workers “per precinct from four to two” would negatively impact participation.<sup>chxxxiii</sup> Tso testified that the proposal “would disproportionately impact anyone who needed additional assistance at the polls.”<sup>chxxxiv</sup> Whether that’s inviting a helper for a limited English proficient voter or anyone who needs an accommodation of some sort because that would need some approval from our poll worker.”<sup>chxxxv</sup>

Ohio witness Kimlee Sureemee provided testimony regarding poll workers:

lines “Myself as a voter ... last year I went to go vote in my polling location for the general election. I had eight lines to check in. There were eight lines to check in in my polling location. Four lines that were formed then to go into a polling booth. There were two that were formed to actually get your form scanned. That was just me as an individual in Lakewood voting. It was over 45 minutes in and out to actually get my vote counted. ... Imagine what that looks like for someone who has limited English. Not knowing how to especially with poll worker reductions, being able to navigate and manage that type of experience, it’s just difficult. That’s why our program is primarily a vote by mail program as well. We really educate our community members to vote by mail, because we see that that’s the easiest way to ensure that their vote is counted. We do this in particular by partnering with the board of elections too.”<sup>chxxxvi</sup>

Poll Closures. Witnesses also testified that poll and poll worker reductions affected voters of color more often than other communities precisely because states heavily rely on poll workers, many of whom did not receive adequate training or support. For example, witness Marziani noted that Texas poll workers were “usually appointed by the local political party,” with “very few standards on who is able to be a poll worker,” and that poll workers were “paid very little” and received “haphazard” training.<sup>chxxxvii</sup> The Chairwoman concluded, “The result of that is pretty gross mismanagement of the polling locations.”<sup>chxxxviii</sup> Marziani then provided what the chairwoman called “one very blatant example, during the 2018 elections ... [from] Harris County, home to Houston” where “at least nine polling locations ... opened more than an hour late, all of them located in communities of color.”<sup>chxxxix</sup> Marziani recalled the indifference law enforcement personnel seemed to take toward the situation, and remarked, “When we called the



local county clerk and said action needs to be taken, we were told that, 'No, no, we shouldn't worry about it. These sort of problems are typical for Election Day,' even though countless folks couldn't stand in line for hours and hours." "Ultimately," she continued, "we sued representing a community organizing group here in Texas, and we were able to get the polls opened for another hour."<sup>CXC</sup> Whether by a coincidence of circumstances or by intention, voters were disenfranchised when poll workers did not show up on time and when poll workers did not ready their voting equipment to open up on time.

A speaker at the Georgia People's Hearing discussed an experience with polling site closures: "In 2017 we learned that the Macon-Bibb county board of elections was prepared to shut down half of the polling locations in the county. And all of 98%, excuse me, of the board of elections or the polling locations that they wanted to shut down were counties that were majority... Polling locations that were majority black, that had voted for Obama in 2008 and 2012. When pushed on why do you want to close half of the polling locations in this major county, they said that they wanted to save money. While we joined with our brothers and sisters at the NAACP and folks from the Lawyers' Committee that pushed to find out that they were probably going to save something like \$100. Per precinct... They [were] prepared to disenfranchise the majority of black voters in one of Georgia's largest counties because they were going to save something like \$100. And when we ask... Not only that, they had planned to take one of the largest precincts in the black community and move it from the community center to the police station. And when we pushed back and said, "People don't want to vote in the police station," they said, "Well only criminals don't want to vote in police station and if your folks aren't criminals and then they won't have any problems going into the police station in order to vote." So what do we do? We mobilize. We found a little known provision in Georgia law that says if we collect signatures from 20% of the voters in a particular location where they're trying to shut down or close a precinct, that we can block it."<sup>CXCi</sup>

That poll workers coming from communities of color might bring a different orientation to the task of election administration was also highlighted during testimony. For example, witness Oliver "OJ" Semans, Co-Director of Four Directions, made recommendations that "election officials work with communities to get more people of color to become election judges and election poll watchers."<sup>CXCii</sup> Semans remarked, "The voter suppression does not have to be a mile away and does not have to be a law. It could be three foot, the length of the table, when you're coming up to vote."<sup>CXCiii</sup> For Semans, the benefits of descriptive representation for stopping election-related discrimination could not be clearer. "We have found that where we have had our Natives as election officials, more people will come because they're not going to be embarrassed," Semans testified.<sup>CXCiv</sup> "They're not going to be turned away. It's a friendly atmosphere. Our people are friendly people, and so it doesn't matter what color you are. When you come in, you are going to be treated with respect."<sup>CXCv</sup> In short, witnesses made direct connections between voting rights litigation to address poll workers and the larger battle to restore preclearance and to revise the coverage formula. Poll workers, witnesses testified, *can be too* partisan if their support for a preferred candidate motivates them to engage in discriminatory behavior towards their opponents.<sup>CXCvi</sup>

Long Lines. Individuals spoke directly to the impact of seeing long voter lines and having experienced standing in long voter lines during both congressional field hearings and the People's Hearings in Florida and in Alabama. Testimony by Jeralyn Cave, of Advancement Project, witnessed long lines during the 2016 election in Florida. Her account is both illustrative and typical. Cave described her experience during the 2016 presidential election in the following manner:

"So, I want to tell this story about how in 2016 my colleague and I, Carolyn Thompson, were here doing a press conference in honor of Desiline Victor. We are here at the north Miami Library where the Desiline Victor Wing is named after her because she waited six hours in line to vote for Obama and was honored at the State of the Union address. While we were here though, we saw extremely long lines, and there were celebrities here. There were food trucks here. There were other people that were here that were trying to encourage people to stay in line, and that is extremely unnecessary. We think it's wrong, and so it does need to be fixed."<sup>cxvii</sup>

Voters of color also complained about the disparities in long wait times between their polling locations and those in other districts. For example, in testimony at the Alabama People's Hearings a witness described his experience during the 2012 presidential election. He remarked, "So, I can remember 2012 presidential election cycle and going to vote, I didn't get in line till about four o'clock. And I didn't vote until about 8:30. So you literally had lines, you know, back out of the parking-lot, down into the neighborhood, and then you really look into extra cell block, you know, because, you know how many registered voters in your area and, you know about how long it takes to go to voting."<sup>cxviii</sup> He continued, "So it's almost intentional when they set one voting location for thousands, thousands of people. So, when you look at other areas, where people can walk right in, vote and be back out in three minutes, and then you ask yourself, okay, Why am I standing in line for four and a half hours to be able to vote?"<sup>cxix</sup>

Another Alabama witness shared a similar story about the stark contrast in the quality and number of polling locations made available to voters in predominately white districts compared to those made available to voters in predominately black districts. Tragically, her comments are also both illustrative and typical of what witnesses shared. The anonymous Black woman testified to the following:

"Now I'm a resident of Fultondale and I vote at a senior facility. The first time I voted there, I was very surprised, there was no line. You walk in, and they do have separate... traditional sections, that you can stand up. But there were tables all lined up, and everybody was sitting down, filling out their ballot, and I was like 'Wait, what?' It was so pleasant, we would walk in and see air conditioning, and they're like 'Hi, Ma'am.' ... they give you your ballot. You sit down you take your time; you're not rushed. You can talk to people if you want to, nobody is really moving. You put your ballot in, they give you your 'I voted' sticker, and you're out the door and I was like... I noticed that there's not a lot of people my color, that get

that privilege. To sit in air conditioning and sit down and have their time to make well informed decisions in voting, and you go to the other side of town where I was born and raised for most of my life. You have older... elderly people and people that do look like me, that have to be in the 90 degree weather, standing up, disabled, old, and even something so simple as 'conditions' can deter people from voting."<sup>cc</sup>

Roger White Owl, Chief Executive Officer of the Mandan, Hidatsa, and Arikara Nation, explained, "We also do not have enough polling places. Two important polling places on our Four Bears Segment and Mandaree Segment were recently closed. Four Bears is one of the major economic hubs in our capital. With only a couple polling places, many tribal members had to drive 80 or 100 miles round trip to cast their vote. This is unacceptable. The federal government must provide resources and open staff for polling places on Indian reservations."<sup>cci</sup> Alicia LaCounte, General Counsel of the Turtle Mountain Band of Chippewa Indians, argued that "[T]he recent enactment of the North Dakota bills, which places requirements on the original citizens of this land, tend to diminish, discourage, and repress the Turtle Mountain tribal citizens' right to vote and access to the poll."<sup>cii</sup>

Provisional Ballots. Duly registered voters were also denied opportunities to cast a regular ballot. In Ohio, for example, Angela Woodson, Political Action Chair for the Cleveland Branch of the NAACP, provided a story about a young voter who tried to navigate the state's voter ID requirements. Woodson remarked that the "young lady . . . actually had a state ID from Alabama" and "did register in time to vote, to change her voter registration to here, but she had not quite gotten her state of Ohio license yet, but she did have an Ohio insurance card."<sup>ciii</sup> The young lady expected to cast a regular ballot, especially since one of the utility bills were in her husband's name and "reflected the same address" as did "her health insurance card."<sup>civ</sup> But, as Woodson recounted, "The challenge was [that] she had no other ID to try to vote" and, as result, "[o]f course, they immediately say, 'Provisional.'"<sup>cv</sup>

Poll workers incorrectly denied voters a regular ballot. Ohio witness Billy Sharp, President of the Urban League Guild, Sharp recalled, "... for a while ago I was a poll watcher, and I watched poll workers tell voters, 'You're not on the voter rolls here, you have to go vote somewhere else.' Well, they had no mention of a provisional ballot. If I'm working and I'm on my break, I really can't afford to go to another location or to the right location."<sup>cvi</sup> To address these problems, Sharp recommended that "we need to probably drill down on training" of poll workers.<sup>cvi</sup>

Moreover, James Major Woodall, served as an Election Protection volunteer. He received a call that election officials were denying students at Albany State University the ability to cast ballots. He recalled: "[I]t was actually several students from Albany State University, one of the HBCUs here in Georgia. And it wasn't a student, it was a parent who called us and said that her child was unable to vote, even though they had her registered to vote, even though that they was at the right precinct, and even though they had proof that they had did what they said . they had done. But they were prevented from not only voting but casting their provisional ballot. ... in 2018 and I got a call from a parent of a student at Albany State University, and that student's mother told us, "My baby cannot vote." And I asked her, "Well, what's wrong? What's going on? Talk to her." And she said, "My son registered to vote with the NAACP. They had

made sure that they were going to the right precinct and they had registered right on time. They had all the correct and important information, the documentation they needed by the state law. They had identification, but when they showed up to vote, they were told not only that they were not on the roll, but that they also were not able to cast a provisional ballot." And then what got even worse was that student wasn't the only one. There were several dozens of students at Albany State University who were not able to vote and we had to do a separate investigation to figure out what was going on because that was unacceptable. Even if there was some discrepancy, they should at least be able to cast a provisional ballot."<sup>ccviii</sup>

That "conditions" matter to how voters experience elections is not a new observation, but that the post-*Shelby* landscape may have emboldened states to ignore racial disparities in the factors shaping how voters experience the electoral process is a new observation worthy of congressional scrutiny and public outrage.<sup>ccix</sup> Because "conditions" matter, it is important that the Congress and the public attend to the ways in which public confusion can produce the same discriminatory results as outright poll worker hostility toward voters.

## V. The People's Proposals

Witnesses testifying before the Subcommittee on Elections and the People's Hearings offered a range of short-, medium-, and long-range solutions to reaffirm (in the strongest terms possible) that citizens who are eligible to vote must have unfettered access to the ballot box and must have their votes appropriately counted and to remediate the effects of the *Shelby County* decision. In an Alabama People's Hearing, Earnest Montgomery, a resident of Shelby County offered: "I do understand now how important the power of the vote is. I believe the greatest survival to our democracy is the power to vote. Our government must commit to assuring that every legal citizen be included, every barrier that prohibits be destroyed, every election from our local schools all the way to our federal elections be fair. I hope our elected leaders in Washington, DC can soon come up with some solution to protect every person's right to vote by some formula or preclearance. For we all know, as it's been said, that one ounce of prevention is more valuable than a pound of cure."<sup>ccx</sup>

In the Table below, we present a summary account of the solutions that hearing participants proposed. The resolutions address issues at the federal, state, and local level, and aim to rebuild and strengthen the wall of protection enshrined in the extraordinary provisions of the Voting Rights Act. The witnesses' solutions, we contend, reflect three realities. First, as remarked by Mimi Marziani, Chair of the Texas Advisory Committee to the US Commission on Civil Rights, that "discrimination in voter registration is persistent, and in fact and sadly, it appears to be getting worse."<sup>ccxi</sup> Second, that the coverage formula and the preclearance regime helped to keep most election-related discrimination at bay – neither provision nor their combination could change the underlying attitudes that motivate actors to engage in unconstitutional behavior. Third, that the protection of voting rights has always been and must always remain a bipartisan effort that reflects the shared concerns of Democrats and Republicans.

**Table: Solutions and Recommendations Presented By Witnesses**

Talk directly with community members about voting practices and concerns
Restore Section 4 of the Voting Rights Act, which will give operative force to Section 5
Account for systemic discrimination in redistricting when considering a revised coverage formula
Establish Independent Federal Agency to Regulate Voting Laws
Expand the Help America Vote Act
Adopt House Resolution 1 (H.R. 1) "For the People Act"
Enhance training for poll workers
Extend poll locations and hours
Establish pre-registration for 16 and 17 year-olds
Establish an Election Day Holiday
Expand Early Voting
Expand Same Day Registration and Voting
Expand Weekend Voting
Increase funding for cyber security and equipment testing labs
Honor federal treaties with Native American tribes and nations
Allow tribal governments to choose polling locations on tribal lands
Increase funding to develop accessible polling locations for Native people
Enhance language accessibility at polling locations
End Felony Disenfranchisement

Source: Author analysis of the 2019 field hearings by the U.S. House of Representatives' Committee on House Administration Subcommittee on Elections and People's Hearings conducted by the Anchors

Witnesses overwhelmingly called for Congress to “restore” the coverage formula to give operative force to the preclearance regime and for Congress to consider refining Section 2, if necessary, to survive possible future judicial attacks. Witnesses also recommended that any attempts to develop a new coverage formula account for previous systemic acts of racial discrimination, and according to Patricia Timmons-Goodson, Vice Chair of the U.S. Commission on Civil Rights, it’s crucial for Congress to remember that these discriminatory acts “tend to recur in certain areas.”<sup>ccxii</sup> Furthermore, witnesses suggested that lawmakers direct federal funding to monitor and respond to racial discrimination in voting practices, and suggested that Congress establish an independent federal agency to regulate voting rights laws. Irving Joyner, Professor of Law at North Carolina Central University School of Law, testified that “Voting is a fundamental right and it is just as fundamental as is communications, as is election financing, and their independent agencies at the federal level to oversee that we have lost faith in the Justice Department to protect our rights. Therefore, we need something more permanent than that and it ought to be in the form of an independent agency with the authority and power to oversee and regulate voting.”<sup>ccxiii</sup>

Witnesses also recommended reforms that were unrelated to reanimating preclearance but that directly related to improving access to the ballot – e.g., expanding adoption of same day registration and voting, early voting, and weekend voting – and to improving protection of the electoral system. For example, Ohio People’s Hearing witness Ms. Simmons, a retired union worker, stressed that the registration and voting processes should be streamlined. She noted that voters must encounter multiple steps along the way to casting a ballot. She testified to the following:

“When I was running for Precinct Committee Person, I was asking people to register to vote. I got an extra, I would say, an extra 70 some people to register to vote. Soon I got to get on their nerves, cause first they had to register to vote, then they got to turn that paper in, then you got to come back to them with the vote by mail, then they got to turn that in. Then they get the ballot, I got to go back to them, "Did you get your ballot?". "I don't know", you know it's on the kitchen table so they don't know if they got the ballot cause they got so many papers coming back in. It should be a little bit shorter. I don't know how to make it shorter, cause I don't know nothing about that practice, but when you register them to vote, then you got to get this and get that and then they're tired. Bout time election time came, they got tired of all the paperwork to be done.”<sup>CCXIV</sup>

Acknowledging the Unique Relationship with Tribal Governments. Witnesses recommended that Congress enact legislation to deal with the unique circumstances facing Native American voters, particularly those residing on tribal lands. For example, witnesses called for stronger enforcement of treaties between the federal government and the Native American Nations in the area of voting rights; called for an increase in direct communication between Native people communities and election officials; and called for Congress to ensure access to voter registration, early voting, and election day polling places on Indian reservations. Other recommendations were for states and the federal government to work in collaboration with tribal governments, to provide additional funding for cyber-security protocols and for equipment testing, and to respect the sovereignty of Indian tribes. Mr. White Owl called for the subcommittee to raise this issue to the highest levels of House leadership. For White Owl, “the federal government, not the states, should work with tribes to come up with the voting rules that will work on our reservations.”<sup>CCXV</sup> Owl explained the unique government-to-government relationship between Indian tribes and the federal government saying “The federal government should also work with us to determine how many polling places are needed on our reservation, and the federal government should provide funding to support these polling places. The state should have no part in our right to vote in elections. In fact, North Dakota is working hard to keep tribal members from casting a vote. Recent elections here have been very close for a few thousand votes. If a tribal member can't cast their vote, candidates they support, that support our issues, can't get elected.”<sup>CCXVI</sup>

Election Day Holiday. Particularly prominent among the recommendations were calls for an Election Day holiday, either at the federal level or at the state/local level. Theoretically, such a holiday would enhance access to the ballot for all voters as well as promote entry for particular segments of the electorate (e.g., voters with disabilities, voters of low-income status, voter's dependent upon public transportation, voters with non-traditional work hours). Additionally, an Election Day holiday could reduce the likelihood that citizens choose disengagement over participation when considering pressures on their time related to getting to work, to traveling to the polls, and to addressing childcare and eldercare responsibilities.

Congressional Legislation. Witnesses also recommended that Congress pass House Resolution 1 (“For the People Act”). They also noted that the legislation would allocate funding

for the development and maintenance of polling locations (with emphasis on rural areas and hard-to-reach areas) and for states to hire, train, and compensate poll workers from diverse backgrounds (especially to provide language assistance to voters with limited proficiency in English. Speaking to the financial resources needed to maintain voting equipment, Inajo Davis Chappell, member of the Cuyahoga County Board of Elections, argued that Congress must “make sure that the testing labs that are used, because there aren't that many, that there are enough that they are testing the equipment to make sure that there's no way to hack in.”<sup>ccxvii</sup>

Felon disenfranchisement. Witnesses also demanded an end to felon disenfranchisement. Here we quote witness testimony from the Florida People's Hearings and the Alabama People's Hearings to provide illustrative examples of voter concerns about the often murky, arbitrary, frustrating, and confusing processes designed to restore or actualize voting rights. Because much of these processes interface with the socioeconomic and political system, citizens often have limited options. Speaking to the economic constraints, Jason Barnes, of the Alabama Voting Rights Project, shared a story about working with a client that “owes \$60,000 in fines and fees right now. He is 55 years old. He has only paid maybe \$500. He will never be able to vote. Cause he can't afford to get it back.”<sup>ccxviii</sup> Barnes also remarked on the lengthy process when individuals “have to fill out a certificate of eligibility to vote” which “goes to the board of pardons and paroles.”<sup>ccxix</sup> Barnes noted that it “takes 44 days for that to come back”, and individuals “have to pay off their fines and fees” and “be off probation and parole.”<sup>ccxx</sup> Barnes noted that individuals also “cannot have a pending conviction... they cannot have a pending disqualifying conviction because it is treated as if they are guilty.” In offering a summary conclusion, Barnes remarked, “So they have to jump through a whole bunch of hoops just for the board of pardons and paroles to tell them okay now you can vote. Now you gotta add another 14 days on it because they actually have to register to vote.”

Speaking to the impact of other hoops and limitations, Florida Senator Victor Torress testified about a proposal put forth by state legislators. He remarked, “I want to read a brief on the legislation we just passed on the voter restoration rights. The bill the Senate passed requires a person to pay all court fees, fines, and restitutions before they can vote, and also sets up two ways these costs can be excused.”<sup>ccxxi</sup> Nevertheless, he intimated, those routes can be confusing: “Meaning that it's not 100% but it's given the opportunity to restoration rights to vote. It means that you who are in doubt have an opportunity to see if a judge or if you're waiting for litigation on your trial or your case, that they have the opportunity to waive and get your voting rights restored by doing community time. But as we know, everything is.”<sup>ccxxii</sup> For these witnesses and others, felon disenfranchisement meant that some portions of the citizenry were deliberately ignored and excluded from informing policy decisions, which affected their lives and the lives of their families.

In conclusion, witness recommended a wide range of solutions to address modern day voter suppression. Those solutions readily underscored the complex intersection between race/ethnicity, socioeconomic circumstances, and access to the ballot. In addition, those solutions acknowledged the need for greater cooperation between affected voters and federal, state, and local governmental entities. To that, it should be unsurprising that witnesses proposed innovative solutions to countering and reversing the effects of *Shelby* and to strengthening the Voting Rights Act. The post-*Shelby* landscape is replete with new and unprecedented dangers for all voters, and especially for voters of color. The Supreme Court decision removed several of the main protections keeping poor and voters of color safe from the incessant onslaught of discriminatory

laws. In the immediate aftermath, legislators across the nation, particularly in those locales most notorious for voter discrimination, rushed to create and to enforce new rules that disenfranchised voters and that would shift elections in favor of persons who were not candidates of choice for communities of color. To add insult to injury, lawmakers often couched reform efforts as anti-election fraud (either registration fraud or voter impersonation fraud) as non-injurious to particular communities. According to witness testimony, much of which included statistics about the effects of electoral reforms on vulnerable communities, nothing could be further from the truth. It is apparent that facially neutral policies often hide discriminatory effects. Moreover, the extremely low probability that individuals have committed voter fraud pales in comparison to the extremely high reality that individuals have been disenfranchised. Our country is at a crossroads. Democracy demands nondiscriminatory access to the ballot. Congress must protect the ability to participate in the electoral franchise. "We the People," demand action to eliminate the discriminatory barriers to the ballot as they currently exist and will evolve in the future.



## ENDNOTES

<sup>i</sup> The term “Hispanic” is used interchangeably with Latino and Latinx throughout this report.

<sup>ii</sup> Morley, Michael T, *Prophylactic Redistricting? Congress’s Section 5 Power and the New Equal Protection Right to Vote*, 59 Wm. & Mary L. Rev. 2053 (2018), <https://scholarship.law.wm.edu/wmlr/vol59/iss5/13/>

<sup>iii</sup> The preamble of the United States constitution reads: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” U.S. CONST. pmb.

<sup>iv</sup> The Fifteenth Amendment of the U.S. Constitution provides:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation.” US CONST. amend. XV, §§ 1–2.

<sup>v</sup> The Jim Crow era defines the late 1800’s to the 1960’s in this country’s history where it sought to replace slavery with legal segregation. “‘Jim Crow laws’ were state laws and local ordinances enacted from the end of Reconstruction through the first six decades of the twentieth century for the purpose of mandating *de jure* racial segregation of all public transportation conveyances, restaurants, restrooms, water fountains, schools, hotels, libraries, and virtually every other form of public accommodations and facilities.” See Lynch by Lynch v. Alabama, No. CV 08-S-450-NE, 2011 WL 13186739, at \*47–48 (N.D. Ala. 2011), *aff’d in part, vacated in part, remanded sub nom.* I.L. v. Alabama, 739 F.3d 1273 (11th Cir. 2014).

<sup>vi</sup> Smithsonian Nat. Museum of Am. History, *White Only: Jim Crow in America*, SEPARATE IS NOT EQUAL: BROWN v. BOARD OF EDUCATION, <https://americanhistory.si.edu/brown/history/1-segregated/white-only-1.html> (last visited Oct. 22, 2019).

<sup>vii</sup> Elk v. Wilkins, 112 U.S. 94 (1884).

<sup>viii</sup> *Securing Indian Voting Rights*, 129 HARV. L. REV. 1731, 1734 (2016) (footnotes omitted); See also James Thomas Tucker, *The Battle over “Bilingual Ballots” Shifts to the Courts: A Post-Boerne Assessment of Section 203 of the Voting Rights Act*, 45 HARV. J. ON LEGIS. 507, 520 (2008).

<sup>ix</sup> Nina Perales, Luis Figueroa, Criselda G. Rivas, *Voting Rights in Texas: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 713, 713 (2008) (“Texas has experienced a long history of voting discrimination against its Latino and African-American citizens dating back to 1845”).

<sup>x</sup> U.S. Comm’n on Civil Rights, August 18, 2017, pp. 77-78.

<sup>xi</sup> Smith v. Allwright, 321 U.S. 649 (1944).

<sup>xii</sup> *Continuing Need for Section 203’s Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 309 (2006) (letter from Joe Garcia, Nat’l Congress of Am. Indians); DANIEL MCCOOL, SUSAN M. OLSON, AND JENNIFER L. ROBINSON, NATIVE VOTE: AMERICAN INDIANS, THE VOTING RIGHTS ACT, AND THE RIGHTS TO VOTE 10 (2007).

<sup>xiii</sup> Harrison v. Laveen, 67 Ariz. 337 (1948).

<sup>xiv</sup> California limited voting rights to white citizens; Idaho, New Mexico and Washington withheld the right to vote from Native Americans not taxed. The North Dakota Constitution limited voting to “civilized” Native Americans who have severed tribal relations. In 1956, Utah was one of the last states to ban a statute that prevented Native Americans residing on the reservation from voting because it did not count them as citizens of Utah. DANIEL MCCOOL, SUSAN M. OLSON & JENNIFER L. ROBINSON, NATIVE VOTE, *supra* note xii.

<sup>xv</sup> See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (repealed 1943) (prohibiting immigration of Chinese laborers); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98; Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952) (banning immigration from almost all countries in the Asia-Pacific region); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 415 (2005).

<sup>xvi</sup> See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (amended 1946) (imposing annual quota of fifty Filipino immigrants); Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952) (denying entry to virtually all Asians); Scott Act of 1888, ch. 1064, 25 Stat. 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795) (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans).

<sup>xvii</sup> *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., CAL. CONST. of 1879 art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

<sup>xviii</sup> Karen Narasaki serves as a Commissioner on the US Civil Rights Commission. She is a former President and Executive Director of Asian Americans Advancing Justice, a national civil rights organization. Her statements were made during a U.S. Commission on Civil Rights Hearing in Washington, DC on August 18, 2017, pp. 77-78.

<sup>xix</sup> *Id.*

<sup>xx</sup> *Congressmen Jesús “Chuy” García, Jimmy Gomez and Adriano Espaillat join NPNA, UnidosUS, and Allies to Call on USCIS to Focus on Application Processing, not Enforcement*, NAT’L PARTNERSHIP FOR NEW AM., (Jul. 16, 2019), <https://partnershipfornewamericans.org/congressmen-jesus-chuy-garcia-jimmy-gomez-and-adriano-espaillat-join-npna-unidosus-and-allies-to-call-on-uscis-to-focus-on-application-processing-not-enforcement/>.

<sup>xxi</sup> Immigration and Nationality Act of 1965 (Hart-Cellar Act), Pub. L. No. 89-236, 79 Stat. 911.

<sup>xxii</sup> Ming Hsu Chen & Taeku Lee, *Reimagining Democratic Inclusion: Asian Americans and the Voting Rights Act*, 3 UC IRVINE L. REV. 359, 376–77 (2013).

<sup>xxiii</sup> THE RISE OF ASIAN AMERICANS, PEW RESEARCH CENTER 59 (2012), <https://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/>.

<sup>xxiv</sup> Jeffrey S. Passel & D’vera Cohn, *U.S. Population Projections: 2005-2050*, Pew Research Center: Hispanic Trends (Feb. 11, 2008), <https://www.pewresearch.org/hispanic/2008/02/11/us-population-projections-2005-2050/>.

<sup>xxv</sup> Civil Rights Act of 1957, Pub. L. 85-315, 71 Stat. 634 (codified as amended at 42 U.S.C. § 1995 (2006)).

<sup>xxvi</sup> *United States v. Atkins*, 323 F.2d 733, (5th Cir. 1963).

<sup>xxvii</sup> *Id.* at 736.

<sup>xxviii</sup> See *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966) (Citing the Civil Rights Acts of 1957, 1960, and 1964, the Court stated, “Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination.”).

<sup>xxix</sup> Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301 reads:

Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

<sup>xxx</sup> *Section 2 of the Voting Rights Act*, U.S. DEP’T. OF JUSTICE: CIVIL RIGHTS DIV., <https://www.justice.gov/crt/section-2-voting-rights-act>.

<sup>xxxi</sup> *Mobile v. Bolden*, 446 U.S. 55 (1980).

<sup>xxxii</sup> *Id.*

<sup>xxxiii</sup> President Ronald Reagan, Text of President’s Statement: Special to the New York Times, November 7, 1981, <https://www.nytimes.com/1981/11/07/us/text-of-president-s-statement.html>. (“The right to vote is the crown jewel of American liberties, and we will not see its luster diminished.”).

- <sup>xxxiv</sup> Section 2 of the Voting Rights Act, *supra* note xxx.
- <sup>xxxv</sup> South Carolina v. Katzenbach, 383 U.S. 301, 313 (1966).
- <sup>xxxvi</sup> *Id.*
- <sup>xxxvii</sup> 28 C.F.R. § 51.52.
- <sup>xxxviii</sup> 28 C.F.R. § 51.1.
- <sup>xxxix</sup> Allen v. State Bd. of Elections, 393 U.S. 544, 565 (1969).
- <sup>xl</sup> Katzenbach v. Morgan, 384 U.S. 641 (1966).
- <sup>xli</sup> H.R. 6219, 94th Cong. (1975) (as approved on Aug. 6, 1975) (codified at 52 U.S.C.A. § 10503).
- <sup>xlii</sup> U.S. COMM’N ON CIVIL RIGHTS, AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE U.S. 189-192 (2018); ASIAN AM. LEGAL DEF. FUND AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2014 ELECTIONS (2014), <https://www.aaldef.org/uploads/pdf/2014AccessToDemocracyReport.pdf>; Asian American Advancing Justice, Testimony at the People’s Hearings (2019) (all testimony People’s Hearing can be accessed at WeVOTE WeCOUNT, <https://wevotewecount.org/>).
- <sup>xliii</sup> U.S. COMM’N ON CIVIL RIGHTS, *supra* note xlii at 189-192.
- <sup>xliv</sup> For a 50-year retrospective on the VRA’s positive impact on political participation and empowerment. See KHALILAH BROWN □ DEAN, ZOLTAN HAJNAL, CHRISTINA RIVERS, & ISMAIL WHITE, JOINT CENTER FOR POLITICAL AND ECON. STUDIES, 50 YEARS OF THE VOTING RIGHTS ACT: THE STATE OF RACE IN POLITICS (2015).
- <sup>xlv</sup> See LAURA WILLIAMSON, PAMELA CATALDO, AND BRENDA WRIGHT, DEMOS, TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES, (2018), <https://www.demos.org/research/toward-more-representative-electorate>; STUART NAIFEH, DEMOS, ACCELERATING THE VOTE: HOW STATES ARE IMPROVING MOTOR-VOTER COMPLIANCE UNDER THE NATIONAL VOTER REGISTRATION ACT (2017), <https://www.demos.org/research/accelerating-vote>.
- <sup>xlvi</sup> South Carolina v. Katzenbach, 383 U.S. 301, 313 (1966).
- <sup>xlvii</sup> *Id.*
- <sup>xlviii</sup> Katzenbach v. Morgan, 384 U.S. 641 (1966).
- <sup>xlix</sup> *Id.*
- <sup>i</sup> Crawford v. Marion Cty. Election Bd., 553 U.S. 181 (2008).
- <sup>ii</sup> *Id.*
- <sup>iii</sup> Northwest Austin Mun. Util. Dist. No. One v. Holder, 557 U.S. 193 (2009).
- <sup>iiii</sup> The Effects of Shelby County v. Holder, BRENNAN CENTER FOR JUSTICE (Aug. 6, 2018), <https://www.brennancenter.org/analysis/effects-shelby-county-v-holder>.
- <sup>lv</sup> NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016).
- <sup>lvi</sup> U.S. COMM’N ON CIVIL RIGHTS, *supra* note xlii.
- <sup>lvii</sup> Perales, Figueroa & Rivas, *supra* note ix, at 717.
- <sup>lviii</sup> See Veasey v. Abbott, 830 F.3d 216 (5th Cir. 2016).
- <sup>lix</sup> MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2012) AND TYSON KING-MEADOWS, WHEN THE LETTER BETRAYS THE SPIRIT: VOTING RIGHTS ENFORCEMENT AND AFRICAN AMERICAN PARTICIPATION FROM LYNDON JOHNSON TO BARACK OBAMA (2011).
- <sup>lx</sup> Preclearance applied to “Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color.”
- <sup>lxi</sup> Caitlin Swain, Co-Director, Forward Justice, Testimony at the North Carolina People’s Hearing (2019).
- <sup>lxii</sup> Dr. Rev. Barber, Testimony at the North Carolina People’s Hearing (2019); Caitlin Swain, *supra* note lx.
- <sup>lxiii</sup> Sheila Tyson, Jefferson Cty. Comm’r., Dist. 2, Testimony at the Alabama People’s Hearing (2019).
- <sup>lxiv</sup> *Id.*
- <sup>lxv</sup> *Id.*
- <sup>lxvi</sup> Witness Testimony, Testimony at the \_\_\_\_ People’s Hearing (2019).
- <sup>lxvii</sup> Witness Testimony, Testimony at the North Dakota People’s Hearing (2019).
- <sup>lxviii</sup> Sally Harrison, *May I See Your Id? How Voter Identification Laws Disenfranchise Native Americans’ Fundamental Right to Vote*, 37 Am. Indian L. Rev. 597, 617 (2013).
- <sup>lxix</sup> Jeniver Van Schuyver, *That’s not a real ID*, WE VOTE. WE COUNT. (Nov. 2016), <https://wevotewecount.org/story/thats-not-real-id>.
- <sup>lxx</sup> Rolando Rios, Voting Rights Attorney, Testimony at the Texas People’s Hearing (2019).
- <sup>lxxi</sup> *Id.*

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- <sup>lxxxi</sup> *Id.*
- <sup>lxxxii</sup> Ruth Buffalo, N.D. State Representative, 27th District, Testimony at the North Dakota People's Hearing (2019).
- <sup>lxxxiii</sup> *Id.*
- <sup>lxxxiv</sup> Patricia Timmons-Goodson, Vice Chair, United States Comm'n on Civil Rights, Testimony at the North Carolina People's Hearing (2019).
- <sup>lxxxv</sup> *Id.*
- <sup>lxxxvi</sup> *Id.*
- <sup>lxxxvii</sup> Roland Rios, *supra* note lxxix.
- <sup>lxxxviii</sup> Mimi Marziani, Chairwoman, Texas Advisory Comm. to the U.S. Comm'n on Civil Rights, Testimony at the Texas People's Hearing (2019).
- <sup>lxxxix</sup> *Id.*
- <sup>lxxx</sup> *Id.*
- <sup>lxxxii</sup> Daniel Ortiz, Outreach Dir., Policy Matters Ohio, Testimony at the Ohio People's Hearing (2019).
- <sup>lxxxiii</sup> *Id.*
- <sup>lxxxiv</sup> Angela Woodson, Political Action Chair, Cleveland Branch of the NAACP, Testimony at the Ohio People's Hearing (2019).
- <sup>lxxxv</sup> *Id.*
- <sup>lxxxvi</sup> *Id.*
- <sup>lxxxvii</sup> Scott Douglas, Executive Dir., Greater Birmingham Ministries, Testimony at the Alabama People's Hearing (2019).
- <sup>lxxxviii</sup> *Id.*
- <sup>lxxxix</sup> *Id.*
- <sup>lxxxix</sup> *Id.*
- <sup>xc</sup> Warnell Vickers, Pastor, New Vision Christian Center Ministries, Testimony at the Florida People's Hearing (2019).
- <sup>xcii</sup> *Id.*
- <sup>xciii</sup> *Id.*
- <sup>xciii</sup> Melkeva Horne, Testimony at the State People's Hearing (2019).
- <sup>xciv</sup> Mike Brickner, Ohio State Dir., All Voting is Local, Testimony at the Ohio People's Hearing (2019).
- <sup>xcv</sup> *Id.*
- <sup>xcvi</sup> Witness Testimony, Testimony at the Alabama People's Hearing (2019).
- <sup>xcvii</sup> *Id.*
- <sup>xcviii</sup> Bernard Simelton, Board of Dir. and Member, NAACP National, Testimony at the Alabama People's Hearing (2019).
- <sup>xcix</sup> Oliver OJ, Co-Dir., Four Directions, Testimony at the South Dakota People's Hearing (2019).
- <sup>c</sup> *Id.*
- <sup>ci</sup> *Id.*
- <sup>cii</sup> As the Department of Justice website explains, "Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act." A plaintiff could establish a violation of the section if the evidence established that, in the context of the "totality of the circumstance of the local electoral process," the standard, practice, or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process." *Section 2 of the Voting Rights Act, supra* note xxx.
- <sup>ciii</sup> This is not to minimize the financial and operational costs associated with the administrative route. Furthermore, adjudication via the administrative route was replete with controversy. As one can imagine, career attorneys and political appointees within the DOJ Civil Rights Division often brought different interpretations of precedent, of congressional intent, and of the appropriate evidentiary standards to apply when examining proposed election reforms. For a discussion on how agency conflicts can undermine voting rights, see TYSON KING-MEADOWS, WHEN THE LETTER BETRAYS THE SPIRIT: VOTING RIGHTS ENFORCEMENT AND AFRICAN AMERICAN PARTICIPATION FROM LYNDON JOHNSON TO BARACK OBAMA 199-245 (2011).
- <sup>civ</sup> Jacqueline De Leon, Staff Attorney, Native Am. Rights Fund, Testimony at the North Dakota People's Hearing (2019).
- <sup>cv</sup> Witness Testimony, Testimony at the Alabama People's Hearing (2019).
- <sup>cvi</sup> Witness Testimony, Testimony at the Alabama People's Hearing (2019).

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- <sup>cvi</sup> Andre's Testimony at the People's Hearing (2019).  
<sup>cvi</sup> Husted v. A. Philip Randolph Institute, 138 S.Ct. 1833 (2018).  
<sup>cix</sup> James Blacksher, Lawyer, Testimony at the Alabama People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cxi</sup> *Id.*  
<sup>cxi</sup> Jacqueline De Leon, *supra* note civ.  
<sup>cxii</sup> *Id.*  
<sup>cxiv</sup> *Id.*  
<sup>cxv</sup> Nancy Abudu, Deputy Legal Dir., Voting Rights, the Southern Poverty Law Ctr., Testimony at the Florida People's Hearing (2019).  
<sup>cxvi</sup> *Id.*  
<sup>cxvii</sup> Stacey Abrams, Testimony at the Atlanta People's Hearing (2019).  
<sup>cxviii</sup> *Id.*  
<sup>cxix</sup> *Id.*  
<sup>cx</sup> *Id.*  
<sup>cx</sup> Dr. Rev. Barber, *supra* note lxi.  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> *Id.*  
<sup>cxxi</sup> Those 14 states were: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.  
<sup>cxix</sup> JONATHAN BRATER, KEVIN MORRIS, MYRNA PEREZ, & CHRISTOPHER DELUZIO, PURGES: A GROWING THREAT TO THE RIGHT TO VOTE, BRENNAN CENTER FOR JUSTICE 1 (2018), <https://www.brennancenter.org/publication/purges-growing-threat-right-vote>. The report calculated that "2 million fewer voters would have been purged over those four years if jurisdictions previously subject to federal preclearance had purged at the same rate as those jurisdictions not subject to that provision in 2013."  
<sup>cx</sup> See *Voting Rights and Election Administration in North Carolina: Hearing Before the H. Comm. on Administration Subcomm. on Elections*, 116th Cong. (2019) (statement of Caitlin Swain, Co-Director of Forward Justice), <https://docs.house.gov/meetings/HA/HA08/20190418/109315/HHRG-116-HA08-Wstate-SwainC-20190418-U1.pdf>.  
<sup>cx</sup> Caitlin Swain, *supra* note lx.  
<sup>cx</sup> Matthew McCarthy, Legal Consultant, ACLU of Tex., Testimony at the Texas People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cx</sup> *Id.*  
<sup>cx</sup> George Corbel, Testimony at the Texas People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cx</sup> Nancy Abudu, *supra* note cxv.  
<sup>cx</sup> Jenny Carroll, Testimony at the [state] People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cx</sup> Nancy Abudu, *supra* note cxv.  
<sup>cx</sup> Chad Dunn, Testimony at the Texas People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cx</sup> *Id.*  
<sup>cx</sup> George Corbel, *supra* note cxxxv.  
<sup>cx</sup> *Id.*  
<sup>cx</sup> Rolando Rios, *supra* note lxix.  
<sup>cx</sup> Senator Dan Blue, Senate Majority Leader, N.C., Testimony at the North Carolina People's Hearing (2019).  
<sup>cx</sup> *Id.*  
<sup>cx</sup> Chad Dunn, *supra* note cxli.  
<sup>cx</sup> *Id.*  
<sup>cx</sup> LANI GUINIER, TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1994)

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- cli Jacqueline De Leon, *supra* note civ.  
 chii Jacqueline De Leon, *supra* note civ.  
 cliv Jacqueline De Leon, *supra* note civ.  
 clv This is why jurisdictions often withdrew their proposed changes once they became scrutinized.[citation from 2006 reports]  
 clvi George Corbel, *supra* note cxxxv.  
 clvii Chad Dunn, *supra* note cxli.  
 clviii Patricia Timmons-Goodson, *supra* note lxxiv.  
 clix Kimlee Sureemee, Senior Manager, Policy-Advocacy and Dev. at Asia Inc., Testimony at the Ohio People's Hearing (2019).  
 clx *Id.*  
 clxi *Id.*  
 clxii Dan Blue, *supra* note cxlvii.  
 clxiii *Id.*  
 clxiv *Id.*  
 clxv *Id.*  
 clxvi Matthew McCarthy, *supra* note cxxxii.  
 clxvii *Id.*  
 clxviii *Id.*  
 clxix *Id.*  
 clxx *Id.*  
 clxxi *Id.*  
 clxxii *Id.*  
 clxxiii Dan Blue, *supra* note cxlvii.  
 clxxiv *Id.*  
 clxxv *Id.*  
 clxxvi Winnie Tang, President, Asian Am. Fed'n of Fla., Testimony at the Florida People's Hearings (2019).  
 clxxvii Kimlee Sureemee, *supra* note clix.  
 clxxviii *Id.*  
 clxxix *Id.*  
 clxxx Hillary Lee, Georgia People's Hearing (2019).  
 clxxxi Mimi Marziani, *supra* note lxxviii.  
 clxxxii *Id.*  
 clxxxiii Elaine Tso, Interim Co-CEO, Asian Services In Action, Testimony at the Ohio People's Hearing (2019).  
 clxxxiv *Id.*  
 clxxxv *Id.*  
 clxxxvi Kimlee Sureemee, *supra* note clix.  
 clxxxvii Mimi Marziani, *supra* note lxxviii.  
 clxxxviii *Id.*  
 clxxxix *Id.*  
 cxx *Id.*  
 cxci Witness Testimony, Testimony at the Georgia People's Hearing (2019).  
 cxcii Oliver OJ, *supra* note xcix.  
 cxciix Oliver OJ, *supra* note xcix.  
 cxciiv Oliver OJ, *supra* note xcix.  
 cxciy Oliver OJ, *supra* note xcix.  
 cxciy Witness Testimony, Testimony at the Georgia People's Hearing (2019).  
 cxciy Jeralyn Cave, Testimony at the Florida People's Hearing (2019).  
 cxciy Witness Testimony, Testimony at the Alabama People's Hearing (2019).  
 cxciy Witness Testimony, Testimony at the Alabama People's Hearing (2019).  
 cxi Witness Testimony, Testimony at the Alabama People's Hearing (2019).  
 cxi Roger White Owl, Chief Exec. Officer, Mandan, Hidatsa, and Arikara Nation, Testimony at the North Dakota People's Hearing (2019).

<sup>ccii</sup> Alicia LaCounte, General Counsel, Turtle Mountain Band of Chippewa Indians, Testimony at the North Dakota People's Hearing (2019).

<sup>cciii</sup> Angela Woodson, Political Action Chair, Cleveland Branch of the NAACP, Testimony at the Ohio People's Hearing (2019).

<sup>cciv</sup> *Id.*

<sup>ccv</sup> Angela Woodson, *supra* note cciii.

<sup>ccvi</sup> Billy Sharp, President, Urban League Guild, Testimony at the Ohio People's Hearing.

<sup>ccvii</sup> *Id.*

<sup>ccviii</sup> James Woodall, Testimony at the Atlanta People's Hearing (2019).

<sup>ccix</sup> Of course, these conditions also include what happens outside polling locations, much of which affects voter willingness to cast a ballot. Some witnesses drew attention to voter intimidation and called upon Congress and the public to attend to this issue given the continued tenuous relationship between the police and law enforcement personnel and residents in communities of color. Alabama People's Hearing witness Patrick Crabtree, for example, testified to the experience of Black voters at polling locations patrolled by uniformed officers, Crabtree testified to the following: "Watch, I'm a poll worker, and every black precinct in Mobile there's a city police or sheriff car with the people there dressed. If they were really concerned about making sure voting is done right wouldn't they be in unmarked car? Like everyday people, so they wouldn't feel threatened. They deliberately do this, so they will not have certain people come in there and try to educate people to vote because they scare them away." Patrick Crabtree, Testimony at the Alabama People's Hearing (2019).

<sup>ccx</sup> Ernest Montgomery, Testimony at the Alabama People's Hearing (2019).

<sup>ccxi</sup> Mimi Marziani, *supra* note lxxviii.

<sup>ccxii</sup> Patricia Timmons-Goodson, *supra* note lxxiv.

<sup>ccxiii</sup> Irving Joyner, Professor of Law, North Carolina Central University School of Law, Testimony at the North Carolina People's Hearing (2019).

<sup>ccxiv</sup> Ms. Simmons, retired Union Worker, Testimony at the Ohio People's Hearings (2019).

<sup>ccxv</sup> Roger White Owl, *supra* note cci.

<sup>ccxvi</sup> *Id.*

<sup>ccxvii</sup> Inajo Davis Chappell, Member, Cuyahoga Cty. Bd. of Elections, Testimony at the Ohio People's Hearing (2019).

<sup>ccxviii</sup> Jason Barnes, Ala. Voting Rights Project, Testimony at the Alabama People's Hearing (2019).

<sup>ccxix</sup> *Id.*

<sup>ccxx</sup> *Id.*

<sup>ccxxi</sup> Senator Victor Torres noted that "the first option is that a judge with the agreement of the victim of a crime can dismiss the repayment requirement. The second option allows for a judge to convert all fines and fees and restitution into community service hours. In the second scenario, a person could have their voting rights restored after completing the community service."

<sup>ccxxii</sup> Jason Barnes, *supra* note ccxviii.