

**OVERSIGHT OF THE VOTING RIGHTS ACT:
A CONTINUING RECORD OF DISCRIMINATION**

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS, AND CIVIL LIBERTIES
OF THE
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OVERSIGHT OF THE VOTING RIGHTS ACT: A CONTINUING RECORD OF DISCRIMINATION

Thursday, May 27, 2021

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,
AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to call, at 10:04 a.m., via Zoom, Hon. Deborah Ross [Vice Chair of the Subcommittee] presiding.

Members present: Representatives Nadler, Raskin, Ross, Johnson of Georgia, Garcia, Bush, Jackson Lee, Jordan, and Fischbach.

Staff present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Moh Sharma, Member Services and Outreach Advisor; Jordan Dashow, Professional Staff Member; Cierra Fontenot, Staff Assistant; John Williams, Parliamentarian; James Park, Chief Counsel for Constitution; Keenan Keller, Senior Counsel; Will Emmons, Professional Staff Member; Matt Morgan, Counsel for Constitution; Betsy Ferguson, Minority Senior Counsel; Ken David, Minority Counsel; Caroline Nabity, Minority Counsel; James Lesinski, Minority Counsel; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Ms. ROSS. The Committee on Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order. Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time. I welcome everybody to today's hearing on Oversight of the Voting Rights Act: A Continuing Record of Discrimination.

Before we continue, I would like to remind Members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today. If you would like to submit materials, please send them to *judiciarydocs@mail.house.gov* and we will distribute them to Members and staff as quickly as we can.

Finally, I would ask that all Members and witnesses mute your microphones while you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself at any time you seek recognition. I will now recognize myself for an opening statement.

Last month, the Reverend Dr. William Barber from North Carolina reminded us in testimony before our Subcommittee that our

Constitution says that we must establish justice. Our Constitution requires equal protection under the law and our Constitution commands that you cannot deny or abridge the right to vote on account of race or color.

When you suppress the right to vote, in essence, you are suppressing people's humanity. You are saying that they are not worthy of whole citizenship. Unfortunately, African Americans and other racial, ethnic, and language minorities know what it is like to have their right to vote, that is their humanity and their full inclusion in our nation's body, politically suppressed.

Throughout our nation's history, federal, state, and local governments as well as individuals and hate groups have tried to undermine voting rights for minority voters. Civil rights leaders like our late colleague John Lewis put their lines on the line to ensure the right to vote for everyone. Their work led to the enactment of one of the most important civil rights measures in our country's history, the Voting Rights Act of 1965.

While the passage of the Voting Rights Act did not end attacks on the right to vote, it did offer a powerful tool to prevent states and localities from implementing discriminatory voting measures or to overturn such measures when they had already been implemented.

Since the Supreme Court's effective gutting of the act's preclearance provision in *Shelby County v. Holder*, states have introduced and, in some cases, acted into law new voting restrictions. Before *Shelby County*, the act's preclearance provision required certain jurisdictions with a history of voting discrimination against racial and language minority groups to obtain approval from the Justice Department or the U.S. District Court for the District of Columbia of any changes to their voting laws or procedures prior to such measures being able to take effect. This mechanism provided significant protection to minority voters by preventing potentially discriminatory voting practices from taking effect before they could harm voters and their right to vote. Unfortunately, in *Shelby County*, the Supreme Court struck down the geographic coverage formula that determined which jurisdictions would be subject to preclearance, meaning that the preclearance provisions remain inactive until Congress adopts a new coverage formula.

Last Congress, the Subcommittee held numerous hearings in which it gathered significant and extensive evidence of ongoing voter suppression since the *Shelby County* decision, especially by those jurisdictions that were once subject to preclearance. As a North Carolinian and former State representative, I have seen up close how the gutting of the Voting Rights Act preclearance formula has led to increased efforts to erode the right to vote.

Before *Shelby County*, many counties within North Carolina were subject to the preclearance requirement. Once this preclearance requirement was effectively eliminated, the legislature moved quickly to pass a sweeping voter suppression law that a federal appeals court would later strike down because it intentionally targeted African Americans with almost surgical precision. Sadly, that law was not the only voter suppression law my State enacted. There are ongoing legal challenges to a voter ID law that the State enacted in 2018 to implement a new State constitutional amend-

ment, and other forms of voter suppression continue to impact minority voters' ability to vote in North Carolina. North Carolina is not alone in its efforts to restrict the right to vote. States across the country have enacted dozens of restrictive voting laws since 2013, including six states that have enacted restrictive voting laws this year alone. According to the Brennan Center for Justice at New York University Law School, as of March 2021, there have been 361 bills with restrictive voting provisions introduced in 47 states as part of this year's State legislative sessions and those numbers have certainly grown since then.

Many of these bills seek to make absentee voting or voting registration harder, reduce early voting, impose stricter voter ID requirements, or undermine the power of local elected, election officials. In the absence of an effective preclearance provision, it is unsurprising that discriminatory measures continue to erode our democracy, undermining the voting rights of racial and language minorities and eroding our democracy.

The way forward for Congress to address this latest form of discrimination and voter suppression is clear: A fully updated and improved Voting Rights Act. Congress must create a new coverage formula to restore the act's preclearance regime and strengthen its other provisions to improve our ability to combat discriminatory voter suppression. Our witnesses today will make clear how relevant our record of voter suppression from last Congress remains today and the need for congressional action. I thank our witnesses for joining us today and look forward to their testimony.

It is now my pleasure to recognize the Ranking Member of the Subcommittee for this Subcommittee hearing, the gentlelady from Minnesota, Ms. Fischbach, for her opening statement.

Ms. FISCHBACH. Thank you very much, Madam Chair.

Voting is a fundamental right in the United States. The election clause of the U.S. Constitution gives State legislatures the authority to prescribe the times, places, and manner of holding elections. The 15th amendment requires that states ensure that voting is accessible and available to every American. In 1965, Congress passed the Voting Rights Act to overcome State resistance and barriers that prevented minorities from exercising their right to vote guaranteed by the 15th Amendment.

Congress has reauthorized the VRA since its passage, most recently extending the law for another 25 years in 2006. However, at that time, Congress did not alter what is known as the coverage formula for the VRA, and so states and counties who had violated their citizens' voting rights in the 1960s and 1970s were still required to undertake onerous steps to update their voting laws, regardless of their more recent records.

In 2010, Shelby County, Alabama challenged the constitutionality of the VRA's coverage formula for subjecting them to these continued requirements based on conduct decades ago. It is worth noting that between 1965 and 2010, Shelby County and the cities and towns within it have submitted at least 682 requested election law changes to the Department of Justice in accordance with the VRA, and the DOJ had objected to just five of them.

In 2013, the Supreme Court agreed that continuing to require states to preclear election law changes based upon conduct from

decades ago was an unconstitutional invasion of State sovereignty. In announcing its opinion in *Shelby County v. Holder*, the Supreme Court found that, and I quote, “The conditions that originally justified these measures no longer characterize voting in the covered jurisdiction.” Some of my colleagues argue that the Court’s opinion in *Shelby County* has unleashed a flood of State election law changes designed to disenfranchise minority voters, but this is a misunderstanding of the intent and the result of State election changes.

Georgia, recently in the news for its law to tighten election security after a very controversial election cycle, has higher rates of African American voter registration and participation according to the Census Bureau data than Democratic-controlled states of Illinois, New York, and California. Similarly, Arizona, another State recently under scrutiny for its election laws, has higher voter turnout among minority groups than neighboring California.

Laws designed to increase election security and integrity are not the same thing as voter suppression or voter discrimination. After a very controversial election, many states should indeed reexamine their election laws for ways to promote greater voter confidence in our election system. The Court’s decision in *Shelby County* in no way invalidated existing voting protections in the VRA or other federal laws and authorities have continued to use these laws when appropriate.

After the *Shelby County* decision, then Attorney General Eric Holder announced the DOJ would, and I quote, “shift resources to the enforcement of Voter Rights Act provisions that were not affected by the Supreme Court’s ruling, including Section 2.” There was no wave of enforcement because there was no wave of voter suppression. The Obama Administration filed 75 percent fewer section 2 cases than the Bush Administration and similarly made little use of other voting right authorities. Therefore, there is no record that merits reinstating the section 4 coverage formula and section 5 preclearance regime as previous legislation has sought to do.

Republicans want every legally cast vote to count. We want robust elections in our country where everyone has confidence in the outcome. I hope today we can have a productive conversation about the VRA and how we can best assist states in enhancing voter protections and preserving the integrity of our elections. I want to thank all our witnesses for appearing today and I look forward to hearing all of the testimony.

I thank you, Madam Chair, and I yield back.

Ms. ROSS. Thank you very much, Ms. Fischbach.

It is now my great pleasure to recognize the Chair of the Full Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Chair NADLER. Thank you, Madam Chair. The purpose of today’s hearing is to continue the subcommittee’s oversight of the Voting Rights Act, in part, by revisiting the extensive record we compiled during the 116th Congress documenting voting barriers in various jurisdictions. Indeed, since the subcommittee’s hearing last Congress, states have only intensified their efforts to enact laws that suppress minority voting rights.

To begin with, it is important to reflect on the origins of the Voting Rights Act as we consider how to amend the Act to address the current barriers to voting faced by too many Americans today. In response to public pressure from the civil rights movement, the Federal Government took renewed interest in protecting minority voters.

Starting in the late 1950s, the Federal Government engaged states and localities with a history of discrimination in a cat-and-mouse chase over their attempts to rob racial minorities of a meaningful participation in a democratic process. Every time a court struck down a jurisdiction's discriminatory voting measure as a result of a successful legal challenge, that jurisdiction would simply implement another way to discriminate against minority voters in response. Meanwhile, as a case slowly worked its way through the courts, racial minorities would continue to be denied the constitutional right to vote.

Congress sought to put an end to this unending cycle, often referred to as the whack-a-mole in which minority rights were the casualty, by passing the Voting Rights Act of 1965. The VRA proved a potent remedy for the most egregious forms of overt voting discrimination and the voting rights landscape changed significantly following its enactment. Under the VRA section 5 preclearance regime, states, and localities with a history of discrimination against racial and ethnic minority voters had to submit changes to their voting laws to the Justice Department or to a federal court for approval prior to taking effect.

While preclearance did not fully eliminate State attempts to discriminate against minority voters, it did end the cat-and-mouse chase, and minority voter registration and political participation increased markedly compared to its previously abysmal levels. In the decades following its initial passage, Congress reauthorized and amended the VRA several times on a bipartisan basis to keep pace with states and localities that still stubbornly refused to stop discriminating against their minority citizens.

In 2013, however, the Supreme Court effectively gutted the Voting Rights Act's most important enforcement mechanism, the section 5 preclearance provision, in its disastrous ruling in *Shelby County v. Holder*. In that decision, the Court struck down the formula for determining which states and localities are subject to preclearance, effectively rendering the preclearance provision null and void. In her dissent, the late Justice Ginsburg compared throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes to throwing your umbrella in a rainstorm because you are not getting wet.

Last Congress, we heard testimony from dozens of witnesses about examples of voting discrimination post-Shelby County that illustrated this point. They testified that at least 23 states had enacted restrictive voting laws since the Shelby County decision including strict voter ID laws, barriers to voter registration such as requiring proof of citizenship documents, allowing challenges of voters in the voting rolls, unfairly purging voters from the voter rolls, reductions in early voting, and the moving or elimination of polling places. In fact, within just 24 hours of the Shelby County decision, both Texas Attorney General and North Carolina's General Assem-

bly announced that they would reinstitute draconian voter ID laws. The federal courts later found that both laws were intentionally racially discriminatory.

Unfortunately, these are just two of the most egregious examples of State and local efforts to discriminate against minority voters from the past eight years. Indeed, since this Subcommittee began examining these issues last Congress, these efforts have only intensified. As of May 24th, a nonpartisan organization voting rights lab is tracking 410 antivoter bills at various stages of the enactment process.

The dozens of bills that would curb minority voting rights have actively been moving through State legislatures and six states have already enacted restrictive voting laws: Arizona, Arkansas, Florida, Georgia, Iowa, and Utah. These recent bills have been justified under the false pretense of addressing the baseless allegations of voter fraud in the 2020 election that have been promoted by former President Trump and his allies.

Let me be clear. There is absolutely no evidence that significant voter fraud or voting irregularities in any way affected the outcome of the 2020 election and it is clear that these laws will suppress minority voters.

Prior to Shelby County, the Voting Rights Act had been an unqualified success in helping to reduce discriminatory barriers to voting and expanding electoral opportunities for people of color to federal, state, and local offices. While it continues to play an important role in remedying discriminatory barriers to voting, the VRA remains weakened without an effective preclearance provision. Too many Americans are still denied the right to vote because of their race, ethnicity, or language minority status.

Without the full protection of the VRA, the right to vote remains under considerable threat. I look forward to hearing from the excellent witnesses participating in today's panel on how we can best strengthen the VRA, and I yield back the balance of my time.

Ms. ROSS. Thank you very much, Chair Nadler.

We are going to go right into our witness testimony right now and thank them very much for being with us this morning. We welcome our witnesses, and I will now introduce each of the witnesses and after each introduction will recognize that witness for his or her oral testimony. Please note that each of your written statements will be entered into the record in its entirety; accordingly, that I ask that you summarize your testimony in five minutes. To help you stay within that time, there is a timer visible on your screen in the grid view, and I may remind you.

Before proceeding with the testimony, I would like to remind all our witnesses appearing on that you have a legal obligation to provide truthful testimony and answers to this Subcommittee and that any false statement you make today may subject you to prosecution under section 1001 of title 18 of the United States Code.

Our first witness is Janai Nelson. Ms. Nelson is Associate Director-Counsel of NAACP Legal Defense and Educational Fund, Inc. She is also a member of LDF's litigation and policy teams and was one of the lead counsel in *Veasey v. Abbott*, a federal challenge to the Texas voter ID law. Prior to joining LDF in June 2014, she was associate dean and faculty scholarship and associate director of the

Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law, where she was also a full professor of law.

Ms. Nelson received a J.D. from the University of California Los Angeles School of Law where she served as articles editor of the UCLA Law Review. She received her B.A. from New York University. Upon graduation from law school, she clerked for the honorable Theodore McMillan on the United States Court of Appeals for the Eighth Circuit and the honorable David Coar on the United States District Court for the Northern District of Illinois.

Ms. Nelson, you are recognized for five minutes.

STATEMENT OF JANAI NELSON

Ms. NELSON. Thank you. Good morning, Chair Ross, Chair Nadler, and Ranking Member Fischbach and Members of the committee. My name is Janai Nelson, and I am associate director-counsel at the NAACP Legal Defense and Educational Fund. Since our founding in 1940 by Thurgood Marshall, LDF has led the fight to secure, protect, and advance the rights of Black voters.

Despite the guarantees of the 14th and 15th Amendments, the Voting Rights Act, and other federal statutes, racial discrimination and targeted suppression of the Black vote persist. In the years since the infamous 2013 Supreme Court in *Shelby County v. Holder*, methods of voter suppression have metastasized across the country. By disabling section 5 of the Voting Rights Act, the *Shelby* decision unleashed devastating attacks on the voting rights of racial and language minorities.

In that decision, Chief Justice John Roberts expressly invited Congress to update the Act to respond to these modern conditions. However, in the eight years since, Congress has failed to do so leaving voters of color and our democracy woefully unprotected. Our report, *Democracy Diminished*, State and local threats to voting post-*Shelby County v. Holder* which we have entered into the record, tracks, monitors, and publishes a record of discriminatory voting changes in jurisdictions formerly protected by section 5 and which section 5 likely would have prevented.

For example, in 2013, LDF sued the State of Texas to stop implementation of its stringent voter ID Law SB 14, the same law previously blocked by section 5 in 2012 and that Texas revived within hours of the *Shelby* decision. The litigation produced multiple federal court findings that Texas's voter ID Law violated section 2 of the Voting Rights Act, including a finding of intentional racial discrimination against Black and Latinx Texans. Although LDF and our partners succeeded at improving that law, by the time the case concluded in 2018, thousands of Texas voters had been disenfranchised in hundreds of local, state, and federal elections.

In 2016, the largely White city of Gardendale, Alabama, attempted to secede from the more racially diverse Jefferson County School Board. Gardendale's secession would have transferred Black voters from the County School Board's election system in which Black voters have some representation to Gardendale City Council's at-large election system in which Black voters have no representation at all. The Eleventh Circuit blocked the secession in

2018 after LDF successfully proved that Gardendale was motivated by racial discrimination.

Also in 2018, LDF filed a suit on behalf of students at Prairie View A&M University, an Historically Black University in the majority Black city of Prairie View in Waller County, Texas. The city refused to provide any early voting location on Prairie View's campus during the first week of voting, even though it provided this opportunity to other voters. This denied Prairie View students an equal an adequate opportunity to vote. Although modest modifications were made, that litigation is still ongoing.

Finally, in 2019, LDF and other civil rights groups sued to stop Florida from overriding the will of its voters enshrined in amendment 4, by mandating that people with past felony convictions pay all their civil or other fees before registering to vote. However, the en banc Eleventh Circuit reversed the district court's favorable ruling, effectively denying voting rights of thousands of people with past felony convictions.

Each of the discriminatory voting laws or changes in this representative sample would have been subject to preclearance. Instead, civil rights groups were forced to try to vindicate the rights of voters through protracted litigation. Litigation, while powerful, is a blunt instrument, and elections occurring under conditions later found to be racially discriminatory have consequences that existing methods of defense cannot combat. The inability of courts to retroactively correct these wrongs means that thousands if not millions of voters are disenfranchised during the pendency of litigation.

We urgently need prophylactic legislation that allows federal authorities to stop discrimination before it infringes on the right to vote. It is unacceptable that in 2021, 56 years after the passage of the Voting Rights Act by a bipartisan super majority, the right to vote remains under threat and under protected. It is the obligation of this generation of lawmakers to respond to the call of the majority of Americans who support new legislation to protect the vote.

Congress must once again use the power enshrined in the Constitution and entrusted to this body to ensure the franchise for all citizens and create a 21st century democracy that is representative of and responsive to our increasingly diverse nation. It is the obligation of this Congress to guard our democracy and to continue the work of perfecting our union by protecting the right to vote. Thank you.

[The statement of Ms. Nelson follows:]



Written Testimony of Janai Nelson
Associate Director-Counsel NAACP Legal Defense and Educational Fund,
Inc.

Before the United States House of Representatives
Subcommittee on the Constitution, Civil Rights and Civil Liberties on
“Oversight of the Voting Rights Act: A Continuing Record of
Discrimination”

May 27, 2021

Good morning, Chairman Cohen, Ranking Member Johnson, and members of the Committee. My name is Janai Nelson, and I am Associate Director Counsel at the NAACP Legal Defense and Educational Fund, Inc. (“LDF”).

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. LDF was launched at a time when the nation’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality in every area of life. Through litigation, public policy, and public education, LDF’s mission has remained focused on seeking structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. In advancing that mission, protecting the right to vote for African Americans has been positioned at the epicenter of our work. Beginning with *Smith v. Allwright*,¹ 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.

The importance of the right to vote to the integrity of our democracy cannot be overstated. Indeed, Thurgood Marshall who litigated LDF’s watershed victory in *Brown v. Board of Education*,² which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century, referred to *Smith v. Allwright*, the case that outlawed all-white primaries, as his most consequential case. He held this view, he explained, because he believed that the vote, and the opportunity to access political power was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for over 80 years—representing Martin Luther King Jr. and the marchers in Selma, Alabama in 1965, litigating seminal cases interpreting the scope of the Voting Rights Act, and working in communities in the South to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Despite the guarantees of the 14th and 15th Amendments to the Constitution, the Voting Rights Act and other federal voting rights statutes, racial discrimination and targeted suppression of the Black vote persists. Indeed, in the years since the infamous 2013 Supreme Court decision in *Shelby County v. Holder*,³ methods of voter suppression have metastasized across the country. LDF helped to litigate the *Shelby*

¹ 321 U.S. 629 (1994).

² 347 U.S. 483 (1954).

³ 570 U.S. 529 (2013).

case, including presenting argument in the Supreme Court in defense of the constitutionality of Section 5 of the Voting Rights Act (“VRA”). The Supreme Court’s decision in *Shelby*, disabling this key provision of the VRA, has had a devastating effect on the voting rights of racial and language minorities in this country. In that decision, Chief Justice John Roberts invited Congress to update the Voting Rights Act to respond to modern conditions. In the eight years since *Shelby* was decided, however, Congress has failed to do so, leaving voters of color—and our democracy—unprotected.

Significance of the Voting Rights Act and the *Shelby* Decision

The end of the Civil War has been described as this nation’s “Second Founding.”⁴ It was then that the United States undertook efforts to amend our Constitution to provide Congress with substantial, affirmative power to finally enforce the principle espoused by the Founders, that *all* are created equal, and that access to the franchise is the cornerstone of citizenship and democracy. Importantly, the Civil Rights Amendments to the Constitution also provided new, specific authority for Congress to defend equal rights, stating that Congress *shall* have power to enforce the Amendments through appropriate legislation.⁵

The 14th and 15th Amendments give Congress the explicit power to enforce the guarantee of equal protection and protection against voting discrimination based on race. Yet for nearly 100 years after the ratification of those Amendments, as Black people were systematically disenfranchised by poll taxes,⁶ literacy tests,⁷ threats,⁸ and lynching⁹, Congress abdicated its obligation to use its enforcement powers.

⁴ See generally Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (2019)

⁵ “Congress shall have power to enforce this article by appropriate legislation.” U.S. CONST. amend. XIII, § 2; “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” U.S. CONST. amend. XIV, § 5; “The Congress shall have the power to enforce this article by appropriate legislation.” U.S. CONST. amend. XV, § 2.

⁶ Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004).

⁷ Jason Morgan Ward, *Hanging Bridge: Racial Violence and America’s Civil Rights Century* (New York: Oxford University Press, 2016).

⁸ Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven, CT: Yale University Press, 2010); U.S. Commission on Civil Rights, “Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume VII: The Mississippi Delta Report: Chapter 3, Voting Rights and Political Representation in the Mississippi Delta” (last accessed May 22, 2021), <https://www.usccr.gov/pubs/msdelta/ch3.htm>.

⁹ Brad Epperly, et. al., “Rule by Violence, Rule by Law: The Evolution of Voter Suppression and Lynching in the U.S. South,” (Mar. 1, 2016), <https://ssrn.com/abstract=3224412>

Congress finally took up its charge by passing the Voting Rights Act of 1965 (“VRA”). The VRA fulfilled the promise of the 15th Amendment that the right to vote should not be denied because of race, color or previous condition of servitude, as well as the 14th Amendment’s guarantee of equal protection under the law. It enshrined our most fundamental values by guaranteeing to all citizens the right to vote, which the Supreme Court has called “preservative of all rights.”¹⁰ In many ways, the VRA made the promise of the Civil Rights Amendments a reality and legitimized our democracy for the first time in our history.¹¹

Moreover, the VRA’s preclearance provisions brought profound changes to the country. The VRA was successful at dismantling the continuation of Jim Crow subjugation in the electoral arena specifically because of the preclearance process’s prophylactic design. Previously, when the Department of Justice obtained favorable decisions striking down suppressive voting practices, states merely enacted new discriminatory schemes to restrict Blacks from voting. In establishing the preclearance framework of the VRA, Congress, therefore, “had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the [Voting Rights Act] itself.”¹² Section 5 of the VRA was expressly designed to address not only then-existing discriminatory voting schemes but also to address the “ingenious methods”¹³ that might be devised and used in the future to suppress the full voting strength of African Americans. Section 5 preclearance was an efficient and effective mechanism for detecting and redressing the many forms of voting discrimination *before* elections took place.

Unfortunately, the Supreme Court’s decision in *Shelby* brought an abrupt halt to the successes of the VRA’s preclearance provisions. As the late-Justice Ruth Bader Ginsberg noted in her dissent to the *Shelby* decision: “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.”¹⁴ The *Shelby* decision allowed state and local governments to unleash discriminatory voter

¹⁰ Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

¹¹ 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 Magazine (Aug. 14, 2019),

<https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>

¹² South Carolina v. Katzenbach, 383 U.S. 301, 314, 335 (1966); “Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures,” wrote Chief Justice Earl Warren. South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966).

¹³ U.S. Congress, House, Committee on the Judiciary Voting Rights, 89th Cong., 1st sess., 1965, Mar. 18-19, 23-25, 20- Apr. 1, 1965.

¹⁴ *Shelby County v. Holder* (Ginsburg, J., dissenting).

suppression schemes virtually unchecked.¹⁵ At its pre-*Shelby* strength, Section 5 would have prevented many of the voter suppression schemes that we have encountered since 2013.

Today, our nation is at a crucial juncture in the decades-long struggle to create, maintain, preserve, and ensure true equality of voting rights for all citizens. The extensive record of discriminatory voting practices enacted since *Shelby* demands that Congress fulfill its constitutional obligation to protect voters from an onslaught of new and “ingenious methods” of voter discrimination.

Congress has the explicit constitutional duty to protect the right of every eligible person to vote, and to ensure that each vote counts. Congress’ power remains undiminished and, in fact, includes the power to impose prophylactic measures to combat discriminatory election laws and practices before they take effect.

Generational Obligation to Protect the Right to Vote

It is unacceptable that in 2021—56 years after the passage of the Voting Rights Act—the right to vote remains under threat.

The passage of the VRA was spurred by the grass roots activism of thousands across the country, and especially in the South, who faced down billy clubs, police dogs and vitriol from white mobs in order to secure the unencumbered right to vote. It was the result of the tremendous sacrifice of those beaten on the Edmund Pettus Bridge, including the late Congressman John Lewis, the martyrdom of Medgar Evers, Jimmie Lee Jackson, Viola Gregg Liuzzo, Andrew Goodman, James Cheney and Michael Schwerner and so many unnamed others¹⁶ that proved crucial in ensuring the federal government take seriously its duty to affirmatively enforce the right to the franchise. In short, the right to vote that we enjoy today was forged by courageous people who demanded change and demanded the protection and expansion of the franchise. The activists and protestors and organizers of today are carrying the torches of change, lit during the struggle for freedom from slavery and sustained during the Civil Rights Movement throughout the 1960s, to ensure that the next generation can exercise the right to vote as a tool for transformation.

¹⁵ U.S. Commission on Civil Rights, “An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Report” (2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

¹⁶ Marty Roney, Remembering the Martyrs of Bloody Sunday, USA Today (Mar. 7, 2015), <https://www.usatoday.com/story/news/nation/2015/03/03/bloody-sunday-martyrs/24344043/>; Deborah Barfield Berry, “Bloody Sunday’ pilgrimage to move through Miss.,” USA Today (Feb. 10, 2014), <https://www.usatoday.com/story/news/nation/2014/02/10/civil-rights-pilgrimage/5376225/>.

It is the heroism of the average American to speak out, protest and demand change when faced with injustice, that we see again today in the calls for federal legislation to protect the right to vote. It is the obligation of this generation of lawmakers to respond to their call and ensure that the hard won gains of the past are not lost. People and institutions across the country have decried the onslaught of voting restrictions, from influential Black executives in corporate America, corporations like Coca Cola, and Delta Airlines,¹⁷ sports associations like Major League Baseball,¹⁸ film industry icons,¹⁹ religious leaders,²⁰ and more. In 2020, we saw thousands of people risk contracting the deadly COVID-19 virus in order to exercise their full rights as American citizens by voting.²¹ The ability to participate in civic life—to have a voice in choosing the elected officials whose decisions impact our lives, families, and communities—is at the core of citizenship, indeed, it is an extension of citizenship.

The people call on Congress once again to use the power enshrined in the Constitution, and entrusted to this body, to ensure the franchise for all citizens and to build a 21st century democracy that is representative of, and responsive to, our growing, and diverse nation. Congress must seize this moment to take courageous action. Indeed, it is the obligation of this Congress to continue to uphold the principles of democracy—and to continue the great tradition of perfecting our union by protecting the right to vote.

Election Day Monitoring post-*Shelby*

Since the Supreme Court’s *Shelby* decision, states and localities have unleashed countless schemes that seek to deny or abridge the rights of voters of

¹⁷ Andrew Ross Sorkin & David Gelles, “Black Executives Call on Corporations to Fight Restrictive Voting Laws,” *New York Times* (March 31, 2021), <https://www.nytimes.com/2021/03/31/business/voting-rights-georgiacorporations.html>; David Gelles, “Delta and Coca-Cola Reverse Course on Georgia Voting Law, Stating ‘Crystal Clear’ Opposition,” *New York Times* (March 31, 2021), <https://www.nytimes.com/2021/03/31/business/delta-coca-colageorgia-voting-law.html>; Andrew Ross Sorkin & David Gelles, “Hundreds of Companies Unite to Oppose Voting Limits, but Others Abstain,” *New York Times* (Apr. 14, 2021), <https://www.nytimes.com/2021/04/14/business/ceoscorporate-america-voting-rights.html?smtyp=cur&smid=tw-nytimes>.

¹⁸ Kevin Draper et. al., “M.L.B. Pulls All-Star Game From Georgia in Response to Voting Law,” *New York Times* (Apr. 6, 2021), <https://www.nytimes.com/2021/04/02/us/politics/mlb-all-star-game-moved-atlanta-georgia.html>.

¹⁹ Kimberly Chin, “Will Smith Movie Pulls Production Out of Georgia Over GOP Voting Law,” *Wall Street Journal* (Apr. 12, 2021), <https://www.wsj.com/articles/will-smith-movie-emanicipation-pulls-production-out-of-georgia-overgop-voting-law-11618257076>.

²⁰ Lakisha Lemons, “Faith leaders fight back against what they call voter suppression bills,” *Spectrum News 1* (Apr. 14, 2021), <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/04/14/faith-leaders-fight-back-against-voter-suppression-laws->

²¹ Jocelyn Stewart, “People Died So I Could Vote,” *Time Magazine* (Sep. 23, 2014) <https://time.com/3423102/people-died-so-icould-vote/>.

color. Indeed, every year since 2013, communities of color throughout our country have sought to vote and participate equally and meaningfully in the political process without the core protections of the Voting Rights Act. And every year since the *Shelby* decision, restrictive and suppressive voting changes are implemented that would have been blocked by Section 5. Numerous reports²² have catalogued these suppressive practices—including strict voter identification laws, unfair purging, cuts to early voting, and eliminating polling places—utilized in many states and jurisdictions throughout the country.

Since 2008, LDF has monitored elections through our Prepared to Vote initiative (“PTV”). Our PTV initiative places LDF staff and volunteers on the ground for primary and general elections every year to conduct non-partisan election protection, poll monitoring, and to support Black political participation in targeted jurisdictions—primarily in the South.

LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1-866-OUR-VOTE), administered by the Lawyers’ Committee for Civil Rights Under Law. The Election Protection hotline coalition works year-round to ensure that all citizens have an equal opportunity to vote and have that vote count. Election Protection provides Americans from coast to coast with comprehensive information and assistance at all stages of voting—from registration to absentee and early voting, to casting a vote at the polls, and overcoming obstacles to their participation.

Accordingly, our PTV initiative equips voters with non-partisan educational information about how to comply with confusing, onerous, or newly changed election

²² In 2014, the Lawyer’s Committee organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination. National Commission on Voting Rights, Protecting Minority Voters: Our Work Is Not Done (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>; In 2016, the Leadership Conference on Civil and Human Rights released a report before the first presidential election conducted without the full safeguards of the VRA detailing polling place reductions on a massive scale in many of the jurisdictions that were once protected by Section 5 of the VRA. The Leadership Conference Education Fund, “The Great Closure Report.” Civilrights.org, (Nov. 2016) <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>; In 2018 the Leadership Conference published a report finding 1,688 polling place closures between 2012 and 2018, almost double the 868 closures found in their 2016 report. The Leadership Conference Education Fund, “Democracy Diverted: Polling Place Closures and the Right to Vote,” (Sep. 2019) democracydiverted.org; Leading up to the 2018 midterm elections the United States Commission on Civil Rights presented a report to the 116th Congress with urgent recommendations regarding the protection of voting rights across the nation. 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>; The Election Protection Coalition amassed extensive data evidencing systemic barriers faced by voters in Georgia, Texas, Florida and North Dakota. Laura Grace & Morgan Conley, “Election Protection 2018 Midterm Elections Preliminary Report,” (2018) <https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-MidtermElections.pdf>.

laws, including burdensome registration requirements, stringent voter ID laws, and strict absentee qualifications. On election day, PTV volunteers visit polling sites to ensure voters are informed of their state’s voting requirements, answer questions about how to comply with election laws, and, when necessary, engage in rapid response actions to ensure every eligible voter is able to cast a ballot. PTV plays a critical role in tracking, monitoring, and reporting practices that make it harder for Black people and other people of color to exercise the fundamental right to vote.

Through its report, titled “Democracy Diminished: State and Local Threats to Voting post-*Shelby County, Alabama v. Holder*,” LDF tracks, monitors, and publishes a record of discriminatory voting changes in jurisdictions formerly protected by Section 5.²³ *Democracy Diminished* details the many tactics that state and local policymakers have implemented with alarming speed since the *Shelby* decision, including barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements, and last-minute polling place closures and consolidations.

2020 Election and Post-Election Assessment

2020 was an unprecedented year in many respects. With the COVID-19 pandemic, the country faced not only a public health crisis, but also a threat to the very foundation of our democracy: free and fair elections. The staggering rate of transmission, infection, and death related to COVID-19 placed many voters in the unthinkable position of choosing to risk their health or lose their right as citizens to participate and vote. It cannot be overemphasized that voters were forced to make a life-risking choice in elections across the country because their government would not protect them.²⁴ The actions and lessons learned over the past year force us to reconsider the arch of voter suppression. We now know that we must be vigilant about fighting voter suppression from the stages of registration and primaries to the counting and canvassing of ballots. Indeed, in the 2020 Election, the efforts at voter suppression continued beyond Election Day: stoked and encouraged by the former President with people across the country participating in a campaign to disrupt the

²³ NAACP Legal Defense Fund, “Democracy Diminished,” LDF’s Thurgood Marshall Institute, <https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-State-and-Local-Threatsto-Voting-Post-Shelby-County-Alabama-v.-Holder.pdf>

²⁴ “The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.,” APM Research Lab (last updated March 5, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race>; COVID-19 hospitalization and deaths by race/ethnicity, Centers for Disease Control and Prevention (last updated March 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-raceethnicity.html>.

counting and certification of the presidential election and ultimately to overturn its results.²⁵

Accounts from LDF's Voting Rights Defender and PTV teams detailed in the LDF Thurgood Marshall Institute's report *Democracy Defended*,²⁶ reveal the depth and breadth of the issues voters faced on Election day. In sum, the 2020 election did not, as numerous news reports suggested, "go smoothly."²⁷ Voters overcame a litany of barriers and obstacles with determination and resilience. The Herculean efforts of civil rights groups, grassroots activists and civic groups proved critical to ensuring access to the polls for millions of voters. This model is not sustainable.

LDF Voting Rights Litigation Post-Shelby and the Need for Prophylactic Legislation

Without the protection of Section 5 of the Voting Rights Act, voters have had to rely on other provisions of the VRA and other laws to help protect the right to vote. Since the *Shelby* decision federal courts have struck down voting changes that violate the Constitution,²⁸ the 24th Amendment to the U.S. Constitution,²⁹ Sections 2 and 203 of the Voting Rights Act, and the Americans with Disability Act. Indeed, there have been at least nine federal court decisions finding that states or localities intentionally

²⁵ Simon Romero, Shaila Dewan & Giulia McDonnell Nieto del Rio, "In a Year of Protest Cries, Now It's 'Count Every Vote!' and 'Stop the Steal!'," *New York Times* (Nov. 5, 2020),

<https://www.nytimes.com/2020/11/05/us/electionprotests-vote-count.html>; Bill Bostock, "Videos show Trump protesters chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan," *Business Insider* (Nov. 5, 2020), <https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11>; Jake Lahut, "Dozens of pro-Trump protesters chant 'Fox News sucks' outside major election HQ in Arizona, with several reportedly trying to get inside as votes are being counted," *Business Insider* (Nov. 4, 2020), <https://www.businessinsider.com/video-fox-news-sucks-chant-crowd-outside-maricopa-election-arizona-2020-11?r=US&IR=T>; Maura Ewing et. al., "Two charged with carrying weapons near Philadelphia vote-counting site amid election tensions," *Washington Post* (Nov. 6, 2020), <https://www.washingtonpost.com/nation/2020/11/06/philadelphiaattack-plot-vote-count-election/>.

²⁶ "Democracy Defended: Executive Summary," NAACP Legal Defense Fund Thurgood Marshall Institute (Feb. 10, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_02102021_DemocracyDefendedPreview11.pdf?_ga=2.209659025.2082701624.1617629692-217316157.1616678028.

²⁷ Sherrilyn Ifill, "No, This Election Did Not Go 'Smoothly,'" *Slate* (Nov. 9, 2020), <https://slate.com/news-andpolitics/2020/11/2020-election-voting-did-not-go-smoothly.html>.

²⁸ 4th Circuit Court of Appeals strikes down North Carolina omnibus voting law finding "provisions target African Americans with almost surgical precision." Robert Barnes & Ann Marrow, "Appeals court strikes down North Carolina's voter-ID law," *Washington Post* (Jul. 29, 2016), https://www.washingtonpost.com/local/publicsafety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html.

²⁹ NAACP v. Billups, 554 F.3d 1340 (2009)

discriminated against Black and other voters of color.³⁰ LDF has litigated challenges to new restrictive voter ID laws, absentee voting restrictions, and discriminatory early voting restrictions. LDF challenged President Trump’s Election Integrity Commission,³¹ and currently remains in litigation against former President Trump and the Republican National Committee for their efforts to discredit the legitimacy of ballots cast by voters in cities with large Black populations.³² LDF also sued the United States Postal Service (“USPS”) in 2020 to ensure the timely delivery of mail-in ballots cast in the November Presidential election and January special election in Georgia.³³

While LDF also continues to vigorously pursue litigation to protect voting rights under Section 2 of the VRA, the U.S. Constitution, and other laws, we know that this is not enough to fully protect the right to vote.³⁴ Below is a brief overview of selected litigation that LDF has brought post-*Shelby* and that is representative of the broad attack on voting rights that persists.

Texas

For years, LDF was prosecuted a statewide lawsuit against the State of Texas involving the state’s photo ID law, SB 14—the same law previously blocked by Section 5 in 2012.³⁵ SB 14 was widely described as the most restrictive voter ID law in the country as it permitted concealed hand-gun license owners to vote with that ID, a

³⁰ See, e.g., *People First of Ala. v. Merrill*, 2020 WL 5814455 (N.D. 2020); *Jones v. Jefferson County Board of Education*, 2019 WL 7500528 (N.D. Ala. 2019); *Stout v. Jefferson County Board of Education*, 882 F.3d 988 (11th Cir. 2018); *Allen v. City of Evergreen* 2014 WL 12607819 (S.D. Ala. 2014); *Democratic National Committee v. Hobbs* 948 F.3d 989 (9th Cir. 2020); *Michigan State A Philip Randolph Institute v. Johnson* 326 F. Supp. 3d 5323 (E.D. Mich. 2019); *Holmes v. Moore* 840 S.E.2d 244 (2020); *North Carolina NAACP v. McCrory* 831 F.3d 204 (4th Cir. 2016); *Perez v. Abbott*, 250 F.Supp.3d 123 (W.D. Tex. Apr. 20, 2017); *Perez v. Abbott* 253 F.Supp.3d 864 (W.D. Tex. May 2, 2017); *Veasey v. Abbott* 265 F.Supp.3d 684 (S.D. Tex. 2017); *Patino v. City of Pasadena* 230 F.Supp.3d 667 (S.D. Tex. 2017).

³¹ “LDF and Local Alabama Organization File Federal Lawsuit Challenging President’s “Election Integrity” Commission,” NAACP Legal Defense Fund (Jul. 18, 2017), <https://www.naacpldf.org/press-relea>

³² “LDF Files Amended Complaint in its Lawsuit Against President Trump and His Campaign’s Attempts to Overturn the Election by Disenfranchising Black Voters,” NAACP Legal Defense Fund (Dec. 22, 2020), <https://www.naacpldf.org/press-release/ldffiles-amended-complaint-in-its-lawsuit-against-president-trump-and-his-campaigns-attempts-to-overturn-theelection-by-disenfranchising-black-voters/>.

³³ *NAACP v. U.S. Postal Service*, No 1:20-cv-02295 (D. D.C.2020).

³⁴ “The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation,”³⁴ NAACP Legal Defense Fund (Feb. 14, 2019), https://www.naacpldf.org/wp-content/uploads/Section-2-costs02_14_19.pdf; 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); 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) http://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0.HTM.

³⁵ *Texas v. Holder*, 888 F.Supp.2d 113, 144-45 (D.D.C. 2012), vacated and remanded, ___ U.S. ___, 133 S.Ct. 2886 (2013).

form disproportionately held by white Texans but prohibited the use of student ID, and employee or trial state or federal government-issued IDs in voting. After the State of Texas implemented SB 14 within hours of the *Shelby* decision,³⁶ LDF and other civil rights advocates challenged the law on behalf of individual voters and organizations, including Black college students, harmed by the strict photo ID law.³⁷

In 2014, a federal district court struck down that photo ID law, holding that “SB 14 creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African Americans [i.e., they comprise a disproportionate share of the more than 600,000 registered voters and one million eligible voters who lack the requisite photo ID], and was imposed with an unconstitutional discriminatory purpose,” and that it “constitutes an unconstitutional poll tax.”³⁸ Following that decision, the Fifth Circuit U.S. Court of Appeals affirmed in 2016 that Texas’s ID law, SB 14, had a discriminatory impact on Black and Hispanic Texans. violated Section 2.³⁹ On remand, the trial court found that Texas had enacted the law for the purpose of discriminating against voters of color.⁴⁰

Although LDF was ultimately successful in that litigation, in the years after the trial and while the case made its way twice to the 5th Circuit Court of Appeals and back to the trial court, Texas elected candidates to state and federal office including: a U.S. senator, members of the Texas delegation to the U.S. House of Representatives, Governor, Lieutenant Governor, Attorney General, Controller, various statewide Commissioners, Justices of the Texas Supreme Court, state boards of education, state senators, members of the state House, state court trial judges, and over district attorneys.

Fayette, Georgia

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 required the election to use single-member districts, which allowed Black voters to again elect their preferred candidate.⁴¹

³⁶ Ed Pilkington, “Texas rushes ahead with voter ID law after supreme court decision,” *The Guardian* (June 25, 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-id-supreme-courtdecision>.

³⁷ *Veasey v. Perry*, 71 F. Supp. 3d 627, 693 (S.D. Tex. 2014).

³⁸ *Veasey v. Perry*, 71 F. Supp. 3d 627, 693 (S.D. Tex. 2014).

³⁹ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

⁴⁰ *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

⁴¹ *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm’rs*, 118 F.Supp.3d 1338 (ND Ga. 2015)

Gardendale, Alabama

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.⁴² In 2018, the Eleventh Circuit blocked the secession after LDF successfully proved that Gardendale was motivated by racial discrimination.⁴³ Before *Shelby*, the Department of Justice had used Section 5 to block similar discriminatory school district secessions in Alabama and elsewhere.⁴⁴

Terrebonne Parish, Louisiana

In 2017, LDF proved that the Louisiana Legislature intentionally maintained at-large elections for the state courts in Terrebonne Parish to prevent the election of a Black judge. Under Section 2 of the VRA and the U.S. Constitution, LDF challenged Louisiana's use of at-large voting to maintain a racially segregated state court (32nd JDC), which has jurisdiction over Terrebonne Parish.⁴⁵ A Black candidate has never been elected as a judge on this court in a contested election. After the initial trial, the court ruled that the at-large electoral scheme for the 32nd JDC “deprives Black voters of the equal opportunity to elect candidates of their choice in violation of Section 2 of the Voting Rights Act of 1965, and it has been maintained for that purpose, in violation of Section 2 and [the Fourteenth and Fifteenth Amendments to the] United States Constitution.”⁴⁶

In early December 2018, the Court entered an order, determining that it would use a special master to help determine the appropriate remedy in this case. In April 2019, the special master issued his findings and recommendations to the Court about the remedial districting plan and in July 2019, the Court adopted a plan recommended by the special master. Subsequently, the Court issued final judgment and injunctive order. The next day the Attorney General, filed a notice of appeal. Oral

⁴² *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).

⁴³ *Stout v. Jefferson County Bd. of Educ.* 882 F. 3d 988 (11th Cir. 2018).

⁴⁴ 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).

⁴⁵ *Terrebone Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395, 462 (MD La. 2017).

⁴⁶ “Fifth Circuit Rejects Louisiana’s Attempt to Prematurely Appeal Voting Rights Decision,” NAACP Legal Defense Fund (Nov. 14, 2017), <https://www.naacpldf.org/press-release/fifth-circuit-rejects-louisianas-attempt-to-prematurely-appeal-voting-rights-decision/>

argument before the Fifth Circuit Court of Appeals was held in January 2020. In June 2020, a three-judge court of the Fifth Circuit reversed the district court's post-trial favorable decision—which found that plaintiffs clearly established vote dilution through experts who found some of the most stark racially-polarized voting anywhere in the country—and denied LDF's petition for rehearing *en banc*.

Waller County, Texas

In 2018, prior to Election Day, LDF received reports that students at Prairie View A&M University ("PVAMU"), a historically Black university, did not have adequate early voting sites, and that county officials refused to provide them. On October 22, 2018, LDF filed a federal lawsuit against election officials in Waller County, Texas, who refused to provide any early voting location on the campus of PVAMU, during the first week of voting that started on October 22. County officials have long discriminated against Black voters at PVAMU and in the City of Prairie View dating back to at least the early 1970s.⁴⁷ During the 2018 election, the County provided fewer early voting opportunities to PVAMU students, as compared to other voters in Waller, despite their high use of this opportunity. During the first week of early voting, no polling sites were available anywhere in the City of Prairie View or on campus; in the second week, while Prairie View, where PVAMU is located, provided five early voting days, two of those were off campus at a site inaccessible to many PVAMU students who lack transportation. By contrast, in the majority-white city of Waller, voters had two locations to vote during the first week and overall, 11 days of early voting. During the second week of early voting, two voting sites were open in Prairie View, but for considerably fewer hours than voting sites in Waller. On Wednesday October 24—the eve of the 2018 election—LDF filed a motion for a temporary restraining order ("TRO") seeking an emergency change to Waller County's early voting schedule that would include early voting on-campus during the first week of early voting.

Later that same day, election commissioners in Waller County, Texas modestly expanded early voting in Prairie View by providing 5 hours of voting at the Prairie View City Hall on Sunday, October 28, and by extending the hours of early voting on the PVAMU campus to 7:00am to 7:00pm on Monday, October 29 through Wednesday, October 31.⁴⁸ Consequently, LDF withdrew its TRO request. However, PVAMU students were still denied equal and adequate voting opportunities in the

⁴⁷ "The Walk of Political Engagement," Prairie View A&M University (Mar. 31, 2017), <https://www.pvamu.edu/1876/2017/03/31/the-walk-of-political-engagement-at-pvamu/>.

⁴⁸ "Waller County Modestly Expands Early Voting in Prairie View, LDF's Suit Still Pending" NAACP Legal Defense Fund, (Oct. 25, 2018), <https://www.naacpldf.org/press-release/waller-county-modestly-expandearly-voting-prairie-view-ldfs-suit-still-pending-2/>.

election overall. In the fall of 2020, the court held a twelve-day trial for this lawsuit brought under Section 2 of the Voting Rights Act and the U.S. Constitution and post-trial briefing is ongoing.

Florida

On November 6, 2018, the people of Florida voted to approve a state constitutional amendment, Amendment 4, to restore voting rights to over 1 million people with felony convictions upon the completion of their sentences. The passage of Amendment 4 reflected the understanding that restoring more than 1.4 million returning citizens' voting rights strengthens public safety, reduces recidivism, and builds a healthy democracy for all.⁴⁹ Amendment 4 generated overwhelming bipartisan support, with a supermajority of Florida voters—more than 64 percent⁵⁰—approving the measure, which resulted in the largest expansion of the electorate since Congress passed the Voting Rights Act in 1965. However, that same year, the Florida Legislature enacted SB 7066 a law that, amongst other requirements, mandated that people with past felony convictions pay all legal financial obligations (“LFOs”) imposed by a court pursuant to a felony conviction before they are eligible to vote, including those LFOs converted to civil obligations, even if they cannot afford to pay.

On June 28, 2019, LDF and other civil rights and good governance groups filed a lawsuit in the U.S. District Court for the Northern District of Florida challenging SB 7066.⁵¹ We alleged that, by conditioning the right to vote on payment of LFOs, SB 7066 violates fundamental fairness and unconstitutionally burdens the right to vote under the Fourteenth Amendment, discriminates on the basis of wealth in violation of the Equal Protection Clause, violates the prohibition against poll taxes enshrined in the Twenty-Fourth Amendment, and imposes punitive sanctions in violation of the Ex Post Facto Clause. We further alleged that SB 7066 is unconstitutionally vague in violation of the Due Process Clause because Florida fails to provide returning citizens with sufficient information to determine whether LFOs continue to disqualify them from voting. Finally, we alleged that SB 7066 chills the voter registration activities of local organizations in violation of the First Amendment and that SB 7066 intentionally discriminates on the basis of race. On October 18, 2019, the district

⁴⁹ Steven Lemongello, “Floridians will vote this fall on restoring voting rights to former felons,” Sun Sentinel (Jan 23, 2018), <https://www.sun-sentinel.com/news/florida/fl-reg-felon-voters-amendment-20180123-story.html>; Steven Bousquest et al., 1.2. Million Floridians Have a Lot Riding on Passage of Amendment 4, MIAMI HERALD (Nov. 2, 2018), <https://www.miamiherald.com/news/politicsgovernment/state-politics/article221021940.html>.

⁵⁰ Tim Mak, “Over 1 Million Florida Felons Win Right To Vote With Amendment 4,” National Public Radio (Nov. 7, 2018), <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4>.

⁵¹ Gruver, et al. v. Barton, et al., No. 1:19-cv-121 (N.D. Fla. 2019).

court granted a partial preliminary injunction, ordering that the individual Plaintiffs in the case must be permitted to vote because they have shown they cannot afford to pay their legal financial obligations.⁵² In May 2020, the district court found SB7066 and its wealth-based hurdles to voting unconstitutional. The decision restored voting rights to of thousands of citizens. The State appealed the decision to the Eleventh Circuit Court of Appeals *en banc* which reversed the district court, effectively denying the voting rights of thousands of people with past felony convictions.

Alabama

On May 1, 2020, in response to the COVID-19 pandemic, LDF filed a lawsuit against Alabama Governor Kay Ivey, Secretary of State John Merrill, and others challenging Alabama's unduly burdensome absentee voting provisions.⁵³ Specifically, the suit challenged the requirement that an absentee ballot application be accompanied by a copy of a photo ID (the "Photo ID Requirement"); the requirement that an absentee ballot affidavit be notarized or signed by two witnesses (the "Witness Requirement"); and the Secretary of State's policy prohibiting curbside voting (the "Curbside Voting Prohibition," collectively, the "Challenged Provisions").

In light of the COVID-19 pandemic, LDF alleged the aforementioned provisions would force thousands of Alabamians who were unable to meet the absentee voting requirements to make a choice between voting in person during the July primary runoff, August municipal elections, and November 2020 elections, thereby risking their health, or forgoing their fundamental right to vote. In June 2020, the district court granted LDF's request for a preliminary injunction in part and Alabamians were able to utilize no-excuse absentee voting for the state's July 14th primary runoff. The State of Alabama then extended the no-excuse policy for the November election. On September 8, 2020, a remote trial began with respect to the witness requirement, ID requirement, and *de facto* ban on curbside voting. On September 30, 2020, the District Court entered a 197-page favorable opinion and granted a permanent injunction against all three provisions challenged by LDF and co-counsel.⁵⁴ The injunction was in place for two weeks, during which time Alabama

⁵² P.R. Lockhart, "A controversial Florida law stops some former felons from voting. A judge just blocked part of it." Vox.com (Oct. 19, 2019), <https://www.vox.com/policy-and-politics/2019/7/2/20677955/amendment-4-florida-felon-voting-rights-injunction-lawsuits-fines-fees>.

⁵³ "LDF, SPLC, and ADAP File Federal Lawsuit Challenging Alabama's Lack of Safe and Accessible Voting During COVID-19 Pandemic," NAACP Legal Defense Fund (May 1, 2020), <https://www.naacpldf.org/press-release/ldf-splc-and-adap-file-federal-lawsuit-challenging-alabamas-lack-of-safe-and-accessible-voting-during-covid-19-pandemic/>.

⁵⁴ "Federal Court Rules Alabama Must Take Steps to Better Protect Voters During COVID-19 Pandemic," American Civil Liberties Union (Sep. 30, 2020), <https://www.aclu.org/press-releases/federal-court-rules-alabama-must-take-steps-better-protect-voters-during-covid-19>.

absentee voters were able to apply for absentee ballots without Photo ID or submit absentee ballots without two witness signatures or a notary stamp under the injunction. On October 13, 2020, the Eleventh Circuit stayed the injunction of the Photo ID and Witness Requirements but left in place the injunction of de facto Curbside Voting Ban.⁵⁵ On October 21, 2020, the Supreme Court of the United States, by a 5-3 vote, stayed the permanent injunction of the Curbside Voting Ban, over a dissent by Justice Sotomayor, joined by Justices Breyer and Kagan.⁵⁶

Limits of Litigation

As the summary of cases above demonstrates, voting rights litigation can be slow and expensive. The parties often spend millions litigating these cases.⁵⁷ The cases take up significant judicial resources.⁵⁸ And the average length of Section 2 cases is two to five years.⁵⁹ But, in the years during a case's pendency, thousands and, in some cases, millions of voters are effectively disenfranchised. For these reasons, the need for prophylactic legislation is both urgent and acute. Litigation is a blunt instrument. 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.

Need for Full Restoration and Enforcement of the Voting Rights Act

When Congress reauthorized the VRA in 2006, it legislated against the backdrop of an unbroken line of Supreme Court authority holding that the VRA's preclearance process was a constitutional means for the Congress to ensure the equal right to vote.⁶⁰ Despite the devastating effect of the Court's *Shelby* decision, the Court did not overrule the constitutionality of a measured and properly tailored preclearance provision—nor did it render other such remedies inherently unconstitutional. The Court in *Shelby* held that the VRA's preclearance coverage formula was unconstitutional because it had not been updated since the 1970s, and

⁵⁵ "SPLC Responds to 11th Circuit Decision in Alabama COVID-19 Voting Case," Southern Poverty Law Center (Oct. 13, 2020), <https://www.splcenter.org/presscenter/splc-responds-11th-circuit-decision-alabama-covid-19-voting-case>.

⁵⁶ *Merrill v. People First of Ala.*, <https://www.law.cornell.edu/supremecourt/text/20A67>

⁵⁷ The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation, NAACP Legal Defense Fund (Feb. 14, 2019), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs02.14.19.pdf>.

⁵⁸ 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).

⁵⁹ 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).

⁶⁰ See *Lopez v. Monterey County*, 525 U.S. 266 (1999); *City of Rome v. United States*, 446 U.S. 156 (1980); *Georgia v. United States*, 411 U.S. 526 (1973); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

therefore was not based on “current conditions.”⁶¹ But the Court’s opinion left opportunity for Congress to establish a new preclearance framework responsive to current conditions. Indeed, the Supreme Court found preclearance a “stringent” and “potent” measure, fully available to Congress to deploy as an “extraordinary” tool to confront racial discrimination in elections and voting systems.⁶² And, as noted above, Chief Justice Roberts expressly invited Congress to establish such a framework.⁶³

In the previous century, the Constitution was amended only twelve times—each time with careful, deliberate consideration. That a Constitutional Amendment was devoted solely to the prohibition of racial discrimination in voting—and that the Amendment expressly delegated enforcement powers to Congress—underscores the extraordinary harm of the denial to vote based on race.⁶⁴ A legislative remedy such as an updated preclearance mechanism would, therefore, be justified in its extraordinary power.

Even one election in which the right to vote is restricted, threatened, or violated, is one election too many. Violations of our electoral system are not ordinary harms and must therefore be met with extraordinary remedies. An election with conditions later found to be racially discriminatory, has consequences that existing methods of defense cannot combat. The inability of the courts to retroactively correct these wrongs further disenfranchises and threatens to disengage voters who may understandably believe that their vote does not matter if discriminatory voting practices are left unchecked. Racially discriminatory practices in the electoral system have consequences that preclearance can prevent and correct. Preclearance was designed as a unique and powerful intervention to stop discrimination *before* elections take place.

It is not only imperative that Congress restore the VRA, but it must also strengthen the VRA to better address the ingenious methods that are, and will be, used to suppress the full voting strength of African Americans and people of color.

The Need for Known Practices Coverage Protections

In addition to a preclearance requirement for states with a history of voting rights violations, a Known Practices Coverage (“KPC”) preclearance framework is necessary to address specific forms of voting discrimination that continue to threaten rights of voters of color. KPC would require preclearance for any voting policies or

⁶¹ *Shelby County, Ala. v. Holder*, 570 U.S. 529, 554 (2013).

⁶² *Shelby County*, 133 S. Ct. 2612, slip op. at 11-12.

⁶³ *Id.* at 557.

⁶⁴ U.S. Const. amend. XV.

practices that pose a significant potential for violations of voting rights as demonstrated by broad historical experience. For example, the creation of at-large seats, annexations of suburban populations, and redistricting completed by incumbents all raise concerns when they occur in a jurisdiction that has experienced recent, significant growth of a specific minority population. Importantly, a KPC framework would require federal preclearance of voting practices that are known to correlate with racial or language-based discrimination only in jurisdictions that have a significant racial or language minority citizen voting age population. KPC combines a demographic threshold with the prevalence of specific, known practices of voting rights discrimination.

We urge Congress to take up the Court's invitation to legislate to enforce the promise of an equal right to vote for all and employ the full force of its authority to protect the American voters from the extraordinary harm of denying or diminishing their right to vote.

Proliferation of Suppressive Voting Measures in the States

Today, we see a repeat of history. Justice Ginsburg, in her *Shelby* dissent, compared efforts to combat voter suppression in the states as similar to “battling the Hydra.”⁶⁵ According to Greek mythology, for every head cut off the Hydra, a mythical and monstrous creature, two more would grow in its place.⁶⁶ Preclearance was designed to address the Hydra problem—to eliminate adaptive, and unrelenting discriminatory voting practices.

Indeed, the Hydra problem is what we see unfolding in the states. Across the country, a resurgence of Jim Crow-style voter discrimination is targeting voters of color by restricting access to the ballot for Black, Latino, Asian American and Pacific Islander, and Native American communities. According to the Brennan Center, as of March 24th, state legislators have introduced over 360 bills with restrictive provisions in 47 states.⁶⁷ The states of Georgia, Florida, Iowa, Arkansas, and Utah have already passed strict voter suppression legislation and several others stand poised to do the same in the coming weeks.⁶⁸

⁶⁵ *Shelby County*, 570 U.S. (Ginsburg, J., dissenting)

⁶⁶ “Hydra: Greek Mythology,” Britannica.com (last accessed May 24, 2021), <https://www.britannica.com/topic/Hydra-Greek-mythology>

⁶⁷ “State Voting Bills Tracker 2021,” Brennan Center for Justice (Last updated Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021>.

⁶⁸ “Voting Laws Roundup: March 2021,” Brennan Center for Justice (Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>.

A significant number of the most suppressive voting laws in the states are made possible by the Supreme Court's *Shelby* decision. That decision not only freed covered jurisdictions from their duty to report any changes in voting laws or rules to the federal government but signaled to jurisdictions throughout the country that the federal government would not screen for improper limits, restrictions, and barriers to voting participation.

Voting access left to the whims of state lawmakers has proven that the scourge of voter suppression reaches far beyond the states and jurisdictions previously covered by the VRA. The proliferation of state anti-voting laws across the country demonstrates the urgent need for Congress to bring the VRA's preclearance formula into the modern era, to reinstate federal oversight over discriminatory voting practices, and to strengthen and protect voting rights wherever suppression occurs. States have proven time and time again, that they are incapable of monitoring themselves and federal legislation is needed to protect voters.

Conclusion

Congress has the constitutional authority to enact legislation that prevents the denial or abridgement of the right to vote on account of race today just as it did in 1965.

The VRA's preclearance process provided a quick, efficient, and non-litigious way of addressing America's pervasive and persistent problem of voting discrimination, and most importantly to address it *before* the harm of disenfranchisement occurred. This Congress should not retreat from establishing a new preclearance framework that reflects the current conditions of the nation.

The VRA was drafted to rid the country of discrimination in voting—not to reduce discrimination to a level tolerable by some and now considered the norm across the country. The loss of the right to vote, or restrictions imposed on ballot access, even if ultimately vindicated, can never be fully remedied. The preclearance framework of the VRA was established expressly to address such harms. It is past time for Congress to once again take up the charge of eradicating racial discrimination in voting and to renew its commitment to protecting and strengthening the fundamental right to vote.

Ms. ROSS. Thank you very much, Ms. Nelson.

Our next witness is Jon Greenbaum. Mr. Greenbaum is the Chief Counsel and Senior Deputy Director of the Lawyers' Committee for Civil Rights Under Law, where he is responsible for managing the Committee's efforts to seek racial justice. He oversees the Committee's legal projects on among other things criminal justice, fair housing, and voting rights. He previously served as director of the Lawyers' Committee's voting rights project.

He also is a Co-Chair of the Voting Rights Task Force of the Leadership Conference on Civil and Human Rights, the national umbrella organization of American civil rights groups. Mr. Greenbaum received his J.D. from the University of California Los Angeles School of Law and his undergraduate degree from the University of California at Berkeley.

Mr. Greenbaum, you are recognized for five minutes.

STATEMENT OF JON GREENBAUM

Mr. GREENBAUM. Chair Ross, Ranking Member Fischbach, and Members of the subcommittee, thank you for the opportunity to testify today on oversight of the Voting Rights Act as the Judiciary Committee addresses the issue of whether and how to respond to the Supreme Court's decision in *Shelby County v. Holder*, which effectively immobilized the preclearance provision of section 5 of the Voting Rights Act by finding its underlying coverage formula unconstitutional.

In my view, Congress needs to respond to the Shelby County decision in a manner akin to the bill passed by the House last session, the John Lewis Voting Rights Advancement Act. I come to this conclusion based on 24 years of working on voting rights issues nationally at the United States Department of Justice and at the Lawyers' Committee for Civil Rights Under Law. Since the Shelby County decision, the Lawyers' Committee's own contribution of compiling the record of discrimination have been substantial and my testimony today provides an opportunity to introduce these contributions into the legislative record.

These documents establish the following: First, the effectiveness and efficiency of section 5 in preventing voting discrimination prior to the Shelby County decision. Second, the high level of voting discrimination since the Shelby County decision especially in the jurisdictions formerly covered by section 5. Third, the hole the Shelby County decision left in the federal enforcement scheme to combat voting discrimination. Fourth, the need for Congress to address Shelby County by enacting legislation that will prevent discriminatory voting changes from going into effect in places where voting discrimination is greatest.

Since Shelby County, the Lawyers' Committee has had to litigate voting rights cases more frequently than prior to Shelby County, and a substantial majority of these cases have involved jurisdictions that were covered by section 5, even though less than half the country is covered by section 5. Moreover, we have sued seven of the nine states that were formerly covered by section 5 as well as the two states that were not covered but had a substantial percentage of the population covered locally.

In 2019, the Lawyers' Committee conducted a 25-year review of the number of times that an official entity made a finding of voting discrimination. This preliminary analysis of administrative actions and court proceedings identified 340 instances. We found that successful court cases occurred in disproportionately greater numbers in jurisdictions that were previously covered by section 5.

Voter turnout by race is an additional measure of the distance we have to go in eliminating voting discrimination in Georgia, Louisiana, South Carolina and North Carolina, all of which were covered by section 5 in whole or in part, and these states where voter data by race is available in the November 2020 election, White voter turnout was substantially greater than Black turnout in all four of these states.

Section 5 was designed to prevent a specific problem: Prevent jurisdictions with a history of discrimination from enacting new measures that would worsen the position of minority voters, the concept known as retrogression. Section 2 is quite different. It evaluates whether the status quo is discriminatory and thus must be changed. The section 2 results inquiry is complex and resource-intensive to litigate. My written testimony identifies four examples from the Lawyers' Committee's litigation record that illustrate why section 2 is an inadequate substitute for section 5.

Let me discuss the most recent. It involves a law in Georgia, a previously covered jurisdiction, enacted this year. The law SB 202 is a 53-section, 98-page law that changes many aspects of Georgia elections. It has spawned several lawsuits including one the Lawyers' Committee is involved in. For the Shelby County decision, SB 202 would not have been allowed to take effect until there was an opportunity to determine its impact on voters of color. At least some aspects of SB 202 appear to be clearly retrogressive and probably would not have been proposed in the first place, let alone passed.

This is perhaps most thoroughly demonstrated by Georgia introducing several restrictions focused on voting by mail where these restrictions were adopted after the November 2020 election where, notably, voters of colors used absentee ballots to an unprecedented degree, and in the cases of Black and Asian voters used absentee voting at higher rates than the White voters. In the eight years since the Shelby County, since the Supreme Court decision in *Shelby County v. Holder* have left voters of color the most vulnerable to voting discrimination they have been in decades.

The records in the Shelby County decision demonstrates what voting rights advocates fear that without section 5 voting discrimination would increase substantially. Without legislation like the John Lewis Voting Rights Advancement Act that addresses the hole in the Voting Rights Act left by the Shelby County decision, our democracy is at grave risk.

[The statement of Mr. Greenbaum follows:]



**STATEMENT OF JON GREENBAUM
CHIEF COUNSEL
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL
LIBERTIES HEARING ON "OVERSIGHT OF THE VOTING RIGHTS ACT:
A CONTINUING RECORD OF DISCRIMINATION"**

MAY 27, 2021

Introduction

Chairman Cohen, Vice Chair Ross, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S. House of Representatives Committee on the Judiciary, my name is Jon Greenbaum and I serve as the Chief Counsel for the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on oversight of the Voting Rights Act as the Judiciary Committee addresses the issue of whether and how to respond to the Supreme Court's decision *Shelby County v. Holder*,¹ which effectively immobilized the preclearance provisions of Section 5 of the Voting Rights Act by finding its underlying coverage formula unconstitutional.

In my view, Congress needs to respond to the *Shelby County* decision in a manner akin to the bill passed by the U.S. House of Representatives in the previous session of Congress — H.R. 4, the John Lewis Voting Rights Advancement Act, which among other things, included a replacement coverage formula that would be applied to the preclearance provisions of Section 5 and the federal observer provisions of Section 8.

I come to this conclusion based on twenty-four years of working on voting rights issues nationally. From 1997 to 2003, I served as a Senior Trial Attorney in the Voting Section at the United States Department of Justice, where I enforced various provisions of the Voting Rights Act, including Section 5, on behalf of the United States. In the more than seventeen years since, I have continued to work on voting rights issues at the Lawyers' Committee for Civil Rights Under Law as Chief Counsel, where I oversee our Voting Rights Project, and prior to that, when I served as Director of the Voting Rights Project.

The Lawyers' Committee is a national civil rights organization created by President Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination. Voting rights has been an organizational core area since the inception of the organization. During my time at the Lawyers' Committee, I was intimately involved in the constitutional defense of Section 5 and its coverage formula in *Shelby County* and its predecessor case *Northwest Austin Municipal Utility District No. 1 v. Holder*.² I also staffed the National Commission on the Voting Rights Act, which issued a report entitled *The National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* (2006). The report and record of the National Commission on the Voting Rights Act, which was submitted to the House Judiciary Committee at the Committee's request, was the largest single piece of the record supporting the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

Legislation like the John Lewis Voting Rights Advancement Act originates from Congress's power to enforce the protections against voting rights discrimination found

¹ 570 U.S. 529 (2013).

² 557 U.S. 193 (2009).

in the Fifteenth and Fourteenth Amendments. The Supreme Court has made clear that such legislation must be rationally related to those enforcement powers³ and this will necessitate Congress developing a legislative record sufficient to justify any such legislation.

As this Committee embarks on the process of building a legislative record, we are far from working off of a blank slate. A lot of work has been done in the last eight years to compile a current record of voting discrimination. The Lawyers' Committee's own contributions to compiling this record have been substantial and this testimony provides an opportunity to introduce these contributions into the current legislative record.

I have attached the following Lawyers' Committee documents as appendices to my testimony and my testimony draws liberally from them:

- The 2014 report of the National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* ("2014 National Commission Report"). The Lawyers' Committee staffed the work of the National Commission, which conducted 25 field hearings and also issued a 2015 report on election administration issues. I have attached the 2014 National Commission Report as Greenbaum Record Item ("GRI") 1 and the transcripts of each field hearing as GRI 2-26.
- The June 25, 2019 testimony of Kristen Clarke, President and Executive Director of the Lawyers' Committee, before this Subcommittee, is attached as GRI 27.
- My September 4, 2019 testimony before this Subcommittee is attached as GRI 28.
- The Lawyers' Committee's *Preliminary Report of Racial and Ethnic Discrimination in Voting, 1994-2019*, is attached as GRI 29.
- A summary of the more than 100 voting cases the Lawyers' Committee has participated in since the *Shelby County* decision is attached as GRI 30.
- The Complaint that the Lawyers' Committee filed as a challenge to the 2021 voter suppression law enacted in Georgia is attached as GRI 31.

These documents, which are likely to be a mere fraction of the record Congress is likely to compile in its deliberations as to whether to respond the *Shelby County* decision, establish the following in my view:

- The effectiveness and efficiency of Section 5 in preventing voting discrimination prior to the *Shelby County* decision;
- The high level of voting discrimination since the *Shelby County* decision, especially in the jurisdictions formerly covered by Section 5;

³ *Shelby*, 570 U.S. at 554, 556; *City of Rome v. United States*, 446 U.S. 156, 177 (1980); *South Carolina v. Katzenbach*, 383 U.S. 301, 324, 330-31 (1966).

- The hole the *Shelby County* decision left in the federal enforcement scheme to combat voting discrimination;
- The need for Congress to address *Shelby County* by enacting legislation that will prevent discriminatory voting changes from going into effect in places where voting discrimination is greatest.

The State of Affairs Prior to the *Shelby County* Decision

Prior to the *Shelby County* decision, the combination of Section 2 and Section 5 of the Voting Rights Act provided a relatively effective means of preventing and remedying minority voting discrimination. Section 2, which is discussed more fully below, remains as the general provision enabling the Department of Justice and private plaintiffs to challenge voting practices or procedures that have a discriminatory purpose or result. Section 2 is in effect nationwide.⁴ Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change.⁵ From its inception, there was a sunset provision for the formula, and the sunset provision for the 2006 Reauthorization was 25 years.⁶

Jurisdictions covered by section 5 had to show federal authorities that a potential voting change did not have a discriminatory purpose or effect. Discriminatory purpose under Section 5 was the same as the Fourteenth and Fifteenth Amendment prohibitions against intentional discrimination against voters of color.⁷ Effect was defined as a change which would have the effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice.⁸ This was also known as retrogression, and in most instances was easy to measure and administer. For example, if a proposed redistricting plan maintained a majority Black district that elected a Black preferred candidate at the same Black population percentage as the plan in effect, it would be highly unlikely to be found retrogressive. If, however, the proposed plan significantly diminished the Black population percentage in the same district, it would invite serious questions as to whether it was retrogressive.

Except in rare circumstances, covered jurisdictions would first submit their voting changes to the Department of Justice. DOJ had sixty days to make a determination on a change, and if DOJ precleared the change or did not act in 60 days, the covered jurisdiction could implement the change.⁹ The submission of additional information by the jurisdiction, which often happened because DOJ requested such information orally, would extend the 60 day period if the submitted information

⁴ 52 U.S.C. § 10301.

⁵ 52 U.S.C. §§ 10303(b), 10304.

⁶ 52 U.S.C. § 10303(b).

⁷ 52 U.S.C. § 10304(c).

⁸ 52 U.S.C. § 10304(b), (d).

⁹ 52 U.S.C. § 10304(a).

materially supplemented the submission.¹⁰ DOJ could extend the 60 day period once by sending a written request for information to the jurisdiction.¹¹ This often signaled to the jurisdiction that DOJ had serious concerns that the change violated Section 5. If DOJ objected to a change, it was blocked, but jurisdictions had various options, including requesting reconsideration from DOJ,¹² seeking preclearance from the federal court,¹³ and modifying the change and resubmitting it.

In the nearly seven years I worked at DOJ, I witnessed first-hand how effective Section 5 was at preventing voting discrimination and how efficiently DOJ administered the process to minimize the burdens on its own staff of attorneys and analysts, and on the covered jurisdictions. The Section 5 Procedures cited above provided transparency as to DOJ's procedures and gave covered jurisdictions guidance on how to proceed through the Section 5 process. Internal procedures enabled DOJ staff to preclear unobjectionable voting changes with minimal effort and to devote the bulk of their time to those changes that required close scrutiny.

The benefits of Section 5 were numerous and tangible. The 2014 National Commission Report provided the following statistics and information regarding DOJ objections:

By any measure, Section 5 was responsible for preventing a very large amount of voting discrimination. From 1965 to 2013, DOJ issued approximately 1,000 determination letters denying preclearance for over 3,000 voting changes. This included objections to over 500 redistricting plans and nearly 800 election method changes (such as the adoption of at-large election systems and the addition of majority-vote and numbered-post requirements to existing at-large systems). Much of this activity occurred between 1982 (when Congress enacted the penultimate reauthorization of Section 5) and 2006 (when the last reauthorization occurred); in that time period approximately 700 separate objections were interposed involving over 2,000 voting changes, including objections to approximately 400 redistricting plans and another 400 election method changes.

Each objection, by itself, typically benefited thousands of minority voters, and many objections affected tens of thousands, hundreds of thousands, or even (for objections to statewide changes) millions of minority voters. It would have required an immense investment of public and private resources to have accomplished this through the filing of

¹⁰ Procedures for the Administration of Section 5 of the Voting Rights Act ("Section 5 Procedures"), 28 C.F.R. § 51.37.

¹¹ *Id.*

¹² *Id.* at 28 C.F.R. § 51.45

¹³ 52 U.S.C. § 10304(a)

individual lawsuits.¹⁴

In addition to the changes that were formally blocked, Section 5's impact on deterring discrimination cannot be understated. Covered jurisdictions knew that their voting changes would be reviewed by an independent body and that they had the burden of demonstrating that the changes were non-discriminatory. By the time I began working at DOJ, Section 5 had been in effect for several decades and most jurisdictions knew better than to enact changes which would raise obvious concerns that they were discriminatory – like moving a polling place in a majority Black precinct to a sheriff's office. In the post-*Shelby* world, a jurisdiction is likely to get away with implementing a discriminatory change for one election (or more) before a plaintiff receives relief from a court, as the Hancock County, Georgia voter purge and Texas voter identification cases detailed later illustrate.

The Section 5 process also brought notice and transparency to voting changes. Most voting changes are made without public awareness. DOJ would produce a weekly list of voting changes that had been submitted, which individuals and groups could subscribe to in order to receive this weekly list from DOJ.¹⁵ For submissions of particular interest, DOJ would provide public notice of the change if it believed the jurisdiction had not provided adequate notice of the change.¹⁶ But even more importantly, the Section 5 process incentivized jurisdictions to involve the minority community in voting changes. DOJ's Section 5 Procedures requested that jurisdictions with a significant minority population provide the names of minority community members who could speak to the change,¹⁷ and DOJ's routine practice was to call at least one local minority contact and to ask the individual whether she or he was aware of the voting change and had an opinion on it. Moreover, involved members of the community could affirmatively contact DOJ and provide relevant information and data.¹⁸

The *Shelby County* Decision

In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional. The majority held that because the Voting Rights Act “impose[d] current burdens,” it “must be justified by current needs.”¹⁹ The majority went on to rule that because the formula was comprised of data from the 1960s and 1970s, it could not be rationally related to determining what jurisdictions, if any, should be covered under Section 5 decades later.²⁰ The four dissenting justices found that Congress had demonstrated that regardless of what data

¹⁴ 2014 National Commission Report at 56.

¹⁵ Section 5 Procedures, 28 C.F.R. § 51.32-51.33.

¹⁶ *Id.* at 28 C.F.R. § 51.38(b).

¹⁷ *Id.* at 28 C.F.R. § 51.28(h).

¹⁸ *Id.* at 28 C.F.R. § 51.29.

¹⁹ *Shelby County*, 570 U.S. at 536 (quoting *Northwest Austin*, 557 U.S. at 203).

²⁰ *Shelby County*, 557 U.S. at 545-54.

was used to determine the formula, voting discrimination had persisted in the covered jurisdictions.²¹ The majority made clear that “[w]e issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions.”²²

The consequence of the *Shelby County* decision is that Section 5 is effectively immobilized as, for now, preclearance is limited only to those jurisdictions where it is imposed by a court after a court previously made a finding of intentional voting discrimination. This special preclearance coverage is authorized by Section 3(c) of the Act. Courts have rarely ordered Section 3(c) coverage, and when they do, it is typically quite limited. Indeed, the only jurisdictions I am aware of that have been subject to Section 3(c) coverage since the *Shelby County* decision are Pasadena, Texas and Evergreen, Alabama.²³ In the case of Pasadena, the only changes subject to preclearance relate to the method of election and redistricting.²⁴

As a result, Section 5 is essentially dead until Congress takes up the Supreme Court’s invitation to craft another coverage formula. There are compelling reasons for Congress to do so because, as discussed below, voting discrimination has increased in the absence of Section 5, and Section 2 cannot adequately substitute for Section 5.

The Effect of the *Shelby County* Decision

The year after the *Shelby County* decision was issued, the Executive Summary and Chapter 3 of the 2014 National Commission Report discussed what was lost in the *Shelby County* decision. We identified the following impacts:

- Voting rights discrimination would proliferate, particularly in the areas formerly covered by Section 5;
- Section 2 would not serve as an adequate substitute for Section 5 for numerous reasons:
 - The statutes are not identical but were instead intended to complement one another;
 - Section 5 prevents a discriminatory voting change from ever going into effect whereas discrimination can affect voters in a Section 2 case prior to a court decision or a settlement;
 - Section 2 litigation is time-consuming and expensive compared to Section 5 which is efficient and less-resource intensive;
 - Section 2 is less likely to prevent discrimination than Section 5 because:
 - Under Section 2 plaintiffs have the burden whereas under Section 5, jurisdictions have the burden of proof;
 - Section 2 has a complicated multi-factor test that provides

²¹ *Id.* at 560 (Ginsberg, J. dissenting).

²² *Id.* at 556.

²³ *See Patino v. City of Pasadena*, 230 F. Supp. 667, 729 (S.D. Tex. 2017).

²⁴ *Id.*

numerous defenses for jurisdictions, whereas Section 5 has a simple retrogression test

- The *Shelby County* decision and DOJ's interpretation that the decision also bars use of the coverage formula for sending federal observers have left voting processes vulnerable to discrimination.²⁵

The subsequent years have demonstrated that the all of the negative impacts we anticipated have come to pass.

Voting Rights Discrimination has Proliferated Since *Shelby County*, Particularly in the Areas Formerly Covered by Section 5

The Lawyers' Committee's Voting Rights Project has never been busier than in the *post-Shelby County* years, during which we have participated as a counsel to a party or as amici in more than 100 voting rights cases. A short summary of each case is attached as GRI 30. Because the Lawyers' Committee has a specific racial justice mission, all of the cases we have participated in implicate race in some fashion in our view even if there are no race claims in the case.

In my 2019 testimony before this Subcommittee, I looked further into the 41 post-*Shelby County* voting rights cases the Lawyers' Committee had filed up to that time. See GRI 28. My testimony reflected that voting discrimination remains alive and well, particularly in the states formerly covered by Section 5. The findings included the following:

- In the thirty-seven cases where we sued state or local governments, twenty-nine (78.3%) involved jurisdictions that were covered by Section 5, even though far less than half the country was covered by Section 5. Moreover, we sued seven of the nine states that were covered by Section 5 (Alabama, Arizona, Georgia, Louisiana, Mississippi, Texas, Virginia), as well as the two states that were not covered but had a substantial percentage of the population covered locally (North Carolina and New York).
- We achieved substantial success. Of the thirty-three cases where there had been some result at the time, we achieved a positive result in 26 of 33 (78.8%). In most of the seven cases where we were not successful, we had filed emergent litigation, either on Election Day or shortly before, where achieving success is most difficult.

This data tells us that voting discrimination remains substantial, particularly in the areas previously covered by Section 5, and especially considering that the Lawyers' Committee is but one organization.

²⁵ 2014 National Commission Report at 12, 55-64.

In 2019, the Lawyers' Committee conducted a 25-year review of the number of times that an official entity made a finding of voter discrimination in the *Preliminary Report of Racial and Ethnic Discrimination in Voting, 1994-2019*, which is attached as GRI 29. This preliminary analysis of administrative actions and court proceedings identified 340 instances between 1994 and 2019 where the U.S. Attorney General or a court made a finding of voting discrimination or where a jurisdiction changed its laws or practices based on litigation alleging voting discrimination. We found that successful court cases occurred in disproportionately greater numbers in jurisdictions that were previously covered under Section 5.

Voter turnout data by race is an additional measure of the distance we have to go in eliminating voting discrimination. In three formerly covered states (Georgia, Louisiana, South Carolina) and in North Carolina, which was partially covered, state election officials maintain voter turnout data that is easily obtainable from the state websites. In the November 2020 election, white voter turnout was substantially greater than Black turnout in each of these four states:²⁶ Georgia, 73% white to 60% Black;²⁷ Louisiana, 74% white to 63% Black;²⁸ North Carolina, 79% white to 68% Black;²⁹ and South Carolina, 74% white to 66% nonwhite (South Carolina uses white and nonwhite categories).³⁰

Why Section 2 is an Inadequate Substitute for Section 5

Prior to the *Shelby County* decision, critics of Section 5 frequently minimized the negative impact caused by its absence by pointing out that DOJ and private parties could still stop discriminatory voting changes by bringing affirmative cases under Section 2 of the Voting Rights Act. Indeed, in the same paragraph of *Shelby County* where the Supreme Court majority states that Congress could adopt a new formula for Section 5, it also notes that its “decision in no way affects the permanent, nation-wide ban on racial discrimination in voting found in §2.”³¹

During the *Shelby County* litigation and the reauthorization process preceding it, defenders of Section 5 repeatedly pointed out why Section 2 was an inadequate

²⁶ The statistics are rounded to the nearest percentile.

²⁷ General Election Turnout By Demographics November 2020, Georgia Secretary of State, https://sos.ga.gov/index.php/elections/general_election_turnout_by_demographics_november_2020

²⁸ State Wide Post Election Statistical Report, Election Date 11/03/2020, Louisiana Secretary of State, https://electionstatistics.sos.la.gov/data/Post_Election_Statistics/statewide/2020_1103_sta.pdf

²⁹ NC Voter Turnout Statistics, 2020 General Election, North Carolina State Board of Elections, https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Voter%20Turnout%20Statistics/voter_turnout_stats_20201103.pdf

³⁰ Voter History Statistics for Recent SC Elections, South Carolina Board of Elections, <https://www.scvotes.gov/data/voter-history.html>

³¹ *Shelby County*, 570 U.S. at 556.

substitute. Eight years of experience demonstrate this.

This is hardly a surprise given that Section 5 and Section 2 were designed by Congress to complement one another as part of a comprehensive set of tools to combat voting discrimination. Section 5 was designed to prevent a specific problem: to prevent jurisdictions with a history of discrimination from enacting new measures that would undermine the gains minority voters were able to secure through other voting protections, including Section 2. The Section 5 preclearance process was extremely potent, but also efficient and surgical in its limited geographic focus and sunset provisions. It was also relatively easy to evaluate because the retrogressive effect standard — whether minority voters are made worse off by the proposed change — is simple to determine in all but the closest cases. Section 5 is designed to protect against discriminatory changes to the status quo.

Section 2 is quite different. It evaluates whether the status quo is discriminatory and thus must be changed. The test for liability should be, and is, rigorous because it is a court-ordered change. Although Section 2 (results) and Section 5 (retrogression) both have discriminatory impact tests, they are distinct. As discussed above, the Section 5 retrogression test is quite straightforward in determining whether a jurisdictional-generated change should be blocked: will minority voters be worse off because of the change?

In contrast, the Section 2 results inquiry is complex and resource-intensive to litigate. The “totality of circumstances” test set forth in the statute is fact-intensive by its own definition. The Senate Report supporting the 1982 amendment to Section 2 lists factors that courts have used as a starting point in applying the totality of circumstances test to include seven such factors (along with two factors plaintiffs have the option to raise).³² On top of the Senate factors, courts have introduced additional requirements. For example, in vote dilution cases, which typically involve challenges to redistricting plans or to a method of election, the plaintiff must first satisfy the three preconditions set forth by the Supreme Court in *Thornburg v. Gingles*,³³ before even getting to the Senate factors. These *Gingles* preconditions require plaintiffs to show that a minority group is compact and numerous enough to constitute a majority of eligible voters in an illustrative redistricting plan and whether there is racially polarized voting (minority voters are cohered in large number to support certain candidates and those candidates are usually defeated because of white bloc voting), and are necessarily proven by expert testimony. In vote denial cases, which involve challenges to practices such as voter identification laws, courts have also added an additional test, with the developing majority view requiring that plaintiffs demonstrate that the challenged law imposes a discriminatory burden on members of a protected class and that this “burden must be in part caused by or linked to social conditions that

³² See e.g., *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).

³³ *Id.* at 50-51.

have or currently produce discrimination against members of the protected class.”³⁴

The result is that Section 2 cases are extremely time-consuming and resource-intensive, particularly when defendants mount a vigorous defense. For example, *United States v. Charleston County*,³⁵ which I litigated at the Department of Justice, was a successful challenge to the at-large method of electing the Charleston (South Carolina) County Council. The litigation took four years, and it involved more than seventy witness depositions and a four-week trial, even though we had prevailed on the *Gingles* preconditions on summary judgment,³⁶ and needed to litigate only the totality of circumstances in the district court.

Four specific examples from the Lawyers’ Committee’s litigation record illustrate why Section 2 is an inadequate substitute for Section 5. The first and most prominent example is the Texas voter identification law, which illustrates the time and expense of litigating a voting change under Section 2 that both DOJ and the federal district court found violated Section 5 prior to the *Shelby County* decision.³⁷ The afternoon that *Shelby* was decided, then-Texas Attorney General Greg Abbott announced that the State would immediately implement the ID law.³⁸ Several civil rights groups, including the Lawyers’ Committee, filed suit in Texas federal court, challenging SB 14 under several theories, including Section 2 and DOJ filed its own suit under Section 2. All of the cases were consolidated. The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts testified. Prior to the November 2014 election, the District Court ruled that SB 14 violated the “results” prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters. The District Court’s injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law — now deemed to be discriminatory — remained in effect.³⁹ Subsequently, a three-judge panel and later an en banc panel of the Fifth Circuit Court of Appeals, affirmed the District Court’s finding as to discriminatory result.⁴⁰ In the absence of Section 5, elections that took place from June 25, 2013 until the Fifth Circuit en banc opinion on July 20, 2016 took place under the discriminatory voter ID law. Had Section 5 been enforceable, enormous expense and effort would have been spared. The District Court awarded private plaintiffs \$5,851,388.28 in attorneys’ fees and \$938,945.03 in expenses, for a total of \$6,790,333.31. The fee award is currently on appeal. As of June 2016, Texas had

³⁴ *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016) (en banc) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 240 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015)); see also, *Ohio State Conference for the NAACP v. Husted*, 786 F.3d 524, 554 (6th Cir. 2014).

³⁵ 316 F. Supp. 2d 268 (D.S.C. 2003), *aff’d*, 365 F.3d 341 (4th Cir.), *cert denied*, 543 U.S. 999 (2004).

³⁶ *United States v. Charleston County*, 318 F. Supp. 2d 302 (D.S.C. 2002).

³⁷ *Veasey*, 830 F.3d at 227 n.7.

³⁸ *Id.* at 227.

³⁹ *Id.* at 227-29, 250.

⁴⁰ *Id.* at 224-25.

spent \$3.5 million in defending the case.⁴¹ Even with no published information from DOJ, more than \$10 million in time and expenses were expended in that one case.

Second, in *Gallardo v. State*,⁴² the Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a “more information” letter based on concerns that the addition of two at-large members would weaken the electoral power of minority voters on the board, in light of racially polarized voting in Maricopa County. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward, precipitating the lawsuit brought by the Lawyers’ Committee and its partners. We could not challenge the change under Section 2, especially because we would not have been able to meet the first *Gingles* precondition. Instead we made a claim in state court alleging that the new law violated Arizona’s constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected our argument, holding that the special laws provision of the state constitution was not violated. Unsurprisingly, the Latino candidate who ran for the at-large seat in the first election lost and the two at-large members are white.

Third, in 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of “challenge proceedings” to voters, all but two of whom were African American. This resulted in the removal of 53 voters from the register. Later that year, the Lawyers’ Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples’ Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the National Voter Registration Act, and obtained relief which resulted in the placement of unlawfully-removed voters back on the register.⁴³ Ultimately, plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and required the county’s policies to be monitored for five years. But after the purge and prior to the court order, Sparta, a predominantly Black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died. This case also reflects the importance of the notice component of Section 5 as the county only provided notice of the purge vaguely in meeting agendas.

The fourth matter is ongoing and reflects the significant present-day impact of the *Shelby County* decision and the loss of Section 5. It involves a law that Georgia, a previously covered jurisdiction, enacted this year, SB 202, a 53 section, 98-page law

⁴¹ Jim Malewitz & Lindsay Carbonell, Texas’ Voter ID Defense Has Cost \$3.5 Million, *The Texas Tribune* (June 17, 2016), <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/>.

⁴² 236 Ariz. 84, 336 P.3d 717 (2014).

⁴³ *Georgia State Conference of the NAACP v. Hancock County*, Case No. 15-cv-414 (M.D. Ga. 2015).

that changes many aspects of Georgia elections. It has spawned several federal lawsuits, most of which include voting discrimination claims. The Lawyers' Committee is counsel in one of these suits and the Complaint from that case is attached as GRI 31.

The litigation will unquestionably be resource-intensive even if the various cases are fully or partially consolidated and the Plaintiffs engage in substantial coordination. It will require numerous experts and extensive fact discovery. There will be elections — and possibly multiple cycles of elections — that will occur before Plaintiffs will have the evidence needed to establish a constitutional or Section 2 violation and the court will set aside the time to hear and decide the claims. If Plaintiffs prevail, Georgia will undoubtedly appeal and even more time will pass.

But for the *Shelby County* decision, SB 202 would not have been allowed to take effect until there was an opportunity to determine its impact on voters of color. Indeed, but for the *Shelby County* decision, there would be no SB 202, at least not in its current form because at least some aspects of SB 202 appear to be clearly retrogressive and probably would not have been proposed in the first place. This is perhaps most clearly demonstrated by Georgia introducing several restrictions focused on voting by mail:

- The new absentee ballot ID requirements mandate that voters include a Georgia Driver's license number or Georgia State ID number on their absentee ballot application. If they have neither, voters are required to copy another form of acceptable voter ID and attach the copies of ID documents along with other identifying information to both their absentee ballot applications and inside the absentee ballot envelope when returning the voted ballot.
- The bill also prohibits public employees and agencies from sending unsolicited absentee ballot applications to voters, yet threatens private individuals and organizations who are not so prohibited with a substantial risk of incurring hefty fines for every application they send to an individual who has not yet registered to vote or who has already requested a ballot or voted absentee.
- SB 202 significantly limits the accessibility of absentee ballot drop boxes to voters. While all counties would be required to have at least one, the placement of drop boxes is limited to early voting locations and drop boxes are available only to voters who can enter the early voting location during early voting hours to deposit their ballot inside the box. Thus, drop boxes are essentially useless to voters who can vote early in-person or who cannot access early voting hours at all due to work or other commitments during early voting hours.
- The bill also mandates an earlier deadline of 11 days before an election to request an absentee ballot, leaving some voters who become ill or have to

travel out of the area in the lurch if they cannot vote during early voting and are unable to meet the earlier deadline to apply for a ballot.⁴⁴

These restrictions were adopted right after the November 2020 election during which voters of color used absentee ballots to an unprecedented degree, and in the cases of Black (29.4%) and Asian (40.3%) voters, at higher rates than white (25.3%) voters.⁴⁵ Given this seemingly disproportionate impact on voters of color, I believe that if Georgia were subject to Section 5, these provisions would have been found retrogressive, and never would have been in effect. Instead, these provisions will be contested through time- and resource-intensive litigation under complex legal standards.

The Impact on the Loss of Observer Coverage

A less discussed impact of the *Shelby County* decision is on the loss of federal observer coverage. Under Section 8 of the Voting Rights Act,⁴⁶ the federal government had the authority to send federal observers to monitor any component of the election process in any Section 4(b) jurisdiction provided that the Attorney General determined that the appointment of observers was necessary to enforce the guarantees of the 14th and 15th Amendments.⁴⁷ A federal district court can also authorize the use of observers when it deems it necessary to enforce the guarantees of the 14th or 15th Amendments as part of a proceeding challenging a voting law or practice under any statute to enforce the voting guarantees under the 14th or 15th Amendment.⁴⁸

In the 2014 National Commission report, we determined that the Attorney General had certified 153 jurisdictions in eleven states for observer coverage and that the Department of Justice had sent several thousand observers to observe several hundred elections from 1995 to 2012.⁴⁹

While not officially stating this, the practice of the Department of Justice has been to apply the Supreme Court's finding that the Section 4(b) coverage formula is unconstitutional not just to preclearance but to observer coverage. The *Shelby County* decision has reduced observer coverage to a trickle. The Department of Justice has instead employed what it calls "monitors."⁵⁰

The difference between federal observers and monitors is dramatic. Under the Voting Rights Act, "Observers shall be authorized to — (1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons

⁴⁴ GRI Doc. No. 31 at 21-23.

⁴⁵ GRI Doc. No. 31 at 29-33.

⁴⁶ 52 U.S.C. § 10305.

⁴⁷ 52 U.S.C. § 10305(a)(2).

⁴⁸ 52 U.S.C. §§ 10302(a), 10305(a)(2).

⁴⁹ 2014 National Commission Report at 180-82.

⁵⁰ See e.g., Press Release, U.S. Dep't. of Justice, "*Justice Department Again to Monitor Compliance with the Federal Voting Rights Laws on Election Day*," (Nov. 2, 2020), <https://www.justice.gov/opa/pr/justice-department-again-monitor-compliance-federal-voting-rights-laws-election-day>.

who are entitled to vote are being permitted to vote; and (2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.” Monitors have no such rights: a jurisdiction does not need to provide any access to the voting process to any monitor.

It is not difficult to see the difference in how this plays out in practice. In a year where legislatures in formerly covered states like Arizona⁵¹ and Texas⁵² are conducting audits of election results or considering restricting the ability of election officials to limit the conduct of partisan poll watchers, it becomes vitally important for the federal government to have discretion to send observers to places with a history of voting discrimination for the purpose of ensuring that processes are fair and that voters of color are not disenfranchised.

Conclusion

The eight years since the Supreme Court decision in *Shelby County v. Holder* have left voters of color the most vulnerable to voting discrimination they have been in decades. The record since the *Shelby County* decision demonstrates what voting rights advocates feared — that without Section 5, voting discrimination would increase substantially. Without legislation like the John Lewis Voting Rights Advancement Act that addresses the hole in the Voting Rights Act left by the *Shelby County* decision, our democracy is at risk.

⁵¹ See *Maricopa County v. Fann*, No. CV 2020-016840, 2021 WL 804446, at *2 (Ariz. Super. Feb. 25, 2021) (discussing action of Arizona Senate to issue subpoenas requiring Maricopa County to produce election records of the November 2020 election).

⁵² SB 7, Tex. Legis. 87th Cong. 2021 (pending Conf. Comm.).

Ms. ROSS. Thank you, Mr. Greenbaum, for your testimony.

Our next witness is T. Russell Nobile. Mr. Nobile is a senior attorney for Judicial Watch and from 2005 to 2012, he served as a trial attorney in the Civil Rights Division of the U.S. Department of Justice including five years in the Division's voting section. He also previously was a legislative assistant for a Member of the House Financial Services Committee. Mr. Nobile received his J.D. from the Mississippi College of Law and his B.A. from University of Mississippi. He served as a law clerk to the Supreme Court of Mississippi.

Mr. Nobile, you are recognized for five minutes.

STATEMENT OF T. RUSSELL NOBILE

Mr. NOBILE. Good morning, Chair Ross, and Ranking Member Fischbach and Chair Nadler and the other Members of the subcommittee. Thank you for the opportunity to speak to you today.

As Chair Ross noted, I have been litigating and involved in election and voting cases dating back to 2005, including bringing cases against Prairie View A&M in 2008 and being a part of the section 5 redistricting case involving the State of Texas around 2011. The Committee has my written testimony. I am not going to rehash it all. What I would like to do draw the committee's attention to three points from H.R. 4 that was considered in the previous Congress.

The first point is that H.R. 4 grants 14th amendment standing to the Attorney General of the United States, which is a sea change in the Administration and the prosecution of constitutional laws in the United States. Shelby County and virtually none of the Voting Rights Act litigation preceding that ever had anything to do with granting the Attorney General 14th amendment standing to bring due process in equal protection claims, and I worry that, and I caution the Committee about the significant impact that will have on both the Department and the relationships between the United States and its inner states.

The second point I would like to talk about in H.R. 4 is the new coverage formula that has been proposed. I believe it has been the same proposed, it is the same formula that has been around since 2014, though I am sure it has changed some. The new formula actually sets up an incentive system so that activist groups will go around targeting jurisdictions and it replaces the previous data-driven metric for determining coverage under section 5 which was struck down in Shelby.

Now Shelby, it is important to note, wasn't struck down because it relied on data. It was a question about whether or not the data was adequate enough based on 1965 to reauthorize section 5 in 2006. So, the problem with the coverage formula proposed in H.R. 4 is it shifts away from the data-driven metric and moves to something called a voting rights violation, or a voting violation.

That is very broadly defined and as the Committee may know, there are a lot of reasons why jurisdictions will settle a voting claim brought against it without any consideration as to the legitimacy of the claim. There are obviously political questions, public finance questions, and good-faith reasons to settle that have nothing to do with their view of the legitimacy of the claims.

The third point I would like to draw to the committee's attention is the proposed nationwide coverage of section 5 or a section 5-like as being considered. Whatever you can say about the current circumstances of voting litigation and voting rights issues and disputes, it is safe to say that if the circumstances weren't bad enough to provide section 5 coverage nationwide in 1965, it is hard to see the data supporting driving, or data supporting covering the Nation in section 5 coverage in 2021.

Again, I appreciate the opportunity to speak to the Committee and I look forward to answering any questions.

[The statement of Mr. Nobile follows:]

**Testimony Before the United States House of Representatives Judiciary Committee's
Subcommittee on the Constitution, Civil Rights, and Civil Liberties.**

**Hearing on "Oversight of the Voting Rights Act:
A Continuing Record of Discrimination"
May 27, 2021**

T. Russell Nobile
Senior Counsel
Judicial Watch, Inc.

Background

Good Morning Mr. Chairman, Ranking Members, and Members of the Subcommittee. Thank you for the invitation to speak with you today.

My name is Russ Nobile. I am a Senior Attorney at Judicial Watch Inc. and part of its election integrity group. Judicial Watch is a public interest nonprofit dedicated to promoting transparency and restoring trust and accountability in government, politics, and the law. For almost a decade, Judicial Watch has been involved in ensuring the honesty and integrity of our electoral processes.

I have been practicing as a litigator for 16 years. I have specialized knowledge and expertise in voting law. I served as a Trial Attorney for the Civil Rights Division of the U.S. Department of Justice for seven years. During this time, I led numerous voting rights investigations, litigation, consent decrees, and settlements in dozens of jurisdictions. I received several awards during my time at the Department, including a Commendation in 2006 and a Service Award in 2010.

From 2006 to 2012, I worked in the Civil Rights Division's Voting Section, which is responsible for enforcing all provisions of the Voting Rights Act of 1965 ("VRA"), National Voter Registration Act of 1993 ("NVRA"), and the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). At different times during my tenure, I was the primary attorney assigned to monitor and receive reports out of certain Section 5 covered jurisdictions, such as South Carolina, Georgia, Mississippi, and Texas. I am particularly familiar with the VRA, which is the subject of my testimony today.

Some of my voting work at the Department of Justice included the 2008 case against Waller County, Texas over how its Registrar handled voter registration applications from students at Prairie View A & M University, an historically black university. That case ultimately led to a consent decree resolving violations of Section 5 and Title I of the Civil Rights Act of 1964.¹ The Justice Department's website shows that the Waller County case was one of the last Section 5 cases it brought before the *Shelby County* decision.² In 2011, I was part of the trial team that represented the United States against Texas in the massive Section 5 case Texas filed over its 2010 redistricting.³

In 2012, I went into private practice in Mississippi, where I continued handling civil rights and voting cases, including litigating cases involving NVRA and Section 2 of the VRA. My clients included Section 5 covered jurisdictions.

¹ *U.S. v. Waller County, et al.*, 4:08-cv-03022 (S.D. Tex. Oct. 17, 2008).

² See Dept. of Justice, Civil Rights Division, "List of Cases Raising Claims Under Section 5 of the Voting Rights Act" available at <https://www.justice.gov/crt/voting-section-litigation> (last visited May 25, 2021).

³ *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012) *vacated*, 570 U.S. 928 (2013) (citing *Shelby County v. Holder*, 570 U.S. 529 (2013)).

I joined Judicial Watch in 2019. Since joining Judicial Watch, I have litigated voting cases in several states and have filed numerous friend-of-the-court briefs before the U.S. Supreme Court and courts of appeal.

The VRA and Shelby County

As the committee knows, Section 5 of the VRA was a temporary, extraordinary remedy to address an extraordinary problem. Before its passage, the democratic process in much of the South was failing because of intentional state-sponsored and/or state-supported efforts to disenfranchise Blacks. Because of this discrimination, elections did not accurately reflect popular support in those jurisdictions. The registration data showed just how much the system was failing in 1965. Before the enactment of the VRA, only 19.4 percent of Blacks of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *See Shelby County*, 570 U.S. at 529. These figures reflected a roughly 50 percent or more racial disparity between the registration rates between Blacks and Whites. *Id.*

This data led Congress to enact the Voting Rights Act of 1965, which was comprised of permanent statutes banning discrimination as well as a unique, temporary statute, Section 5. Congress developed Section 5 after it “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.” *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966). Through Section 5, Congress created an unusual remedy to limit discrimination without the need for prior adjudication, and to do so by subjecting only a

specific set of jurisdictions to these extraordinary provisions. *Id.* As structured, Section 5 *presumed* that any voting change by a covered jurisdiction was implemented out of discriminatory intent or effect, until the jurisdiction proved otherwise. The Supreme Court ruled this presumption of guilt without a trial was justified in the context of the terrible racial discrimination occurring in 1965.

While Section 5 was originally a temporary provision set to expire after five years, Congress extended it for 66 years before the Supreme Court intervened in 2013 with its *Shelby County* decision. However, that does not mean that intentional or effect-based discrimination in voting are legal following the *Shelby County* decision. Permanent provisions of the VRA, such as Section 2, still prohibit such discrimination and provide the tools needed for the Justice Department or private litigants to challenge election standards, practices, or procedures that are enacted with discriminatory intent or that result in minorities having less opportunity than others to participate in the electoral process.

After *Shelby County*, it was reasonable to expect that the Justice Department would have shifted strategies focusing its resources on Section 2 enforcement. It would not have been surprising to see a large increase in the number of Section 2 cases brought by the Department since 2013, especially given the media's reporting of "rampant voter suppression." Yet, there has been no noticeable uptick in the number of Section 2 cases brought during this time. In fact, the Justice Department has only brought five Section 2 cases since the *Shelby County* decision, two of which were a replacement for the Section 5

redistricting cases against Texas that was vacated following the *Shelby County* decision.⁴ In fact, looking all the way back to the start of the Obama administration in 2008, the Justice Department has filed a total of ten Section 2 enforcement cases.⁵ This not to suggest that racism no longer exists. Nor is it an attack on my former DOJ colleagues' sincere desire to bring Section 2 cases. Rather, this is simply objective data that speaks to the issue of whether the Attorney General needs new authority to combat "rampant" voter suppression such that a case-by-case approach would be ineffective.

At bottom, the central question is whether current circumstances still necessitate Section 5's extraordinary remedies to combat "widespread and persistent discrimination in voting." See *Katzenbach*, 383 U.S. at 328. Actual data, not social media postings, directly answers this question. It is hard to maintain "that case-by-case litigation [is] inadequate to combat widespread and persistent discrimination in voting" in 2021, given the small number of Section 2 cases initiated by the Justice Department over the 8 years since the *Shelby County* decision.

Registration and Turnout Data⁶

Data, not pop culture nor hyperbole from those that oppose race-neutral election integrity laws, tells the true story of ballot access in America. To objectively evaluate

⁴ *United States v. State of Texas* (W.D. Tex. 2013) and *United States v. State of Texas* (S.D. Tex. 2013). See Dept. of Justice, Civil Rights Division, "List of Cases Raising Claims Under Section 2 of the Voting Rights Act" available at <https://www.justice.gov/crt/voting-section-litigation> (last visited May 25, 2021).

⁵ *Id.*

⁶ All registration and turnout data regarding the 2020 election is from an April 2021 report from the Census Bureau. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2020)(Table 4b) <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> (last visited May 25, 2021).

whether racial minorities have an equal opportunity to participate in the electoral process, you must look at racial registration and turnout data. Looking at the most recent data, the opportunity to participate is exponentially better now than it was in 1965. Based on this data, it is hard to contend that Section 5 needs to be expanded as proposed in H.R. 4.

Registration. Current data shows that Black registration has completely rebounded and, in some instances, exceeds White registration rates. In fact, the data shows that eight years after *Shelby County*, registration disparities in Texas, Florida, North Carolina, Louisiana, and Mississippi – all previously covered (in whole or part) by Section 5 – are all below the national average. In fact, Black registration in Mississippi is 4.3% *higher* than White registration. Registration disparities in these former Section 5 states are lower than the disparities in California, New York, Connecticut, D.C., Delaware, and Virginia. In fact, the four biggest registration disparities, i.e. where White registration most exceeds Black registration, are found in Massachusetts, Wisconsin, Oregon, and Colorado, all of which President Biden won in 2020.

Turnout. The 2020 election had a higher turnout across all race groups.⁷ Voter turnout disparities in Mississippi, North Carolina, Georgia, Florida, and Texas were all smaller than the national average. In fact, the disparities in turnout in Massachusetts, Wisconsin, Oregon, Colorado, New Jersey, and New York were higher than turnout

⁷ “Despite Pandemic Challenges, 2020 Election Had Largest Increase in Voting Between Presidential Elections on Record,” Dept. of Commerce, Census Bureau, Apr. 29, 2021, available at <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html> (last visited on May 25, 2021).

disparities in these former Section 5 states. Again, turnout for Blacks in Mississippi outperformed that of Whites.

There is a significant disconnect between the data and the media narrative. However one views any talking points about “rampant voter suppression,” the data cannot be ignored: registration rates and turnout data in 2020 far exceeds that in 1965. When Blacks now register and turnout at higher rates in places like Mississippi, it is simply not credible to claim that Jim Crow style voter suppression currently exists.⁸

Voting Rights Advancement Act of 2019, H.R. 4, 116th Cong. (2019)

Though it purports to remedy the problems highlighted by the Supreme Court in *Shelby County*, the truth is that H.R. 4 goes far beyond any civil rights law enacted during the height of the civil rights era. Rather, it is part of a grander plan to shift control of American elections away from individual state legislatures and into the hands of a single federal bureaucratic department. It accomplishes this by giving the Attorney General a previously unseen level of authority over elections. Even more troubling than this change to our constitutional tradition of leaving elections to the states, H.R. 4 will ultimately lead to lasting damage to the Department of Justice’s credibility.

H.R. 4 Gives the Attorney General Powers That Go Far Beyond Voting

H.R. 4 proves that Congress indeed hides elephants in mouseholes.⁹ Buried deep in its final pages, H.R. 4 grants the Attorney General authority to enjoin “any act prohibited

⁸ Editorial, ‘Jim Eagle’ and Georgia’s Voting Law: Biden Compares State Voting Bills to Jim Crow. *Never Mind the Facts*, WALL STREET JOURNAL, March 26, 2021, available online at <https://www.wsj.com/articles/jim-eagle-and-georgias-voting-law-11616799451> (last visited May 26, 2021).

⁹ See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

by the 14th or 15th Amendment” of the Constitution.¹⁰ This little-noticed provision will abolish a longstanding legal principle, leading to highly contentious litigation between states and the Attorney General. It is difficult to overstate the risk that this new law creates to the Department of Justice and the states. Congress should end this unprecedented effort to further inject the Justice Department into partisan election disputes before it goes any further.

Under current law, the Attorney General is only authorized to bring civil rights claims under specific statutes, typically those statutes prohibiting discrimination, and has no authority to sue directly for certain violations of the Constitution. Private plaintiffs can, and do, allege violations of the Constitution, but the Justice Department does not. This proposed change is a major power shift, allowing the Justice Department to become involved in a whole range of 14th Amendment cases that previously it would have been unable to pursue. The opportunity for any administration, Republican or Democratic, to exploit this new law is significant.

In the election context, we need only look to the 2020 presidential election to see the impact this provision would have had. Virtually every dispute during the 2020 election involved a 14th Amendment claim. While many praised Attorney General Barr’s restraint in not involving the Department of Justice in that litigation, he undoubtedly declined to act because, as the Attorney General, he lacked standing over 14th Amendment disputes. If H.R. 4 had been implemented in 2019, the Justice Department would have been under

¹⁰ Sec. 7(a) of H.R. 4.

enormous pressure to intervene or bring its own 14th Amendment case, such as suing to stop last last-minute changes to election laws rushed through Pennsylvania, Arizona, Wisconsin, North Carolina, Georgia, and Michigan. The exact same can be said about the highly partisan dispute in *Bush v. Gore*.

Of course, it is not just presidential elections in which the Attorney General could use these new powers. He or she will have the opportunity going forward to bring constitutional claims to “help” resolve election disputes involving preferred congressional candidates too. It is impossible to quantify the long-term effects on our electoral process if the Justice Department begins resolving highly-partisan electoral disputes.

What is more alarming is that the new 14th Amendment powers in H.R. 4 are not limited to voting rights.¹¹ As written, the Attorney General will be allowed to bring any

¹¹ As amended by H.R. 4, 52 USC §10308(d) will provide as follows:

d) Civil action by Attorney General for preventive relief; injunctive and other relief
Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by the 14th or 15th Amendment, this Act, or any Federal voting rights law that prohibits discrimination on the basis of race, color, or membership in a language minority group, the aggrieved person or (in the name of the United States) the Attorney General may institute an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

Currently, section (d) of 52 U.S.C. §10308 provides:

(d) Civil action by Attorney General for preventive relief; injunctive and other relief
Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 10301, 10302, 10303, 10304, 10306, or 10307 of this title, section 1973e of title 42, 1 or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

action under the 14th Amendment, which could include actions to promote (or restrict) gun rights, religious liberties, and abortion rights. How the Attorney General exercises these new powers will, of course, depend on whichever direction the political winds are blowing at that time. Members of Congress who support H.R. 4 may feel radically different when another administration takes control.

Ultimately, this new authority raises more questions than can possibly be addressed today. For now, though, there are real questions about what this new power means for private constitutional and § 1983 litigation.

H.R. 4's Coverage Formula For Traditional Section 5

H.R. 4's new coverage formula for traditional Section 5 creates incentives that pervert civil rights enforcement. Under H.R. 4, jurisdictions that have had a number of "voting rights violations" over a period of time will be subject to Section 5 coverage. The most obvious problem with this new coverage formula is the incentives it creates. H.R. 4 defines "voting rights violations" broadly, capturing minor settlements that never resolved the merits of any claims. This definition actually retroactively penalizes jurisdictions that previously entered into good faith settlements motivated by their desire to amicably resolve disputes and limit public costs without regard to the legitimacy of the claims. Having handled affirmative civil rights litigation, I can say firsthand that discouraging settlement is counterproductive to the enforcement of civil rights laws.

Moreover, it is not just the Justice Department who brings voting lawsuits. H.R. 4 creates something akin to the "heckler's veto" for the loudest private interest groups, encouraging them to drive up "voting rights violations" (i.e., minor settlements) against

targeted jurisdictions. Under this coverage formula, advocacy groups and other litigants will be incentivized to “sue and settle” cases, before running to the Justice Department to claim they triggered Section 5 coverage. Such incentives could further encourage collusive settlements – where local officials enter into meritless settlements with groups to which they are aligned – artificially driving up “voting rights violations.” Ultimately, H.R. 4’s coverage formula does not correct the problems raised in *Shelby County*. In fact, it aggravates the problems by replacing the data-based approach for Section 5 coverage with a new easily corruptible process that rewards litigious parties. This will further encourage the type of close coordination between the Justice Department and advocacy groups criticized in *Johnson v. Miller*, 864 F. Supp. 1354 (S.D. Ga. 1994), *affirmed*, 515 U.S. 900 (1995). This is not how Section 5 coverage should be determined.

Regardless of coverage, it goes without saying that the bureaucratic nature of Section 5 discouraged jurisdictions from making good faith improvements to their voting laws. We may disagree on the degree, but anytime you drive up costs and increase regulation, it discourages the targeted behavior (i.e., non-discriminatory changes to elections practices from 1966 – 2013). Much has been made of new voting changes implemented by covered jurisdictions since 2013, but such changes are to be expected. For 48 years, there were substantial costs and risks (both legal and political) associated with making even minor changes to how elections were conducted in Section 5 jurisdictions. The fact that changes have been made post-*Shelby County* does not mean that all of those changes were racially motivated.

There Is No Data Supporting Nationwide Section 5 Coverage

Inexplicably, H.R. 4 imposes a new nationwide preclearance coverage called “Practice-Based Preclearance Coverage.” Whatever the lingering effects are from the civil rights era, there is no data that supports expanding Section 5 nationwide. Because this new preclearance targets certain standards, practices, and procedures such as voter identification and list maintenance, it is reasonable to conclude that nationwide preclearance is designed to target popular voter integrity provisions. Clearly, it is not because the Congress determined that “case-by-case litigation [by the Department of Justice is] inadequate to combat widespread and persistent discrimination in voting.” If nationwide registration disparities did not justify nationwide Section 5 coverage during the Jim Crow era, it is hard to see what data from 2020 supports imposing a nationwide preclearance requirement today.

H.R. 4’s Transparency Provisions

Section 5 of H.R. 4 also imposes a new transparency regime. Specifically, it requires that all state or political subdivisions to provide formal notice of changes to any voting standard, practice, or procedure with respect federal elections occurring 180 days or less before the election. Whatever the motivation for this provision, had it been in effect during the 2020 election, it would have led to even more litigation, likely limiting many of the new election laws put into effect during the 2020 federal election. Because of H.R. 4’s permissive private right of action, there would have been no way to limit the number of private transparency suits challenging COVID-related election changes.

Ms. ROSS. Thank you, Mr. Nobile. You get the gold star for coming in under time, so thank you for doing that so quickly.

Our final witness is Wendy Weiser. Ms. Weiser directs the democracy program at the Brennan Center for Justice at New York University's School of Law. Her program focuses on voting rights and election, money in politics and ethics, redistricting and representation, government dysfunction—maybe we will hear a little bit about that—rule of law and fair courts. She founded and directed the program's voting rights and elections project directing litigation, research, and advocacy efforts to enhance political participation and prevent voter disenfranchisement across the country. Ms. Weiser received her J.D. from Yale Law School and her B.A. from Yale Law School. She served as a law clerk to the honorable Eugene Nickerson of the United States District Court for the Eastern District of New York.

Ms. Weiser, you are recognized for five minutes.

STATEMENT OF WENDY WEISER

Ms. WEISER. Thank you, Chair Nadler, Vice-Chair Ross, Ranking Member Fischbach, and Members of the Subcommittee. Thank you so much for the opportunity to testify on strengthening the Voting Rights Act which is one of the foundational tests of America and a critical bulwark against discrimination in our voting system. Unfortunately, in the eight years since the Supreme Court gutted the law's most powerful provision, its preclearance requirement, it has become clear that the remaining provisions are simply not strong enough to protect Americans from increasingly pervasive acts of discrimination in voting. The John Lewis Voting Rights Advancement Act is urgently needed.

Today, American democracy and our most cherished values are under attack from within and core to that attack is a fierce assault on Americans' right, Americans' freedom to vote. As we have heard, as of March 31st, the Brennan Center counted more than 360 bills to curb voting in 47 states this year alone, and will be publishing new, larger numbers tomorrow. Many of these bills clearly target voters of color. They restrict access to voting options that voters of color used in recent elections, and they even empowered poll watchers to harass or intimidate voters with fewer limits. These bills are being driven by the false and often racially-tinged claim that the 2020 election was stolen, the same claim that fueled the January 6th insurrection at the Capitol. More and more, proponents are brazenly admitting that their goal is to subtract voters from the electorate. Now, as of today, more than a dozen states have already enacted new restrictions and bills are actively moving in many more.

We at the Brennan Center have been tracking vote suppression legislation for over a decade and the current antivoter attacks are breathtaking in their scale, their scope, and their speed. It is the biggest legislative assault on voting since Reconstruction. Although the problem has grown more acute, it is not new. Since Shelby County, we have found that attacks on voting rights are especially severe in states and localities that were previously covered by section 5 of the Voting Rights Act.

In my written testimony, I present recent evidence of racial discrimination in the voting process; it is overwhelming. For example, dozens of court cases have found that State and local voting laws and practices to be racially discriminatory and in some intentionally so. In a Texas redistricting case, for example, a three-judge court found that the record contained more evidence of discriminatory intent than we have space or need to address.

Our research shows that since Shelby County voter purge rates have soared and the bulk of this growth was in counties that were previously covered by section 5. In 2018, the median purge rate in those counties was 40 percent higher than in others, and in 90 out of a hundred counties in North Carolina, for example, people of color were overrepresented among those purged. I note that the Constitution does not only prohibit racially discriminatory voting restrictions where Members of targeted groups have low turnout, turnout is caused by many factors including hotly contested races.

We are also heading into the first redistricting cycle in more than half a century without preclearance, posing a high risk to fair representation for communities of color. These forceful threats to our democracy demand an equally forceful response. Congress has the power and the moral duty to stop these attacks, to protect Americans against further erosion of their rights, and to help realize the Constitution's vision of an inclusive democracy.

The VRAA is extremely well-tailored to combat these modern racially discriminatory practices consistent with the Supreme Court's guidance. It is more than justified by the record already before Congress. While critical, the VRAA alone is not enough to address current threats. To fully counter the scourge of vote suppression we are seeing today, we also need the For the People Act, H.R. 1. While the VRAA specifically targets race discrimination in voting, H.R. 1 sets baseline national standards for voting access for all Americans and it addresses other threats as well.

Both bills enjoy broad and bipartisan support across the country, and both are desperately needed. We strongly urge this Congress to work diligently to send an updated VRAA and the For the People Act to President Biden's desk for signature this year. Thank you.

[Statement of Ms. Weiser follows:]



Testimony of

Wendy Weiser

Vice President for Democracy at the
Brennan Center for Justice at NYU School of Law¹

Hearing on Oversight of the Voting Rights Act: A Continuing Record of Discrimination

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

May 27, 2021

Thank you for the opportunity to testify in support of strengthening the Voting Rights Act (“VRA”), a law that has played a critical role in safeguarding American democracy against pernicious, persistent threats of discrimination in the election system. The Brennan Center for Justice at NYU School of Law strongly supports this Committee’s efforts to restore and revitalize the VRA, through the John Lewis Voting Rights Advancement Act (“VRAA”).

The VRA is widely considered the most effective civil rights legislation in our nation’s history.² Not only did it dismantle discriminatory voting practices prevalent during the Jim Crow era, but it also served as a bulwark against new discriminatory voting measures in the decades that followed. Unfortunately, in its 2013 decision in *Shelby County v. Holder*,³ the Supreme Court neutered the VRA’s most powerful provisions. Since then, voters in many of the jurisdictions that had previously been protected by the law’s preclearance regime have been battered by a barrage of new voting laws and practices that target and disproportionately harm voters of color, and these pernicious practices have spread elsewhere.⁴

¹ The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country’s system of democracy and justice. I am the Vice President for Democracy and Director of the Brennan Center’s Democracy Program. I have authored numerous nationally recognized reports and articles on voting rights and elections. My work has been featured in numerous media outlets across the country, including the *New York Times*, the *Washington Post*, the *Los Angeles Times*, the *Boston Globe*, *USA Today*, and *Politico*. I have served as counsel in numerous voting rights lawsuits, including a number of the lawsuits referenced in this testimony. I have testified previously before Congress, and before several state legislatures, on a variety of issues relating to voting rights and elections. My testimony does not purport to convey the views, if any, of the New York University School of Law.

² *The Effect of the Voting Rights Act*, U.S. Dep’t of Justice (June 19, 2009), <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>.

³ *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013).

⁴ See, e.g., *Voting Laws Roundup: March 2021*, Brennan Center for Justice (Apr. 1, 2021).

I submit this testimony to present and highlight evidence of widespread discrimination in the voting process in recent years—evidence that warrants a swift and powerful congressional response. As we previously testified in the 116th Congress, state and local jurisdictions have implemented a staggering number of discriminatory voting practices over the past decade, including targeted purges of the voter rolls, biased redistricting schemes, and laws restricting access to voting. Sadly, without strong national legal protections, the problem is only getting worse.

This year, in states across the country, we see a fierce new assault on the right to vote fueled by the “Big Lie” about widespread voter fraud. Legislators are rushing to enact yet another wave of discriminatory voting restrictions, in what would be the most significant cutback of the right to vote since the Jim Crow era. As in the Jim Crow era, laws that may look neutral on their face are too often designed and applied to target voters of color.⁵ As of the Brennan Center’s March 31, 2021 count, state lawmakers had introduced more than 360 bills in 47 states to curb the vote.⁶ That number is still growing, according to our soon-to-be-published new count,⁷ and is more than four times the number of restrictive bills introduced just two years ago. Already, at least 14 states have enacted new laws with provisions that restrict access to voting.⁸ This amounts to a real time attack on our democracy. Additional threats loom, as states prepare to start their once-in-a-decade redistricting processes for the first time in over a half a century without the full protections of the Voting Rights Act.⁹

These forceful threats to the franchise demand an equally forceful response. Congress has the power to stop this attack on right to vote and protect Americans against further attacks. The Constitution’s Fourteenth and Fifteenth Amendments give Congress the power to remedy and deter discrimination in the voting process. The extraordinary amount of evidence of voting discrimination in recent years, which I highlight below, is more than enough to justify strong congressional action pursuant to this power, including passage of the VRAA. Moreover, the Congress has extremely strong powers under the Elections Clause to set the “times, places and manner” of federal elections—powers the Supreme Court has said include “authority to provide a complete code for congressional elections.”¹⁰ That power should also be used to stop vote suppression and strengthen voting access.

<https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>; Wendy Weiser & Max Feldman, *The State of Voting 2018*, Brennan Center for Justice (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_State_of_Voting_2018.pdf; *New Voting Restrictions in America*, Brennan Center for Justice (Nov. 19, 2019), <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>; *Voting Laws Roundup 2019*, Brennan Center for Justice (July 10, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>.

⁵ See discussion *infra* Part I, Sections A-E.

⁶ *Voting Laws Roundup: March 2021*, Brennan Center for Justice (April 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>.

⁷ *Voting Laws Roundup: May 2021*, Brennan Center for Justice (May 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021> (forthcoming).

⁸ *Id.*

⁹ See Michael C. Li, *The Redistricting Landscape, 2021-22*, Brennan Center for Justice, 20 (2021).

https://www.brennancenter.org/sites/default/files/2021-02/2021_2_11_State%20of%20Redistricting.pdf.

¹⁰ *Smiley v. Holm*, 285 U.S. 355, 366 (1932). See also *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

The 2020 presidential contest featured historic levels of voter turnout — the highest in over a century, even in the face of a deadly pandemic.¹¹ But there were also unprecedented efforts to thwart the electoral process and disenfranchise voters, primarily in Black, Latino, and Asian communities, efforts that, as discussed, continue today through an aggressive push to enact restrictive voting laws across the country. The VRAA is a critical tool in combatting this discrimination. We urge the Committee to act expeditiously to pass the VRAA, along with the For the People Act, to root out this discrimination and to protect every American’s freedom to vote.

I. Evidence of Discrimination in Restrictive Voting Policies and Practices

Over the last decade, states have enacted and implemented voting restrictions that target and disproportionately harm racial and ethnic minorities and undermine our democracy. Often legislators have piled restriction on restriction in a manner that maximizes their suppressive impact. A growing body of research shows that many of these restrictions measurably reduce access and participation, especially among voters of color. This section presents and reviews evidence of discriminatory practices and the ways in which they both target and impact voters of color. The Brennan Center has extensively documented new, direct burdens on the right to vote over the past decade.¹² (I attach as Appendix B prior testimony the Brennan Center submitted to Congress on this topic. A compendium of our documentation can be found in Appendices A and C).

A. Voter Purges

First, there is strong evidence of discrimination in state and local practices for purging the voter rolls since the *Shelby County* decision.

Voter purges are the often error-laden process by which election officials try to clean voter rolls by removing the names of people who are not eligible to vote.¹³ Prior to the Supreme Court’s decision in *Shelby County*, jurisdictions that were covered by the VRA’s preclearance provisions were required to get federal approval for changes to their purge practices before

¹¹ Kevin Schaul, et al., 2020 Turnout Is the Highest in Over a Century, November 5, 2020 <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/>.

¹² See, e.g., *Voting Laws Roundup: March 2021*, Brennan Center for Justice (Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>; Wendy Weiser & Max Feldman, *The State of Voting 2018*, Brennan Center for Justice (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_State_of_Voting_2018.pdf; *New Voting Restrictions in America*, Brennan Center for Justice (Nov. 19, 2019), <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>; *Voting Laws Roundup 2019*, Brennan Center for Justice (July 10, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>. See also, e.g., Wendy Weiser & Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice (2011), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_2012.pdf; *Voting Laws Roundup 2015*, Brennan Center for Justice (June 3, 2015), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2015>; Wendy Weiser & Nhu-Y Ngo, *Voting Rights in 2011: A Legislative Round-Up*, Brennan Center for Justice (July 15, 2011), <https://www.brennancenter.org/our-work/research-reports/voting-rights-2011-legislative-round>.

¹³ Myrna Pérez, *Voter Purges*, Brennan Center for Justice, 1-3 (2008), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter-Purges-2008.pdf.

implementing them.¹⁴ This requirement protected voters from ill-conceived, discriminatory purges. That protection is now gone, and voter purges are on the rise. The Brennan Center’s research suggests that race has played a critical role in increased purge rates.

A peer-reviewed study the Brennan Center conducted in 2018, using data from the federal Election Assistance Commission (“EAC”), found that for the two election cycles between 2012 and 2016, jurisdictions that were previously subject to preclearance under the VRA because of their racially discriminatory voting practices had purge rates that were significantly higher than those in other jurisdictions.¹⁵ In other words, the *Shelby County* decision has had a direct, negative impact on purges in precisely the parts of the country with the worst records on voting discrimination against racial and ethnic minorities. Overall, our study found that, between 2014 and 2016, states removed almost 16 million voters from the rolls—nearly 4 million more than they removed between 2006 and 2008.¹⁶ This 33 percent growth far outstripped the growth in the voter population.¹⁷ If those counties had purged at the same rate as other counties, as many as 1.1 million fewer individuals would have been removed from rolls between 2016 and 2018, and 2 million fewer between 2014 and 2016.¹⁸ (I attach a copy of this study in Appendix C.)

The Brennan Center conducted a subsequent analysis in 2019 showing that this elevated purge rate in formerly covered jurisdictions continued through the 2018 election cycle.¹⁹ Assessing 2019 EAC data, we found that between 2016 and 2018 the median purge rates in counties that were previously covered by the VRA was 40 percent higher than in other counties.²⁰ Nationwide at least 17 million voters were purged between 2016 and 2018, a number that is considerably higher than past purge rates. (I attach a copy of this analysis in Appendix C.)

A chart from this 2019 study, previously submitted before the Committee on House Administration, vividly illustrates the apparent impact of the *Shelby County* decision on purge rates in jurisdictions that were formerly covered by Section 5 of the VRA:

¹⁴ See *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1060 (E.D. Tex. 2000); Letter from John Tanner, Chief, Voting Section, Civ. Rts. Div., U.S. Dep’t of Justice, to Charlie Crist, Att’y Gen. of Fla. (Sept. 6, 2005); Letter from John R. Dunne, Asst. Att’y Gen., Civ. Rts. Div., U.S. Dep’t of Justice, to Debbie Barnes, Chairperson, Dallas Cnty. (Ala.) Bd. of Registrars (June 22, 1990) (interposing Section 5 objection to implementation of new purge practices).

¹⁵ 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.

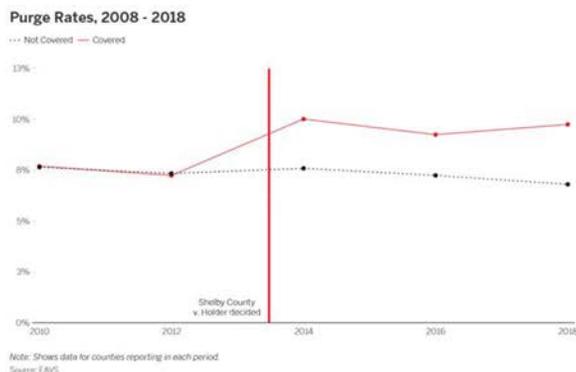
¹⁶ Brater et al., *Purges*.

¹⁷ Brater et al., *Purges*.

¹⁸ Brater et al., *Purges*.

¹⁹ Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, Brennan Center for Justice (Aug. 21, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.

²⁰ Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, Brennan Center for Justice (Aug. 21, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.



As the chart makes clear, despite the fact that formerly covered jurisdictions had comparable purge rates with the rest of the country prior to *Shelby County*, once the preclearance condition was lifted, purge rates in these jurisdictions surged relative to the rest of the country. Comparable data for the 2020 election cycle is not yet available.

Data from Georgia, Texas, Florida, and North Carolina during this period provide further evidence of this troublesome phenomenon. Our research found that Texas purged 363,000 more voters between 2012 and 2014 than it did between 2008 and 2010, while Georgia purged twice as many voters — 1.5 million voters — between the 2012 and 2016 elections as it did between 2008 and 2012.²¹

According to another Brennan Center analysis, the state also saw most of its counties purge more than 10 percent of their voters between 2016 and 2018.²² Between December 2016 and September 2018, Florida purged more than 7 percent of its voters. And between September of 2016 and May 2018, North Carolina purged 11.7 percent of its voter rolls. A disproportionate impact was on voters of color: in 90 out of 100 counties in North Carolina, voters of color were over-represented among the purged group.²³ (I attach a copy of this analysis in Appendix C.)

B. Wait Times to Vote

There is ample evidence that voters of color face significantly longer wait times at the polls than white voters and that discriminatory state and local practices are at least partially responsible for these disparities.

²¹ Brater et al., *Purges*.

²² Kevin Morris & 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>.

²³ Morris & Pérez, “Florida, Georgia, North Carolina Still Purging Voters.”

A Brennan Center study of wait times during the 2018 midterm elections found that Latino voters waited on average 46 percent longer, and Black voters 45 percent longer, than white voters to cast their ballots.²⁴ Moreover, Latino and Black voters were more likely than white voters to wait in the longest of lines on Election Day: some 6.6 percent of Latino voters and 7.0 percent of Black voters reported waiting 30 minutes or longer to vote, surpassing the acceptable threshold for wait times set by the Presidential Commission on Election Administration, compared with only 4.1 percent of white voters.²⁵ Multiple additional studies have found similar and persistent racial disparities in wait times over the past decade.²⁶

Some of these disparities can be explained by polling place closures in jurisdictions with high minority populations. A study by the Leadership Conference on Civil and Human Rights uncovered nearly 1,700 polling place closures in jurisdictions formerly covered by Section 5 of the VRA, despite a significant increase in voter turnout in those jurisdictions during the same period.²⁷ A survey of Native Americans in South Dakota by the Native American Voting Rights Coalition found that 32 percent of respondents said that the distance needed to travel to the polls affected their decision to cast a ballot.²⁸

Polling place closures often disproportionately harm voters of color. During the 2020 presidential primary election in Wisconsin, for example, Milwaukee closed all but five of its 182 polling places. A peer-reviewed academic journal article by the Brennan Center's Kevin Morris and Peter Miller found that this closure depressed turnout by more than 8 percentage points overall—and by about 10 percentage points among Black voters.²⁹ This corroborates other academic research showing that polling place closures decrease turnout, and that these effects can fall disproportionately on voters of color.³⁰

²⁴ Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, Brennan Center for Justice (2020), https://www.brennancenter.org/sites/default/files/2020-06/6_02_WaitingtoVote_FINAL.pdf.

²⁵ Klain et al., *Waiting to Vote*.

²⁶ See Stephen Pettigrew, *The Racial Gap in Wait Times: Why Minority Precincts Are Underserved by Local Election Officials*, 132 *Pol. Sci. Q.* 527 (2017); M. Keith Chen et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data*, *Rev. of Econ. & Stat.* (2020); David Cottrell et al., *Voting Lines, Equal Treatment, and Early Voting Check-In Times in Florida*, *State Pol. & Pol'y Q.* (2020).

²⁷ *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference Education Fund (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. Another example of discriminatory polling place closures can be seen in Georgia's new prohibition on mobile voting sites. Mobile voting (polling sites on wheels that travel to different set locations) — a practice that has only been used in Fulton County, which has the largest Black population in the state — was outlawed by the Georgia legislature this year. See Michael Waldman, *Georgia's Voter Suppression Law*, Brennan Center for Justice (Mar. 31, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-voter-suppression-law>.

²⁸ Native American Voting Rights Coalition, *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota: Survey Research Report Executive Summary and Policy Reform Recommendations*, Native American Rights Fund (Jan. 2018), <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>. See also Peter Dunphy, *The State of Native American Voting Rights*, Brennan Center for Justice (Mar. 13, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/state-native-american-voting-rights>.

²⁹ Kevin Morris & Peter Miller, *Voting in a Pandemic: COVID-19 and Primary Turnout in Milwaukee, Wisconsin*, *Urb. Aff. Rev.* (Apr. 2021); Kevin Morris, *Did Consolidating Polling Places in Milwaukee Depress Turnout?*, Brennan Center for Justice (June 24, 2020), <https://www.brennancenter.org/our-work/research-reports/did-consolidating-polling-places-milwaukee-depress-turnout>.

³⁰ See, e.g., Enrico Cantoni, *A Precinct Too Far: Turnout and Voting Costs*, 12 *Am. Econ. J.: Appl. Econ.* 61 (2020); Henry E. Brady & John E. McNulty, *Turning Out to Vote: The Costs of Finding and Getting to the Polling Place*, 105 *Am. Pol. Sci. Rev.* 115 (2011).

A number of recently passed voting laws and pending bills are likely to exacerbate these disparities. The recently passed Georgia law notoriously makes it a crime to provide food or water to voters waiting in line to vote (though it allows election workers to provide self-service water).³¹ Reporting from last year indicated that Black Georgians faced far longer waits than white Georgians in the June primary,³² and a report from ProPublica and Georgia Public Broadcasting indicated that this was largely due to closed polling places.³³ A new law in Florida may similarly restrict the ability to provide snacks and water.³⁴ According to our recently published Voting Laws Roundup, new laws in Iowa and Montana reduce polling place availability: the Iowa law requires polls to close earlier on Election Day, while the Montana law allows more polling places to qualify for reduced hours.³⁵ A bill pending in Michigan, which has already passed in one chamber, would almost double the number of voters that can be assigned to one precinct, likely meaning much longer lines to vote on Election Day.³⁶ This will likely be felt most acutely in minority-rich cities, which experienced especially long lines last year.³⁷ Bills advancing in Nevada, Texas, South Carolina could likewise result in polling place closures.³⁸

C. New Voting Restrictions Before This Year

Shortly before the *Shelby County* decision, the Brennan Center documented a new trend of state legislation seeking to make it harder to vote in advance of the 2012 election.³⁹ Fortunately, many of the restrictive voting laws passed at that time never went into effect because they were blocked by Section 5 of the VRA; many others were repealed, invalidated or blunted

³¹S.B. 202, 156th Gen. Assemb., Reg. Sess., § 33 (Ga. 2021).

³²Mark Niesse & Nick Thieme, *Extreme Voting Lines Expose where Georgia Primary Failed*, Atlanta Journal-Constitution (July 28, 2020), <https://www.ajc.com/politics/extreme-voting-lines-expose-where-georgia-primary-failed/YQUMSTEBVFA7Y7CR7U000EHSVLI/>.

³³Stephen Fowler, *Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled*, ProPublica (October 17, 2020) <https://www.propublica.org/article/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled>.

³⁴S.B. 90, 2021 Leg., Reg. Sess., § 29 (Fla. 2021); *See also*, Eliza Sweren-Becker, *Florida Enacts Sweeping Voter Suppression Law*, Brennan Center for Justice (May 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/florida-enacts-sweeping-voter-suppression-law>.

³⁵Iowa S.F. 413, 89th Gen. Assemb., Reg. Sess., § 36 (Iowa 2021); MT S.B. 196, 2021 Leg., Reg. Sess., § 1 (Mont. 2021).

³⁶MI H.B. 4134, 101st Leg., Reg. Sess., § 658 (Mich. 2021).

³⁷*See, e.g.*, Kevin Quealy & Alicia Parlapiano, *Election Day Voting in 2020 Took Longer in America's Poorest Neighborhoods*, N.Y. Times (Jan. 4, 2021), <https://www.nytimes.com/interactive/2021/01/04/upshot/voting-wait-times.html>; Beth LeBlanc et al., *Long Lines, Hour-Long Waits Prompt Criticism at Michigan Polls*, The Detroit News (Mar. 10, 2020), <https://www.detroitnews.com/story/news/politics/2020/03/10/michigan-localities-juggling-rise-same-day-voter-registration/5004002002/>.

³⁸S.B. 84, 81st Leg., Reg. Sess., § 1 (Nev. 2021); S.B. 236, 124th Gen. Assemb., Reg. Sess., § 1 (S.C. 2021); S.B. 7, 87th Leg., Reg. Sess. (Tex. 2021). The Senate version of S.B. 7 in Texas includes a provision (Section 3.06) that would require counties with populations of one million to distribute polling places according to the share of registered voters in each state House district relative to the total number of eligible voters. For more information on the impact of this provision on polling place closures, *see* Alexa Ura et al., *Polling Places for Urban Voters of Color Would Be Cut under Texas Senate's Version of Voting Bill Being Negotiated with House*, Tex. Tribune (May 23, 2021), <https://www.texastribune.org/2021/05/23/texas-voting-polling-restrictions/>.

³⁹Wendy R. Weiser & Lawrence Nordon, *Voting Law Changes in 2012*, Brennan Center for Justice (2011), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_2012.pdf.

by courts.⁴⁰ After the *Shelby County* decision, we documented a new spike in voting restrictions, as multiple previously covered states seized upon the lack of federal oversight to put in place discriminatory laws and policies.⁴¹ This push to pass restrictive voting laws has continued unabated ever since.⁴² Many of these new laws have targeted and disproportionately impacted voters of color, as we have continuously documented.⁴³ The problem goes beyond legislation; we have also documented a range of other new discriminatory voting practices in recent years.⁴⁴

The number of discriminatory voting practices over the past decade is too voluminous to detail in this testimony. Instead, I highlight a few recent examples:

a. Strict Voter ID Laws

New strict voter ID laws implemented over the last decade have further targeted voters of color and restricted their ability to exercise their right to vote. Federal courts in at least four states have found that strict voter ID laws were racially discriminatory, and in some cases, that such laws were intentionally discriminatory.

In 2011, bills were introduced in 34 states to implement stricter voter ID requirements; nine of those passed, but most were blocked by Section 5 or judicial decisions.⁴⁵ Pennsylvania enacted a

⁴⁰ Wendy R. Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Justice (2012), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_Election_Update.pdf

⁴¹ Tomas Lopez, *'Shelby County': One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>; *Voting Laws Roundup 2013*, Brennan Center for Justice (December 19, 2013), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2013>; *Voting Laws Roundup 2014*, Brennan Center for Justice (Dec. 18, 2014), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2014>.

⁴² Wendy Weiser & Erik Opsal, *The State of Voting in 2014*, Brennan Center for Justice (June 17, 2014), <https://www.brennancenter.org/our-work/research-reports/state-voting-2014>; *Voting Laws Roundup 2015*, Brennan Center for Justice (June 3, 2015), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2015>; *Voting Laws Roundup 2016*, Brennan Center for Justice (April 18, 2016), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2016>; *Voting Laws Roundup 2017*, Brennan Center for Justice (May 10, 2017), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2017>; *Voting Laws Roundup 2018*, Brennan Center for Justice (April 2, 2018), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2018>; *Voting Laws Roundup 2019*, Brennan Center for Justice (July 10, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2019>; *Voting Laws Roundup 2020*, Brennan Center for Justice (February 4, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020>; *Voting Laws Roundup 2021*, Brennan Center for Justice (Jan. 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021>. See also Wendy Weiser & Max Feldman, *The State of Voting 2018*, Brennan Center for Justice (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_State_of_Voting_2018.pdf.

⁴³ See articles cited *supra* notes 38–40.

⁴⁴ See, e.g., Rebecca Ayala, *Voting Problems 2018*, Brennan Center for Justice (Nov. 5, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/voting-problems-2018>; Peter Dunphy, *When It Comes to Voter Suppression, Don't Forget About Alabama*, Brennan Center for Justice (Nov. 5, 2018), Rebecca Ayala & 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>; Wendy R. Weiser & Margaret Chen, *Voter Suppression Incidents*, Brennan Center for Justice (Nov. 3, 2008), <https://www.brennancenter.org/our-work/research-reports/voter-suppression-incidents-2008>.

⁴⁵ Wendy R. Weiser & Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice, (2011), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_2012.pdf; Wendy R. Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Justice (2012), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_Election_Update.pdf.

strict photo ID law in 2012, only to have it struck down as unconstitutional by a state court in 2014.⁴⁶

Efforts to tighten voter ID requirements rose after the *Shelby County* decision and have continued since.⁴⁷ In 2013, at least five states—Alabama, Mississippi, North Carolina, North Dakota, Virginia and Texas—implemented or began to enforce strict photo ID laws, most of which had previously been blocked by the Department of Justice due to their discriminatory impact. The Texas and North Carolina laws were both struck down by federal courts as discriminatory. The Fourth Circuit Court of Appeals famously said that North Carolina’s voter ID law disenfranchised Black voters “with almost surgical precision.”⁴⁸

The Texas’ law disenfranchised all voters who lacked one of scant few forms of ID—notably including firearms permits, which are disproportionately held by white Texans, while excluding student IDs and IDs issued by state agencies. A federal district court found that more than 600,000 registered Texas voters—and many more unregistered but eligible voters—lacked an accepted form of ID, and that “a disproportionate number of African-Americans and Hispanics populate that group of potentially disenfranchised voters.”⁴⁹ The court further held that, not only did the law have the effect of discriminating against African-American and Hispanic voters, but it was intentionally enacted for that very purpose. The Fifth Circuit Court of Appeals *en banc* ultimately affirmed that the law had the result of discriminating on the basis of race.⁵⁰

North Dakota has passed new voter ID restrictions three times in the past eight years. In 2013, the state strictly limited voters to one of four acceptable forms of ID, all of which were required to contain the voter’s street address, notwithstanding that 19 percent of Native Americans—many of whom lived on reservations without street addresses—lacked qualifying IDs.⁵¹ The law was amended in 2015 to exclude college identification certificates that had long been used by student voters. In 2016, finding that the law discriminated against Native American voters, a federal district court enjoined the law, requiring North Dakota to provide a “fail safe” alternative for voters who could not obtain a qualifying ID without reasonable effort.⁵² In 2017, North Dakota again amended its law, but retained the residential address requirement. A federal court enjoined the new law in 2018, concluding that it had a “discriminatory and burdensome impact on Native Americans,”⁵³ although the injunction was stayed on appeal.⁵⁴ Finally, in 2020, the parties to the litigation reached a settlement allowing Native American voters who do not have a residential street address to vote.⁵⁵

Wisconsin’s strict photo ID law, passed in 2011, has been repeatedly blocked as

⁴⁶ *Applewhite v. Commonwealth of Pennsylvania*, 330 M.D. 2012 (Pa. Commw. Ct. 2014).

⁴⁷ See, e.g., *Election 2016: Restrictive Voting Laws by the Numbers*, Brennan Center for Justice (Sept. 28, 2016), <https://www.brennancenter.org/our-work/research-reports/election-2016-restrictive-voting-laws-numbers#legalchallengestorestrictivephotoidlaws>.

⁴⁸ *N.C. State Conf. NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

⁴⁹ *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014).

⁵⁰ *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015).

⁵¹ *Brakebill v. Jaeger*, No. 1:16-cv-008 (D.N.D. 2018).

⁵² *Brakebill v. Jaeger*, 2016 WL 7118548 (D.N.D. 2016).

⁵³ *Brakebill v. Jaeger*, 2018 WL 1612190 (D.N.D. 2018).

⁵⁴ *Brakebill v. Jaeger*, 932 F.3d 671 (8th Cir. 2019).

⁵⁵ *Brakebill v. Jaeger*, No. 1:16-cv-008 (D.N.D. 2020).

discriminatory and reinstated by both state and federal courts over an 8-year period. Likewise, a voter ID law passed in North Carolina after the prior version was struck down in 2016 was initially blocked as racially discriminatory by both state and federal courts, though the Fourth Circuit Court of Appeals vacated the injunction shortly after the November 2020 election.⁵⁶

Efforts to suppress the vote through strict voter ID laws continue unabated to the present day. As of April 1, 2020, new voter ID requirements accounted for nearly a quarter of the 361 restrictive voting bills proposed by state legislatures in 2021. There is little question why state legislatures have so doggedly focused on imposing and tightening voter ID requirements: research has shown time and again that such laws operate to disproportionately exclude voters of color.⁵⁷ For instance, a recent study conducted at the University of California San Diego concluded that voter ID laws “disproportionately reduce voter turnout in more racially diverse areas.”⁵⁸

b. Restrictions on Voter Registration

In 2017, Georgia enacted an “exact match” law mandating that voters’ names on registration records must perfectly match their names on approved forms of identification.⁵⁹ The state enacted the law, even though only months earlier, the Secretary of State agreed in a court settlement to stop a similar procedure, which had blocked tens of thousands of registration applications.⁶⁰ A Brennan Center analysis of the policy found that, in the months leading up to the 2018 election, roughly 70 percent of Georgia voters whose registrations were blocked by the policy were people of color.⁶¹ The state subsequently enacted a law that largely ended the policy because of litigation challenging the matching program.⁶²

In recent years, some states have imposed new restrictions on the voter registration process which take aim at organizing efforts to boost participation by voters of color and low-income voters. After the Tennessee Black Voter Project collected more than 90,000 new voter registration forms in the leadup to the 2018 election, Tennessee enacted a law inflicting civil penalties on groups that employed paid canvassers if they submitted incomplete or inaccurate voter registration forms.⁶³

⁵⁶ *N.C. State Conf. NAACP v. Raymond*, 981 F.3d 295 (4th Cir. 2020).

⁵⁷ See, e.g., *Research on Voter ID*, Brennan Center for Justice (Apr. 11, 2017), <https://www.brennancenter.org/our-work/research-reports/research-voter-id>; Dan Hopkins,

What We Know About Voter ID Laws, FiveThirtyEight (Aug. 21, 2018, 7:07 AM), <https://fivethirtyeight.com/features/what-we-know-about-voter-id-laws/>; *Citizens Without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice (Nov. 2006), https://www.brennancenter.org/sites/default/files/2020-09/download_file_39242.pdf.

⁵⁸ Christine Clark, *Skewing the Vote: Voter ID Laws Discriminate Against Racial and Ethnic Minorities*, *New Study Reveals*, UC San Diego News Center, (Jun. 25, 2020), <https://ucsdnews.ucsd.edu/feature/skewing-the-vote>.

⁵⁹ Jonathan Brater & Rebecca Ayala, *What’s the Matter with Georgia?*, Brennan Center for Justice, (Oct. 12, 2018), <https://www.brennancenter.org/blog/whats-matter-georgia>.

⁶⁰ Press Release, Lawyers’ Committee for Civil Rights Under Law, “Voting Advocates Announce a Settlement of ‘Exact Match’ Lawsuit in Georgia,” Feb. 10, 2017, <https://lawyerscommittee.org/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/>.

⁶¹ Jonathan Brater & Rebecca Ayala, *What’s the Matter with Georgia?*, Brennan Center for Justice, (Oct. 12, 2018), <https://www.brennancenter.org/blog/whats-matter-georgia>.

⁶² *Georgia Largely Abandons Its Broken ‘Exact Match’ Voter Registration Process*, Lawyers’ Committee for Civil Rights Under Law, (Apr. 5, 2019), <https://lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>.

⁶³ Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, Brennan Center for Justice (January 16 2020),

c. Cutbacks to Early Voting

Over the past decade, multiple states have reduced early voting days or sites used disproportionately by voters of color. In Ohio and Florida, for example, legislatures eliminated early voting on the Sundays leading up to Election Day after African American and Latino voters conducted successful “souls to the polls” voter turnout drives on those days.⁶⁴ Federal courts have struck down early voting cutbacks in North Carolina, Florida, and Wisconsin because they were intentionally discriminatory.⁶⁵ In Florida, after a federal court mitigated but did not fully block a law rolling back early voting days, voters of color experienced disproportionate harms.⁶⁶ A study by Professors Daniel Smith and Michael Herron found that voters who had previously cast their ballot on the Sunday before Election Day in 2008—a day that Black voters relied on at three times the rate as white voters—were disproportionately less likely to cast a valid ballot on any day in the 2012 general election, when voting was no longer available on that day.⁶⁷ Similar efforts continue today.

d. Disenfranchisement of Individuals With Past Criminal Convictions in Florida

In 2019, Florida lawmakers passed a bill that made the right to vote for people with felony convictions contingent on the repayment of all legal financial obligations, including fines, fees, and restitution.⁶⁸ The bill was a clear attempt to undermine a constitutional amendment passed by voters in 2018 that finally put an end to a 150-year-old policy of permanent disenfranchisement initially intended to evade mandate of the Fifteenth Amendment.⁶⁹ Given the systemic racial inequality built into Florida’s criminal justice system, as well as the racial wealth and wage gaps in the state, it was plain that the bill would produce discriminatory results.

These results were made clear in litigation challenging the law. Expert testimony demonstrated that a staggering 774,000 Floridians were disenfranchised by the pay-to-vote

<https://www.brennancenter.org/our-work/analysis-opinion/whats-matter-georgia>; Amy Gardner, *How a Large-Scale Effort to Register Black Voters Led to a Crackdown in Tennessee*, Washington Post (May 24, 2019), https://www.washingtonpost.com/politics/how-a-large-scale-effort-to-register-black-voters-led-to-a-crackdown-in-tennessee/2019/05/24/9f6ccee1e-7284-11e9-8be0-ca575670e91c_story.html.

⁶⁴ See David G. Savage, *Federal Judge Orders Ohio to Keep Its Early Balloting in Place*, L.A. Times, Aug. 31, 2021, <https://www.latimes.com/politics/la-xpm-2012-aug-31-la-pn-ohio-early-voting-judge-20120831-story.html>; Michael C. Herron & Daniel A. Smith, *Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355*, 11 Election L. J. 331, <https://www.liebertpub.com/doi/pdf/10.1089/elj.2012.0157>.

⁶⁵ *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 925 (W.D. Wis. 2016); *Federal Court Blocks Discriminatory Early Voting Changes in Florida*, Brennan Center for Justice (Aug. 21, 2012), <https://www.brennancenter.org/our-work/analysis-opinion/federal-court-blocks-discriminatory-early-voting-changes-florida>.

⁶⁶ *Florida v. United States*, 885 F. Supp. 2d 299 (D.D.C. 2012); Wendy Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Justice (2012), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_Election_Update.pdf.

⁶⁷ Michael C. Herron & Daniel A. Smith, *Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election*, 67(3) Pol. Rsch. Q. 646, <https://www.jstor.org/stable/24371899>; see also Wendy Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Justice (2012), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voting_Law_Changes_Election_Update.pdf.

⁶⁸ 2019 Fla. Sess. Law Serv. Ch. 2019-162 (C.S.S.B. 7066).

⁶⁹ See Erika Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, 4–7 (Dec. 16, 2016), https://www.brennancenter.org/sites/default/files/2019-08/Report_Florida_Voting_Rights_Outlier.pdf.

requirement, but that Black Floridians were both more likely to owe money and more likely to owe more money than their white counterparts.⁷⁰ In fact, more than 334,000 of those disenfranchised—or roughly 43 percent—were Black,⁷¹ even though less than 17 percent of all Floridians are Black.⁷² Despite these plainly discriminatory results, a federal court ultimately held that the plaintiffs had not met the high burden of proving that the law was enacted with a racially discriminatory purpose, but said “the issue [was] close and could reasonably be decided either way.”⁷³

While a number of courts have held that felony disenfranchisement laws cannot be challenged under the Voting Rights Act because Congress did not intend to reach these laws,⁷⁴ this latest example of the race discrimination produced by Florida’s disenfranchisement law shows why Congress should take them into account this time. Many criminal disenfranchisement laws, including Florida’s, are rooted in deeply prejudiced 19th-century efforts to prevent the Fifteenth Amendment from taking full effect.⁷⁵ These laws also continue to disproportionately harm voters of color: According to data from the Sentencing Project, African Americans are disenfranchised at 3.7 times the rate of the rest of the population.⁷⁶

D. Restrictive Voting Laws Enacted This Year

As the Brennan Center has documented extensively, state legislators across the country have recently escalated efforts to enact new voting restrictions.⁷⁷ In many cases, the racially discriminatory causes and effects of seemingly race-neutral laws are hard to miss.

⁷⁰ Second Supplemental Report of Daniel A. Smith, Ph.D., *Jones v. DeSantis*, No. 4:19-cv-300 (N.D. Fl. 2020), ECF No. 334-1, 15–16, <https://www.brennancenter.org/sites/default/files/2020-05/Smith%20Second%20Supplemental%20Report.pdf>.

⁷¹ *Id.* at 16–17.

⁷² *Census QuickFacts: Florida*, U.S. Census Bureau (2019), <https://www.census.gov/quickfacts/FL>.

⁷³ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1235 (N.D. Fl. 2020), *rev’d on other grounds sub nom. Jones v. Gov. of Florida*, 975 F.3d 1016 (2020). A number of courts have held that felony disenfranchisement laws cannot be challenged under the Voting Rights Act on the basis of discriminatory results because Congress did not intend to reach these laws with the original law or subsequent renewals. See *Farrakhan v. Gregoire*, 623 F.3d 990, 993 (9th Cir. 2010) (collecting cases). Thus, Plaintiffs must prove intentional discrimination by the state legislature in order to challenge felony disenfranchisement laws. *Id.*; see also *Johnson v. Gov. of State of Florida*, 405 F.3d 1214, 1218, 1234 (11th Cir. 2005).

⁷⁴ See *Farrakhan v. Gregoire*, 623 F.3d 990, 993 (9th Cir. 2010) (collecting cases). As a result, Plaintiffs must prove intentional discrimination by the state legislature in order to challenge felony disenfranchisement laws. *Id.*; see also *Johnson v. Gov. of State of Florida*, 405 F.3d 1214, 1218, 1234 (11th Cir. 2005). Congress has previously recognized how “inordinately difficult” it is to prove that laws have a discriminatory purpose. See *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (quoting S. Rep. 97-417, 36, 1982 U.S.C.A.N. 177, 214). It is for this reason that Congress designed the VRA to protect against discriminatory policies even without proof of discriminatory intent. *Id.*

⁷⁵ Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice, 2 (May 9, 2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_Disenfranchisement_History.pdf.

⁷⁶ Christopher Uggen, et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, Sentencing Project, 4 (Oct. 30, 2020) <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.

⁷⁷ *Voting Laws Roundup: January 2021*, Brennan Center for Justice (Jan. 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021>; *Voting Laws Roundup: February 2021*, Brennan Center for Justice (Feb. 8, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021>; *Voting Laws Roundup: March 2021*, Brennan Center for Justice (Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>.

For example, Georgia recently passed legislation that restricts voting access in multiple ways, including by reducing access to mail voting.⁷⁸ According to a recent Brennan Center analysis, this law was put in effect immediately after Black voters dramatically increased their use of mail voting and it will disproportionately harm Black voters.⁷⁹ Specifically, our study found that, although white voters still made up most of all mail voters in 2020, their share of the vote-by-mail electorate dropped from 67 percent in 2016 to 54 percent in 2020; the Black share, meanwhile, surged from 23 percent to 31 percent.⁸⁰ Nearly 30 percent of Georgia's Black voters cast their ballot by mail in 2020, but just 24 percent of white voters did so.⁸¹ In other words, Georgia's new law reducing absentee voting access appears to be tied to Black voters' increased use of absentee voting. Measures making it harder to vote by mail have similarly been enacted in thirteen other states, including Florida and Iowa, and are moving through legislatures in at least 18 other states.⁸²

Even when voters of color can equally access and cast absentee ballots, states like Arizona, Georgia, Florida, Idaho, Kansas, and Montana have enacted policies that mean their votes are less likely to be counted—such as signature matching requirements, vote-by-mail ID mandates, and postage costs.⁸³ Several studies have found that absentee ballots cast by voters of color have in recent years been rejected at much higher rates than those cast by their white counterparts.⁸⁴ One study, published in the *Election Law Journal* (a leading legal resource on election issues), found that in Florida, in both the 2018 and 2016 federal elections, absentee ballots returned by African American and Latino voters were twice as likely to be rejected as those cast by white voters.⁸⁵ A similar phenomenon has been documented in a study of Florida's 2020 presidential primary conducted by the ACLU of Florida,⁸⁶ and in a Brennan Center study of Georgia's 2020 primaries.⁸⁷

⁷⁸ Michael Waldman, *Georgia's Voter Suppression Law*, Brennan Center for Justice (Mar. 31, 2021),

<https://www.brennancenter.org/our-work/analysis-opinion/georgias-voter-suppression-law>, Ga. S.B. 202 (2021).

⁷⁹ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>. Also, in Arizona, Governor Doug Ducey recently signed SB 1485, a bill that makes it harder to vote by mail. Under the new law, any voters who did not cast an early voting ballot in two consecutive election cycles will be removed from the state's Permanent Early Voting List. Voters cut from the list will no longer automatically receive their mail ballots and will have to request them. Jane C. Timm, *Arizona Gov. Ducey Signs New Law That Will Purge Infrequent Mail Voters From State's Ballot List*, NBC News (May 11, 2021),

<https://www.nbcnews.com/politics/elections/arizona-legislature-passes-law-purge-infrequent-mail-voters-n1267025>.

⁸⁰ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>.

⁸¹ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>.

⁸² *Voting Laws Roundup: May 2021*, Brennan Center for Justice (May 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021>.

⁸³ *Voting Laws Roundup: March 2021*, Brennan Center for Justice (Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021#rbe>.

⁸⁴ See, e.g., Sophie Chou & Tyler Dukes, *In North Carolina, Black Voters' Mail-In Ballots Much More Likely to Be Rejected Than Those From Any Other Race*, ProPublica (Sept. 23, 2020), <https://www.propublica.org/article/in-north-carolina-black-voters-mail-in-ballots-much-more-likely-to-be-rejected-than-those-from-any-other-race>.

⁸⁵ Anna Baringer et al., *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, *Election Law Journal: Rules, Politics, and Policy*, Vol. 19, No. 3 (Sept. 17, 2020), <https://www.liebertpub.com/doi/full/10.1089/elj.2020.0658>.

⁸⁶ Daniel A. Smith, *Vote-By-Mail Ballots Cast in Florida*, ACLU of Florida (Sept. 19, 2018), <https://www.acluf.org/en/publications/vote-mail-ballots-cast-florida>.

⁸⁷ Kevin Morris, *Digging Into the Georgia Primary*, Brennan Center for Justice (Sept. 10, 2020),

A report, based on data collected by Professor Michael Bitzer, of absentee ballots cast in the North Carolina 2020 primary found that ballots cast by Black voters were rejected at three times the rate as those cast by white voters.⁸⁸

Georgia’s new law, Senate Bill 202, also prohibits voters from casting a ballot at the wrong precinct — including votes for the contests that the voter is actually eligible to participate in — unless it is after 5:00 p.m., thus barring out-of-precinct voting for most of Election Day.⁸⁹ A Brennan Center analysis of the legislation found that the proposed policy change would disproportionately affect minority voters, where residents tend to move more frequently.⁹⁰ The case of Fulton County in 2020 illustrates this: Fulton County’s population is 44% Black and roughly 67% of provisional ballots cast in Fulton County were cast out of precinct. By contrast, Georgia’s population as a whole is 31% Black, and statewide just 44% of provisional ballots were cast out of precinct. Because Black voters live in neighborhoods with much higher rates of in-county moves, they are likely to be hit especially hard by the near-total elimination of out-of-precinct voting. This policy change could impact thousands of voters across the state.⁹¹

* * *

Lawmakers have typically justified new voting restrictions by the purported need to safeguard against voter fraud. But occasionally politicians reveal more troubling—and discriminatory—motives. At a May 2016 trial on Wisconsin’s voting restrictions, for example, former Republican legislative staffer Todd Allbaugh testified that some Wisconsin legislative leaders were “giddy” that the state’s new strict voter ID law could keep minority and young voters from the polls. Similarly, in 2012, in response to a state-level battle over early voting hours, Doug Preisse, chairman of Franklin County, Ohio’s Republican Party, told the Columbus Dispatch, “I guess I really actually feel we shouldn’t contort the voting process to accommodate the urban — read African-American — voter turnout machine.”

Those pushing these discriminatory vote suppression measures are increasingly saying the quiet part out loud, openly acknowledging that the goal of the measures is to subtract voters — particularly voters of color — from the electorate. In one instance a few months ago, an Arizona legislator made headlines when he said that he did not think everyone should vote.⁹² “Quantity is important but we have to look at quality as well,” said Rep. John Kavanaugh.⁹³ Meanwhile, Texas bill SB7 (poised to pass in the coming days) originally included language that it was meant to

<https://www.brennancenter.org/our-work/research-reports/digging-georgia-primary>.

⁸⁸ Sam Levine, *Black Voters’ Mail-In Ballots Being Rejected at Higher Rate*, *Guardian* (Oct. 17, 2020),

<https://www.theguardian.com/us-news/2020/oct/17/black-voters-mail-in-ballots-rejected-higher-rate-north-carolina>.

⁸⁹ Ga. Code Ann. § 21-2-418(a) (2021); see also Ga. S.B. 202 § 34 (2021).

⁹⁰ Kevin Morris, *Georgia’s Attempt to Limit out-of-Precinct Voting Will Hurt Black Neighborhoods*, Brennan Center for Justice (Mar. 16, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-attempt-limit-out-precinct-voting-will-hurt-black-neighborhoods>.

⁹¹ See generally Mark Niesse, *How Georgia’s Voting Law Works*, *Atlanta Journal-Constitution* (May 6, 2021),

<https://www.ajc.com/politics/how-georgias-new-voting-law-works/GF6PLR44PNESPKR5FXCBE7VEOY/>.

⁹² Timothy Bella, *A GOP Lawmaker Says the ‘Quality’ of a Vote Matters. Critics Say That’s ‘Straight out of Jim Crow.’*, *Washington Post* (Mar. 13, 2021), <https://www.washingtonpost.com/politics/2021/03/13/arizona-quality-votes-kavanaugh/>.

⁹³ Timothy Bella, *A GOP Lawmaker Says the ‘Quality’ of a Vote Matters. Critics Say That’s ‘Straight out of Jim Crow.’*, *Washington Post* (Mar. 13, 2021), <https://www.washingtonpost.com/politics/2021/03/13/arizona-quality-votes-kavanaugh/>.

protect the “purity of the ballot box,” a phrase from the state’s constitution used to justify all-white primaries in the Jim Crow era. It was removed only after it was called out during a contentious March 9 hearing on the bill.⁹⁴

E. Racial Discrimination in Redistricting

Racial discrimination in redistricting is widespread and well-documented. During the 2010 redistricting cycle, discriminatory conduct occurred not only in 2011-2012, when most states and localities drew their new districts, but also after the *Shelby County* decision.

a. Statewide Redistricting

Early in the decade, a three-judge federal court denied preclearance of Texas’ congressional redistricting plan after finding not only that the plan resulted in “retrogression,” making it demonstrably harder for minority voters to effectively participate in elections, but also that the record contained “more evidence of discriminatory intent than we have space, or need, to address.”⁹⁵ For example, in one district, lawmakers “consciously replaced many of the district’s active Hispanic voters with low-turnout Hispanic voters in an effort to strengthen the voting power of [the district’s] Anglo citizens.”⁹⁶

In a number of other states, maps were passed after *Shelby County* only later to be invalidated as discriminatory racial gerrymanders. Specifically, over the past five years, federal courts found that Alabama,⁹⁷ Virginia,⁹⁸ North Carolina,⁹⁹ and Texas¹⁰⁰ had engaged in illegal racial gerrymandering in violation of the Fourteenth Amendment in congressional or legislative redistricting. In North Carolina, for example, a federal court found that the redrawing of the state’s congressional map in 2011 was “a textbook example of racial predominance” that resulted in the

⁹⁴ Hannah Knowles, *A Texas Bill Drew Ire for Saying It Would Preserve ‘Purity of the Ballot Box.’ Here’s the Phrase’s History.*, Washington Post (May 9, 2021), <https://www.washingtonpost.com/history/2021/05/09/texas-purity-ballot-box-black/>.

⁹⁵ *Texas v. United States*, 887 F. Supp. 2d 133, 161 n.32 (D.D.C. 2012) (denying preclearance of both Texas’ 2011 state house and congressional plans under Section 5).

⁹⁶ *Id.* at 155. Because Texas did not obtain preclearance in time for the 2012 elections, a federal court in San Antonio ordered changes to Texas’ congressional plan that included creation of an additional minority coalition district in the Dallas-Fort Worth region and changes to other districts to address the deliberate retrogression of the electoral power of communities of color. *Perez v. Abbott*, 253 F. Supp. 3d 864 (W.D. Tex. 2017).

⁹⁷ *Alabama Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026 (M.D. Ala. 2017) (finding that the use of race predominated in the drawing of 12 state legislative districts without sufficient justification).

⁹⁸ *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 180 (E.D. Va. 2018) (finding that the legislature failed to satisfy its burden to prove that the “predominant use of race was narrowly tailored to achieve a compelling state interest” in drawing 11 legislative districts); *Page v. Virginia State Bd. of Elections*, No. 13cv678, 2015 WL 3604029, at *16 (E.D. Virginia 2015) (finding that defendants failed to show that the congressional plan was narrowly tailored to further Virginia’s interest in complying with the Voting Rights Act).

⁹⁹ *Covington v. North Carolina*, 316 F.R.D. 117, 165, 176 (M.D.N.C. 2016) *aff’d*, 137 S. Ct. 2211 (2017) (finding that “race was the predominant factor motivating the drawing of all challenged districts”); *Harris v. McRory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding that “race predominated in CD 1 and CD 12” and “defendants have failed to establish that this race-based redistricting satisfies strict scrutiny”).

¹⁰⁰ *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018) (holding that “HD90 is an impermissible racial gerrymander”).

unconstitutional packing of Black voters into two districts.¹⁰¹

This discrimination has often been difficult to root out. In North Carolina, for example, a Brennan Center study found that the new congressional plan adopted by the state after the district court's racial gerrymandering ruling had virtually the same electoral effects as the original map.¹⁰²

In several of the above-referenced states, racial discrimination in redistricting was also used by states as a tool for partisan gerrymandering. For instance, one Brennan Center study showed that North Carolina and Virginia's schemes to pack Black voters into congressional districts, which were later found to be racial gerrymanders, also functioned to maximize overall Republican seats.¹⁰³ Another Brennan Center study found that Texas's enacted 2011 congressional map would have given Republicans a four-seat advantage in the state's congressional delegation by failing to create any new electoral opportunities for fast-growing communities of color who had accounted for 90 percent of Texas' population gain between 2000 and 2010.¹⁰⁴

The targeting of communities of color for partisan advantage is nothing new. Historically, both Democrats and Republicans have minimized the electoral power of communities of color in order to gain partisan advantages in map-drawing, particularly in the South, where there is continued residential segregation and a high correlation between race and political preference.¹⁰⁵ This discriminatory targeting is likely to continue—and be exacerbated—in the upcoming redistricting cycle in light of the Supreme Court's 2019 ruling that partisan gerrymandering claims are non-justiciable in federal court.¹⁰⁶

b. Local redistricting

Racial discrimination in redistricting is also well-documented at the local level, both as it relates to the drawing of district lines as well as in the use of at-large elections. Since *Shelby County* was decided, courts have found numerous instances where Section 2 of the Voting Rights Act was violated in connection with county and municipal redistricting—including in Kern County,

¹⁰¹ *Harris v. McRory*, 159 F. Supp. 3d 600, 611, 627 (M.D.N.C. 2016) *aff'd sub nom.* *Cooper v. Harris*, 137 S. Ct. 1455 (2017).

¹⁰² Laura Royden, Michael Li, Yuri Rudensky, *Extreme Gerrymandering & the 2018 Midterm*, Brennan Center for Justice, 25 (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme_Gerrymandering_Midterm_2018.pdf.

¹⁰³ Laura Royden, Michael Li, Yuri Rudensky, *Extreme Gerrymandering & the 2018 Midterm*, Brennan Center for Justice, 23-25 (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme_Gerrymandering_Midterm_2018.pdf.

¹⁰⁴ Michael Li & Laura Royden, *Minority Representation: No Conflict with Fair Maps*, Brennan Center for Justice, 15-16 (2017), https://www.brennancenter.org/sites/default/files/2019-09/Minority-Representation-Analysis_0.pdf.

¹⁰⁵ Michael Li & Laura Royden, *Minority Representation: No Conflict with Fair Maps*, Brennan Center for Justice, 3 (2017), https://www.brennancenter.org/sites/default/files/2019-09/Minority-Representation-Analysis_0.pdf. Prior to the 1990s, Democrats in the South strategically divided Black communities among districts in order to protect white Democratic incumbents and prevent election of Republicans. *Id.*

¹⁰⁶ *Rucho v. Common Cause*, 139 S. Ct. 2484(2019).

California,¹⁰⁷ Virginia Beach, Virginia,¹⁰⁸ East Ramapo Central School District, New York,¹⁰⁹ Sumter County, Georgia,¹¹⁰ Ferguson-Florissant School District, Missouri,¹¹¹ Albany County, New York,¹¹² and Yakima, Washington.¹¹³

Similarly, a review by the Brennan Center of preclearance letters issued by the Department of Justice from 2010 onward identified at least 13 instances where the Department denied preclearance to a proposed redistricting plan at the county or municipal level.¹¹⁴ For example, Green County, Georgia enacted a redistricting plan for its Board of Commissioners and Board of Education that eliminated both of the county's Black ability-to-elect districts, which the Department of Justice concluded was "unnecessary and avoidable."¹¹⁵

More recently, in the aftermath of *Shelby County*, both Galveston County, Texas and Pasadena, Texas revived redistricting plans that had previously been blocked by the Department of Justice.¹¹⁶ In Pasadena, a federal court later found that the adoption of this plan, which changed how members of the city council were elected, had been motivated by discriminatory animus.¹¹⁷

c. Attempts to Manipulate Who Counts in Redistricting

In recent years, there has also been a concerted effort, led by prominent conservative activists and donors, to persuade states and local governments to exclude children and non-citizens from the population base used to draw electoral districts, drawing on a 2016 Supreme Court decision that left open the question of whether drawing districts based on something other than total population would be constitutionally permitted.¹¹⁸ There is strong evidence that the goals of this effort are explicitly discriminatory. Thomas Hofeller, a leading Republican redistricting strategist who helped draw maps after the 2010 census in Alabama, Florida, North Carolina, and Texas that were later struck down by courts as discriminatory, wrote in a memo made public after his death

¹⁰⁷ *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1144 (E.D. Cal. 2018) (concluding that "Latino voters in Kern County have been deprived of an equal opportunity to elect representatives of their choice, in violation of § 2 of the Voting Rights Act").

¹⁰⁸ *Holloway v. City of Va. Beach*, 2021 WL 1226554 (E.D. Va. 2021) (finding that at-large election scheme violated Section 2 of the Voting Rights Act).

¹⁰⁹ *Clerveaux v. East Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021) (affirming lower court's finding that school board's use of an at-large system violated Section 2 of the Voting Rights Act).

¹¹⁰ *Wright v. Sumter Cnty. Bd. of Elections and Registration*, 979 F.3d 1282 (11th Cir. 2020) (affirming lower court's finding that district map violated Section 2 of the Voting Rights Act).

¹¹¹ *Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924 (8th Cir. 2018) (affirming lower court's finding that the school board election system violated Section 2 of the Voting Rights Act).

¹¹² *Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302 (N.D.N.Y. 2015) (finding that the county legislature's districts violated Section 2 of the Voting Rights Act).

¹¹³ *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014) (finding that the at-large city council election system violated Section 2 of the Voting Rights Act).

¹¹⁴ *Instances Where DOJ Preclearance Was Denied to Proposed Redistricting Plans*, Brennan Center for Justice (May 24, 2021), <https://www.brennancenter.org/our-work/research-reports/instances-where-doj-preclearance-was-denied-proposed-redistricting-plans>.

¹¹⁵ Objection Letter from Thomas E. Perez, Assistant Att'y Gener. to Greene Cnty., Ga., at 2 (Apr. 13, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120413.pdf.

¹¹⁶ Tomas Lopez, *Shelby County: One Year Later*, Brennan Center for Justice (June 24, 2014), https://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf.

¹¹⁷ *Patino v. City of Pasadena*, 230 F. Supp. 3d 667 (S.D. Tex. 2017).

¹¹⁸ *Evenwel v. Abbott*, 577 U.S. 937 (2016).

that drawing districts on the basis of adult citizens would be “advantageous to Republicans and non-Hispanic Whites [sic].”¹¹⁹

The most advanced of these efforts to change the population basis used to draw districts has been in Missouri. Lawmakers behind a recently adopted constitutional amendment contend that the amendment would allow the state to draw legislative districts based only on the adult citizen population.¹²⁰ Lawmakers and political consultants in Texas, Arizona, Florida, and Tennessee have also reportedly explored drawing legislative districts on the basis of adult citizens in the upcoming redistricting cycle.¹²¹

Even if the Supreme Court holds that drawing districts based on a subset of the population rather than total population is permitted under the U.S. Constitution, courts have long recognized that these alternative schemes often have an impermissible discriminatory impact on communities of color.¹²² What was true in the 1970s and 1980s is only truer now as the country has become more diverse, with a majority of children under 1 years old now non-white.¹²³

Indeed, a recent Brennan Center study found that communities of color would bear the brunt of a change in Missouri, if effectuated.¹²⁴ Our analysis found that 28 percent of Missouri’s Black population, 54 percent of its Asian population, and 54 percent of its Latino population would go uncounted if only adult citizens were considered in redistricting. This is in comparison to only 21 percent of Missouri’s white population that would be excluded. The result would be that whiter, rural areas would gain representation, while districts with large Black and sizeable Latino population in the Kansas City and St. Louis areas would need to be significantly reconfigured. Specifically, three of the four majority-Black senate districts in Missouri would be underpopulated under adult citizen apportionment.¹²⁵ The impact in other more diverse and demographically younger states, like Texas, would be even more extreme.

II. The Need for a New Voting Rights Act

The passage of the VRA in 1965 was a major step in addressing and remedying our country’s long history of racialized vote suppression. It delivered on the promise made at the

¹¹⁹ Michael Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, N.Y. Times, May 30, 2019, <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

¹²⁰ David Daley, *The Coming Redistricting Showdown in Missouri Will Be Huge*, The Hill, Nov. 10, 2020, <https://thehill.com/opinion/campaign/525007-the-coming-redistricting-showdown-in-missouri-will-be-huge>.

¹²¹ See Ari Berman, *Trump’s Stealth Plan to Preserve White Electoral Power*, Mother Jones, Jan/Feb 2020, <https://www.motherjones.com/politics/2020/01/citizenship-trump-census-voting-rights-texas/>; see also Justin Miller, *Republicans Come to Texas to Prepare for the 2021 Redistricting Battle*, Texas Observer, Aug. 20, 2019, <https://www.texasobserver.org/republicans-come-to-texas-to-prepare-for-the-2021-redistricting-battle/>.

¹²² See e.g. *Kilgarlin v. Martin*, 252 F.Supp.404, 411 (S.D. Tex. 1966) (finding that apportionment based on qualified electors was unconstitutional and a violation of the Voting Rights Act); *Terrazas v. Clements*, 581 F. Supp. 1319, 1328 (N.D. Tex. 1983) (finding in court-approved settlement that apportionment under the Texas Constitution based on “qualified electors rather than population dilutes the voting strength of racial and ethnic minorities”).

¹²³ William H. Frey, *Less Than Half of US Children Under 15 Are White, Census Shows*, Brookings Institute (June 24, 2019), <https://www.brookings.edu/research/less-than-half-of-us-children-under-15-are-white-census-shows/>.

¹²⁴ Yuri Rudensky & Gabriella Limón, *Gerrymandering Away Missouri’s Future*, Brennan Center for Justice (Sept. 18, 2020), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-away-missouris-future>.

¹²⁵ Yuri Rudensky & Gabriella Limón, *Gerrymandering Away Missouri’s Future*, Brennan Center for Justice (Sept. 18, 2020), <https://www.brennancenter.org/our-work/research-reports/gerrymandering-away-missouris-future>.

passage of the 15th Amendment that Americans should be free from racial discrimination when voting. It provided safeguards to block new and mutating forms of vote suppression and the teeth to enforce those protections. Without these mechanisms over the last 8 years, discriminatory voting laws have proliferated. The VRAA would restore and modernize the protections against race discrimination that existed pre-*Shelby*, and move us closer to voting equality.

A. Preclearance Was an Effective Tool Against Discrimination in the Voting Process

The VRA's pre-*Shelby* preclearance requirement was highly successful in stopping voting discrimination in covered jurisdictions. It prevented discriminatory laws and practices from going into effect and deterred states from adopting new ones. Between 1998 and 2013, Section 5 blocked 86 discriminatory changes, including 13 in the 18 months before *Shelby County*.¹²⁶ It prompted jurisdictions to withdraw hundreds of potential discriminatory changes, and it dissuaded them from offering even more such changes in the first place.¹²⁷ The Supreme Court acknowledged in *Shelby County* that the VRA, when fully in force between 1965 and 2006, "proved immensely successful at redressing racial discrimination and integrating the voting process."¹²⁸

Without Section 5 preclearance, there is no longer an adequate check against discriminatory laws and practices. The policies implemented in the immediate aftermath of the *Shelby County* decision make clear that Section 5 was holding back discriminatory measures. Within hours of the Court's decision, Texas moved forward with implementing what was then the nation's strictest voter identification law, a law that had been previously denied preclearance because of its discriminatory impact.¹²⁹ Mississippi announced that it would move to implement its voter ID law—which had been held up in preclearance review—the same day the Court's decision was handed down.¹³⁰ The state had also previously submitted the policy for preclearance but had not obtained approval to implement it.¹³¹ The day after the *Shelby County* decision, Alabama moved forward with its strict voter ID law, after having postponed submitting it for preclearance for almost two years.¹³² And within two months after *Shelby County*, North Carolina enacted a law that imposed a strict photo ID requirement, cut back on early voting, and reduced the window for voter registration. The state legislature had initially been considering a narrower voter ID bill, but after the decision, a state senator admitted publicly, "now we can go with the full bill," rather than less a restrictive version.¹³³

¹²⁶ Wendy Weiser & Alicia Bannon, *An Election Agenda for Candidates, Activists, and Legislators*, Brennan Center for Justice (2018).

<https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20Solutions%202018.%20Democracy%20Agenda.pdf>; Tomas Lopez, *'Shelby County': One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

¹²⁷ *Id.*; Tomas Lopez, *'Shelby County': One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

¹²⁸ *Shelby County v. Holder*, 570 U.S. 529, 548 (2013).

¹²⁹ Tomas Lopez, *'Shelby County': One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

¹³⁰ Press Release, Secretary of State of Mississippi, Statement on Supreme Court Voting Rights Act Opinion, June 25, 2013, <https://www.sos.ms.gov/About/Pages/Press-Release.aspx?pr=422>.

¹³¹ Tomas Lopez, *'Shelby County': One Year Later*, Brennan Center for Justice (June 24, 2014), <https://www.brennancenter.org/our-work/research-reports/shelby-county-one-year-later>.

¹³² *Id.*

¹³³ *Id.*

The experience of Pasadena, Texas, where the Latino population increased from 19 percent in 1990 to more than 48 percent in 2010, is illustrative. Prior to *Shelby County*, the City of Pasadena had an eight-member city council, all elected from single-member districts.¹³⁴ Only days after *Shelby County*, the City began a process to change the composition of the council so that two members would be elected from at large districts. When asked why he was pushing the change, the City's mayor told reporters "because the Justice Department can no longer tell us what to do."¹³⁵ A federal judge later found that adoption of the arrangement had been motivated by discriminatory animus toward the city's fast-growing and increasingly politically effective Latino community.¹³⁶

The implication is clear: Section 5 shielded voters from retrogressive laws designed to limit voting rights. Since *Shelby County*, voters of color have disproportionately suffered under the laws implemented. With discriminatory voting practices proliferating in many states, this strong tool is again needed.

B. Preclearance Is a More Effective Tool Than After-the-Fact Litigation

Section 2 of the VRA, which allows private parties and the Justice Department to challenge discriminatory voting practices in court, remains in effect after *Shelby*, but it is no substitute for preclearance.

First, litigation is a far lengthier and more expensive process than preclearance, and lawsuits often do not yield results for voters until after an election is over.¹³⁷ Too often, this means that elections are conducted under a discriminatory law. The votes lost in those tainted elections cannot be reclaimed.

Our longstanding lawsuit against Texas' voter ID law, discussed above, illustrates this point.¹³⁸ After the state passed the law, the Department of Justice objected to it,¹³⁹ and a three-judge federal court prevented the state from implementing it.¹⁴⁰ That decision, however, was vacated after *Shelby County*, leading to years of litigation. Every court that considered the law found it to be discriminatory¹⁴¹ (and a federal district court found that it was intentionally discriminatory),¹⁴² but the law remained in effect until a temporary remedy was put in place for the

¹³⁴ *Patino v. City of Pasadena*, 230 F.Supp.3d 667, 681 (S.D. Tex. 2017).

¹³⁵ *Id.* at 722.

¹³⁶ *Id.* at 724.

¹³⁷ Objection Letter from Thomas E. Perez, Assistant Att'y Gen. to Keith Ingram, Dir. of Elections at Off. of the Tex. Sec'y of State (March 12, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120312.pdf.

¹³⁸ The Brennan Center represented the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives, along with the Lawyers' Committee for Civil Rights Under Law and other co-counsel. The case was consolidated with several others.

¹³⁹ Objection Letter from Thomas E. Perez, Assistant Att'y Gen. to Keith Ingram, Dir. of Elections at Off. of the Tex. Sec'y of State (March 12, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120312.pdf.

¹⁴⁰ *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012).

¹⁴¹ See *Texas NAACP V. Steen (consolidated with Veasey v. Abbott)*, Brennan Center for Justice (Sept. 21, 2018), <https://www.brennancenter.org/our-work/court-cases/texas-naacp-v-steen-consolidated-veasey-v-abbott>.

¹⁴² *Veasey v. Perry*, 71 F. Supp. 3d 627, 698-704 (S.D. Tex. 2014). The Court determined that the law had a discriminatory purpose under Section 2 of the VRA and the 14th and 15th Amendments because "racial discrimination was a motivating factor" in its passage. It reached this determination by looking at several factors. First, in six years of debate, no impact study or analysis was conducted to determine whether it would impair minority voting rights, despite legislative opponents' demands for one. Second, proponents of the law also departed from normal legislative procedure

November 2016 election.¹⁴³ In the meantime, Texans were forced to vote in several hundred federal, statewide, and local elections under discriminatory voting rules.¹⁴⁴ There are other examples of litigation victories well after voters suffered injury; for example, a challenge to the Alabama voter ID law mentioned above was filed on December 15, 2015.¹⁴⁵ The law was upheld by the Eleventh Circuit, which granted summary judgment to the state of Alabama, in July 2021.¹⁴⁶

Litigation is also inferior to preclearance because courts have used the Supreme Court’s so-called *Purcell* doctrine to deny relief when it is most needed—right before an election.¹⁴⁷ The *Purcell* doctrine provides that courts should avoid changing election rules in the period right before an election because of the possibility of voter confusion and administrative difficulty. Under the doctrine, dozens of court rulings that removed barriers to voting during the pandemic were reversed in 2020, creating a perverse incentive for wrongdoers to adopt discriminatory changes close to an election to avoid judicial oversight. Preclearance would negate the opportunity to abuse this doctrine.

Moreover, the effectiveness of voting rights litigation can be seriously undermined in the future because of new and growing efforts within states to make it harder to challenge discriminatory voting laws in courts. A recent Brennan Center study found that state lawmakers in 26 states have introduced legislation targeting courts and threatening judicial independence; in 8 of those states, legislators have specifically targeted election cases.¹⁴⁸

C. The VRAA Will Thwart or Mitigate Future Discriminatory Voting Laws, Policies and Practices

The VRAA is designed to respond to the discriminatory practices I have described today, in a way that is responsive to the Supreme Court’s concerns. Notably, through its “geographic coverage” provisions, it modernizes the formula used to determine which jurisdictions will be subject to preclearance, drawing on a recent history of discrimination in voting. This updated formula targets discrimination as it exists in 2021.

to pass it, instead saying there was an “emergency” that required immediate resolution. Third, the law did not actually directly address the problems it claimed to address. For example, to fight non-citizen voting, the law approved the use of a small number of IDs, including some legally issued to non-citizens. Fourth and fifth, legislative history and contemporaneous statements showed that the bill’s proponents understood the impact the law would have on minority voters. Additionally, the Court found that the law produced a discriminatory result in violation of Section 2 of the VRA and constituted an unconstitutional poll tax.

¹⁴³ Michael Wines, *Texas Agrees to Soften Voter ID Law After Court Order*, N.Y. Times, Aug. 3, 2016, <https://www.nytimes.com/2016/08/04/us/texas-agrees-to-soften-voter-id-law-after-court-order.html>.

¹⁴⁴ Adam Liptak, *Supreme Court Allows Texas to Use Strict Voter ID Law in Coming Election*, N.Y. Times, Oct. 18, 2014, <https://www.nytimes.com/2014/10/19/us/supreme-court-upholds-texas-voter-id-law.html>.

¹⁴⁵ *Greater Birmingham Ministries v. Alabama*, 161 F. Supp. 3d 1104, 1107 (N.D. Ala. 2016).

¹⁴⁶ *Greater Birmingham Ministries v. Alabama*, 992 F.3d 1299 (11th Cir. 2021).

¹⁴⁷ See, e.g., *Veasey v. Perry*, 769 F.3d 890, 893-96 (5th Cir. 2014) (issuing stay and collecting cases).

¹⁴⁸ Patrick Berry et al., *Legislative Assaults on State Courts — 2021*, Brennan Center for Justice (May 19, 2021), <https://www.brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2021>. See also, Patrick Berry and Alicia Bannon, *Lawmakers Are Targeting the Courts That Could Shoot Down Voter Suppression Laws*, Wash. Post (May 19, 2021), <https://www.washingtonpost.com/outlook/2021/05/19/voter-suppression-laws-states/>.

In addition, the VRAA introduces limits on measures that have historically been used to discriminate against voters of color.¹⁴⁹ This “known practices” provision uses the wealth of evidence accrued since passage of the original VRA to identify categories of changes that will be always subject to preclearance when made in jurisdictions that meet minority population thresholds. A report by the Mexican American Legal Defense and Educational Fund, Asian Americans Advancing Justice, and NALEO Educational Fund found that nearly two-thirds of preclearance denials between 1990 and 2013 related to changes in methods of election, redistricting, annexations, polling place relocations, and interference with language assistance.¹⁵⁰ Each of these types of laws, and several others, would be covered under the VRAA.

The VRAA also provides for notice to be given to the public when certain election changes are made in close proximity to federal elections, restores the federal observer program, and makes it easier for those challenging discriminatory voting laws in court to obtain relief.

These provisions are more than justified and well-tailored to the record of discrimination before Congress. In requiring preclearance in the places with greatest record of discrimination and for the measures most likely to be discriminatory, the VRAA “link[s] coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement,” as the Supreme Court in *Shelby County* said the Voting Rights Act must.¹⁵¹ The bill is well equipped to attack the kinds of discriminatory practices we have seen implemented over the last few years.

For more than fifty years, the VRA has been a principal engine of voting equality in our country. Congress has repeatedly recognized its importance and effectiveness, as well the ongoing need for its protections. Since its initial passage in 1965, Congress reauthorized, updated, and expanded the VRA four times.¹⁵² The law has always enjoyed broad bipartisan support. In 2006, Congress reauthorized the law’s preclearance provisions with unanimous support in the Senate and overwhelming bipartisan support in the House.¹⁵³ It should do so again. The American public, across all demographic groups, strongly supports the VRA; according to a 2014 poll, 81 percent of voters support the Act, and 69 percent support restoring it.¹⁵⁴ The VRAA is the best vehicle for accomplishing this.

D. Nationwide Preclearance Is Not a Viable Approach

Some have suggested that the VRAA should be replaced with a bill that institutes

¹⁴⁹ Voting Rights Advancement Act, H.R. 4, 116th Cong. §4(b) (2019).

¹⁵⁰ Erin Hustings, et al., *Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities’ Voters*, 14 (Nov. 2019), <https://www.maldef.org/wp-content/uploads/2019/11/Practice-Based-Preclearance-Report-Nov-2019-FINAL.pdf>.

¹⁵¹ *Shelby Cty. v. Holder*, 570 U.S. 529, 546 (2013).

¹⁵² *History of Federal Voting Rights Laws*, U.S. Dep’t of Just. (last updated July 28, 2017), <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

¹⁵³ The 2006 reauthorization of the Voting Rights Act passed the U.S. House of Representatives 390-33, and the U.S. Senate 98-0. *Actions Overview: H.R. 9 – 109th Congress (2005-2006)*, U.S. Congress, <https://www.congress.gov/bill/109th-congress/house-bill/9/actions>; Press Release, White House, *Fact Sheet: Voting Rights Act Reauthorization and Amendments Act of 2006* (July 27, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-1.html>.

¹⁵⁴ Press Release, Leadership Conf. on Civ. and Hum. Rts., *New Voting Rights Act Polling Shows Strong Bipartisan Support Nationwide* (Sept. 30, 2014), <https://civilrights.org/2014/09/30/new-voting-rights-act-polling-shows-strong-bipartisan-support-nationwide/>.

nationwide preclearance for all voting changes. That novel proposal contemplates a powerful tool against voting discrimination across the country; unfortunately, it is not viable. The current approach—a modern geographic coverage formula for preclearance coupled with coverage of designated practices known to be discriminatory—is better tailored to address modern threats to voting, consistent with the Supreme Court’s guidance. Any gaps can and should be addressed through other legislative tools.

First, as discussed above, the current approach in the VRAA has been carefully designed to meet the conditions the Supreme Court articulated for congressional legislation enforcing the 14th and 15th Amendments. It is closely tailored to a wealth of evidence of modern discrimination in the voting process—including evidence presented before this Committee. As a result, I am confident that it is an appropriate exercise of Congress’s enforcement clause powers and will survive constitutional attacks.

There is strong reason to fear, on the other hand, that a nationwide preclearance approach would not survive a constitutional challenge before the current Supreme Court. Although the 14th and 15th Amendments were intended to give Congress broad powers to craft legislation to remedy and prevent discrimination in the voting process, the Supreme Court has interpreted that power more narrowly with respect to preclearance. Specifically, it has made clear that there needs to be a strong justification for Congress either to require states to submit proposed legislation for preclearance, or to treat states differently from one another.¹⁵⁵ To justify preclearance, the Court has further required Congress to develop a detailed record that provides strong evidence that the requirement targets real and current threats of unconstitutional discrimination in the voting process. Congress has done so with respect to jurisdictions and practices with a recent history of discrimination. Unfortunately, it would be extremely difficult for Congress to make a similar showing with respect to every voting jurisdiction and every voting practice nationwide. As Harvard Law School Professors Guy Uriel Charles and Lawrence Lessig wrote in a recent essay, a nationwide preclearance approach would therefore “certainly fail the Supreme Court’s test,” at least under the current Court.¹⁵⁶

Second, it would be difficult to administer a nationwide preclearance program, at least without a substantial expansion of capacity in the Department of Justice and the federal courts. What is more, the VRAA already includes new provisions that apply nationwide: the “known practices” provisions that require all jurisdictions that meet certain population thresholds to submit for preclearance any voting changes that fall within a list of practices Congress determined to be discriminatory. This provision has been closely tailored to address the strong evidence of discrimination before Congress.

To be clear, even if it were feasible, nationwide preclearance would not obviate the need for further congressional legislation to combat recent attacks on Americans’ freedom to vote. As explained below, the preclearance requirement is extremely powerful, but standing alone, it will not address the full range of the vote suppression problem facing the country. More would still be needed.

¹⁵⁵ See *Shelby County v. Holder*, 570 U.S. 529 (2013); *NAMUDNO v. Holder*, 557 US__ (2009).

¹⁵⁶ Guy-Uriel Charles & Lawrence Lessig, *The Democrats are Walking Right Into a Trap on Voting Rights*, Slate (May 24, 2021, 2:19 PM), <https://slate.com/news-and-politics/2021/05/democrats-joe-manchin-voting-rights-trap.html>.

III. The VRAA and the For the People Act

Although passing the VRAA is critical to protecting American voters, it is not enough. To fully protect voters and stop the current wave of voter suppression in the states, Congress must also pass and send to President Biden for his signature the For the People Act, comprehensive democracy reform legislation designated as H.R. 1 in the House and S. 1 in the Senate.

Division A of the For the People Act—which derives from the federal Voter Empowerment Act written and long championed by Rep. John Lewis¹⁵⁷—would set a basic federal foundation for voting access to fill critical gaps the VRAA cannot fully address. It would require states to modernize voter registration, including instituting same-day and automatic voter registration, along with strong protections to keep eligible voters from being purged from the rolls. It would also require states to allow two weeks of early voting (including on weekends) and no excuse voting by mail. And it would restore voting rights to formerly incarcerated citizens once they complete their sentences, increase legal protections against voter intimidation and deceptive practices intended to suppress the vote, and take a variety of other steps to protect the freedom to vote. Finally, it would ban partisan gerrymandering and take other steps to protect racial and language minorities in the congressional redistricting process. All of these provisions and many others are summarized in the Brennan Center’s online annotated guide to the bill.¹⁵⁸ (Divisions B and C of the For the People Act contain much needed campaign finance and ethics reforms, which the Brennan Center also strongly supports.¹⁵⁹)

The VRAA and the For the People Act address different facets of the problem of voter suppression. The VRAA focuses on race discrimination in voting and would restore and update the federal preclearance process. Its protections are largely prospective; they mostly cover *changes* in voting rules. Thus, a restrictive bill passed before the VRAA’s enactment would not be covered. The For the People Act would, on the other hand, override previously-enacted state laws and previously-adopted practices to the extent that they conflict with its provisions.

Moreover, the VRAA’s preclearance process is by its nature targeted, and it would not apply to every voting change in every jurisdiction. Its geographic coverage depends on statutory triggers that turn on the existence of documentary evidence of voting discrimination, such as successful lawsuits or consent decrees.¹⁶⁰ This means that places without a significant recent history of trying to restrict access to the ballot will not be covered until the violations add up.¹⁶¹

¹⁵⁷ See Voter Empowerment Act, H.R. 1275, 116th Congress (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1275>.

¹⁵⁸ See *Annotated Guide to the For the People Act of 2021*, Tit. I, subtit. A, D, E, H, I, Tit. II, subtit. F, Brennan Center for Justice (Mar. 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021>.

¹⁵⁹ *Hearing on S. 1, The For the People Act, Before the S. Comm. on Rules & Admin.*, 117th Cong. (2021) (testimony of Michael Waldman, President, Brennan Center for Justice), https://www.rules.senate.gov/imo/media/doc/Testimony_Waldman.pdf.

¹⁶⁰ The Voting Rights Advancement Act of 2019, H.R. 4, 116th Cong. § 3 (2019), <https://www.congress.gov/bill/116th-congress/house-bill/4>.

¹⁶¹ For instance, in Iowa and Montana, both states that have long sought to making voting accessible, legislators have

Some jurisdictions that have in recent years restricted access to voting, like Wisconsin and Ohio, have never previously been subject to preclearance.¹⁶² Unfortunately, attacks on voting rights are becoming increasingly common even in places that do not have a history of discrimination. The For the People Act fills those gaps since all of its provisions apply nationwide.

Finally, preclearance does not cover all discriminatory practices—including those that discriminate on bases other than race, such as laws targeting student voters. It also has not been effective at combatting increasingly common partisan and racial gerrymandering that targets communities of color based on their real or perceived voting patterns, at least when those gerrymanders did not reduce the number of districts where communities of color could elect their preferred candidates.¹⁶³ By banning partisan gerrymandering by statute, the For the People Act would help ensure that communities of color are not used as a tool for partisan advantage. Preclearance also depends on the willingness and ability of the Department of Justice to fully enforce the Voting Rights Act. While that has historically been a priority in both Democratic and Republican administrations, there have been instances where even blatantly discriminatory laws were precleared.¹⁶⁴

The For the People Act's safeguards provide another critical backstop against vote suppression. According to the Brennan Center's analysis, it would preempt many of the worst restrictive voting bills being proposed and enacted in states across the country this year.¹⁶⁵ Its protections would make it easier for everyone to vote, and virtually all of them address barriers that disproportionately affect Black, Latino, and Asian voters.

recently enacted a number of new restrictions, including tighter identification requirements in both states, limits on early voting in Iowa, and elimination of same-day voter registration in Montana. Stephen Gruber-Miller, *Gov. Kim Reynolds Signs Law Shortening Iowa's Early and Election Day Voting*, Des Moines Reg. (Mar. 9, 2021), <https://www.desmoinesregister.com/story/news/politics/2021/03/08/iowa-governor-kim-reynolds-signs-law-shortening-early-voting-closing-polls-earlier-election-day/6869317002/>; Amy Beth Hanson, *Montana Governor Approves Ending Same-Day Voter Registration*, Associated Press (Apr. 19, 2021), <https://apnews.com/article/elections-montana-voter-registration-voting-5ee83eb24b3339610cfaec3570a16e4f>; Brianne Pfannenstiel, *Branstad Signs Controversial Voter ID Bill into Law*, Des Moines Reg. (May 5, 2017), <https://www.desmoinesregister.com/story/news/politics/2017/05/05/branstad-signs-controversial-voter-id-bill-into-law/311568001/>.

¹⁶² In the 2010 cycle of redistricting, for example, the Department of Justice precleared legislative and/or congressional redistricting plans in Alabama, Florida, North Carolina, and Virginia that courts later found to be racial or partisan gerrymanders. See *Status of Statewide Redistricting Plans*, U.S. Department of Justice (2020), <https://www.justice.gov/crt/status-statewide-redistricting-plans>. See also *Jurisdictions Previously Covered by Section 5*, U.S. Dep't of Justice (Sept. 11, 2020), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>; Michael Powell & Peter Slevin, *Several Factors Contributed to 'Lost' Voters in Ohio*, Washington Post (Dec. 15, 2004), <https://www.washingtonpost.com/archive/politics/2004/12/15/several-factors-contributed-to-lost-voters-in-ohio/73aefa72-c8e5-4657-9e85-5ec8b2451202/>; Claire Campbell & Laura Schultz, *Wisconsin GOP's Voting Restrictions Impact Black Residents*, Wis. State J. (Oct. 26, 2020), https://madison.com/wsj/news/local/govt-and-politics/wisconsin-gops-voting-restrictions-impact-black-residents/article_1b3af4d2-d5a7-594b-87be-7a368001c32d.html.

¹⁶³ See *Annotated Guide to the For the People Act of 2021*, Tit. II, subtit. E, Brennan Center for Justice (Mar. 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021>.

¹⁶⁴ For instance, in 2005 political appointees at the Justice Department overruled career staff in the Civil Rights Division and precleared Georgia's new voter identification requirements, despite abundant evidence that they would disparately harm voters of color. See Dan Eggen, *Criticism of Voting Law Was Overruled*, Washington Post (Nov. 17, 2005) https://www.washingtonpost.com/wp-dyn/content/article/2005/11/16/AR2005111602504_pf.html.

¹⁶⁵ Gareth Fowler et al., *Congress Could Change Everything*, Brennan Center for Justice (Apr. 1, 2021), <https://www.brennancenter.org/our-work/research-reports/congress-could-change-everything>.

None of this is to deny the critical importance of the Voting Rights Act—a necessary and proven tool to combat persistent discrimination in voting. (The For the People Act itself contains findings reaffirming Congress’s commitment to restore the Voting Rights Act by passing the VRAA.¹⁶⁶) Indeed, no single bill—not even a bill as comprehensive as the For the People Act—could envision and preempt every discriminatory voting restriction a state or locality might seek to pass. The VRAA ensures that Americans will still be protected from discriminatory voting changes that Congress did not foresee or include in the For the People Act. Both laws are necessary to guarantee all Americans a baseline level of voting access, free from discriminatory efforts to block their path to the voting booth or dilute or nullify their votes.

IV. Conclusion

Recent federal elections make clear that discriminatory voter suppression is an ongoing problem—a problem that will not subside without congressional action. The John Lewis Voting Rights Advancement Act will provide a powerful tool to combat discriminatory measures that inhibit voting rights for individuals across the country. And the For the People Act will establish baseline national rules for voting access for all Americans—rules that cannot be manipulated for discriminatory reasons or partisan gain. We urge Congress to act quickly and enact these historic pieces of legislation.

¹⁶⁶ *Annotated Guide to the For the People Act of 2021*, Tit. II, subtit. A, Brennan Center for Justice (Mar. 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021>.

Ms. ROSS. Thank you very much, Ms. Weiser.

We will now proceed under the five-minute Rule with questions, and I will begin by recognizing myself for five minutes and my first question is for Ms. Nelson.

Ms. Nelson, according to your previous testimony, in the years since Shelby County your organization has documented a significant increase in the enactment of discriminatory voting practices across numerous jurisdictions including North Carolina and including those previously covered by section 5 preclearance. The NAACP Legal Defense Fund has also filed many successful lawsuits challenging these practices under section 2 of the Voting Rights Act. However, is section 2 litigation alone adequate to remedy such widespread voter discrimination?

Ms. NELSON. Thank you very much for that question. The short answer is that no, section 2 is wholly inadequate to prevent the deluge of voter suppression efforts that we see proliferating across the country. Section 5 operated as a gatekeeper for intentional discrimination and for retrogressive actions of states. It allowed jurisdictions to go to the Federal Government to ensure that any new voting change would not harm the status quo for minority communities in their jurisdiction.

That was an incredibly powerful tool to ensure that elections would not occur, and elected officials would not be elected to bodies to govern to determine the fate and lives of people within their jurisdiction and later to find out that the tool that helped get them there was, in fact, discriminatory and that election and any subsequent actions could not be undone.

If we think about the work that section 2 does, it is an after-the-fact tool to prevent a remedy and seek a forward-acting remedy for past discrimination. Section 5 prevents that discrimination from ever occurring, so section 2 is no replacement for section 5. As powerful as it is and as much as we utilize it, it is alone not sufficient to prevent racial discrimination in voting.

Ms. ROSS. Thank you very much, Ms. Nelson.

Ms. Weiser, it is suggested that one way Congress could avoid a lengthy debate regarding updated preclearance coverage would be to adopt a nationwide preclearance regime. What are your thoughts on this idea?

Ms. WEISER. Thank you very much for that question. I believe that the approach taken by the John Lewis Voting Rights Advancement Act, a modern geographic formula for preclearance coupled with coverage of practices known to be discriminatory, has been very carefully tailored to address modern threats to voting consistent with the Supreme Court's guidance and there is strong reason to fear that a nationwide preclearance approach would not survive a constitutional challenge before the current U.S. Supreme Court.

As you know, in the Shelby County decision, the Court has made clear that there needs to be very strong justification to require states to submit their voting laws and practices for federal preclearance and strong evidence that this requirement addresses a real and current threat to discrimination in voting process. Congress has already amassed a wealth of evidence of discrimination

in the voting process and in recent years that supports the preclearance requirements that are in the VRAA.

While I do agree that the problem of discriminatory voting requirements is now spreading nationwide, I think it would be very difficult for Congress to make a similar showing with respect to every voting jurisdiction and every voting practice nationwide or at least one that would pass muster before the current U.S. Supreme Court. So, and I do note that there is as we have heard, even in the current VRAA, a nationwide preclearance provision that is tailored to a defined set of specific practices that are known to be discriminatory and so there is a nationwide component in there already.

Ms. ROSS. Thank you very much.

We are now going to move to the Ranking Member. Ms. Fischbach, you are recognized for five minutes.

Ms. Fischbach, we can't hear you.

We will give her just a second and we may have to come back to her.

Ms. Fischbach, we can't hear you, so I am going to go to Chair Nadler and then hopefully you will be ready when he finishes.

So, Chair Nadler, you are recognized for five minutes.

Chair NADLER. Thank you.

Ms. Weiser, in striking down the VRA's coverage formula in the Shelby County decision, the Supreme Court emphasized that the extraordinary remedy of section 5 preclearance must be justified by current needs. The Court noted that the increase in minority voter registration and participation in covered jurisdictions since the VRA's initial enactment demonstrated that a preclearance formula did not reflect current needs. The Court suggested that widespread voter discrimination was a problem of the past.

How do voting laws and practices your organization has documented in the last decade demonstrate that despite what the Supreme Court suggested in 2013, widely, widespread voting discrimination continues to exist, to persist in jurisdictions obvious, previously covered by section 5 even before the Court's decision in Shelby?

Ms. WEISER. Thank you, Chair.

We have been documenting some both before and after the Shelby County decision a growing push to restrict access to voting across the country and growing discriminatory voting measures at both State and local levels. In the immediate aftermath of the Shelby County decision, there was a flood of new State laws and even local practices that were immediately put into effect that had been previously blocked by section 5 of the Voting Rights Act. You have heard an example already, two examples already, from Ms. Nelson and that were put in effect, only later to be challenged for years before being struck down as discriminatory.

I note that the VRAA is very well-tailored to address these modern threats to voting that we are seeing today. Unlike the prior section 4, the touchstone is not registration and turnout numbers. It is actual proven acts of discrimination that this Congress is amassing and there are a lot of them in the records that have been out there today.

Chair NADLER. Ms. Nelson, do you see parallels between the current post-Shelby era and the unending cycle of voter discrimination litigation that defined the pre-VRA section 5 era?

Ms. NELSON. Absolutely. We were litigating cases well before *Shelby County v. Holder* and continue to do so after Shelby County released just an onslaught of attacks on the right to vote. We saw, literally, the day of the decision, states that were previously covered under section 5 resurrecting the same laws that the Federal Government had said were discriminatory and putting them into effect. If that doesn't indicate the willingness of too many jurisdictions in our country to knowingly and implement laws that they know will discriminate against American voters, then I don't know what other proof we need.

So, there is a direct line between the efforts pre-Shelby and those that are now permitted post-Shelby.

Chair NADLER. Thank you.

Mr. Greenbaum, you note in your written testimony that an oft-overlooked side effect of the Shelby County decision is the reduced number of federal observer appointments under the section 8 of the VRA. Instead, DOJ has relied on so-called monitors to ensure jurisdictions with a history of discrimination conduct the election process in a fair manner that does not disenfranchise minority voters.

Can you explain the difference between these monitors and observers and what impact the reduction in full-fledged observers has had on the efficacy of voting rights enforcement?

Mr. GREENBAUM. Thank you, Chair Nadler. There is a dramatic difference. Observers, federal observers have a federal right to observe each step of the voting process to make sure that it is non-discriminatory and fair to all voters. So, it is very powerful in terms of preventing any discrimination at the polls and the lead-up to the election and on election day. When I was at the Department of Justice and did observer coverage, I saw that in practice.

Post-Shelby County when DOJ sends monitors out to the polls, those monitors do not have a right to be there. If a jurisdiction allows them to observe parts of the process that is okay, but a jurisdiction can throw them out in much the same way that most people can be thrown out from observing the election process. So that protection against discrimination that exists when you have the federal observers has gone away.

One of the things that we are seeing in some of the legislation that is being proposed in states this year are rules that are going to make it more difficult for poll workers to be able to throw out partisan poll watchers who may be disruptive. I think in one state, Texas, they are even contemplating allowing partisan poll watchers to be able to videotape what is going on at the polls, which has a long history of photographing and videotaping and being a measure that has been used to intimidate voters of color.

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

Ms. ROSS. Thank you, Mr. Chair.

We are going to try Ms. Fischbach again.

Ms. Fischbach, are you still with us?

I am not hearing her, but we are going to keep trying, and we are going to move to Mr. Johnson.

You are recognized for five minutes.

Mr. JOHNSON of Georgia. I thank the Chair for holding this hearing. Racism is defined as a belief that inherent differences among the various human racial groups determine cultural or individual achievement, usually involving the idea that one's own race is superior and has the right to dominate others or that a particular racial group is inferior to others. When the Europeans landed at Jamestown, Virginia, in 1607, they came with the idea that they were a superior race and the Native Americans known as "Indians" or even "Injuns" were subhuman.

This idea of White supremacy was further evidenced was further evidenced with the start of the transatlantic slave trade just twelve years later in 1619, 401 years ago. Racism has never suddenly disappeared from the hearts and minds of the people it afflicts, and, in fact, racism has been foundational and permeates the soil of America. It has manifested itself in the area of voting rights for nonwhite people in America. Because racism still exists in America, the racist knife of voters' disenfranchisement is alive and well.

The lie of voter fraud in American elections is just the latest iteration. It has entrenched itself into the American psyche and proven resistant to fact checks and studies. The poison of Donald Trump's big lie has put our democracy in peril. The protections embedded in the 14th and 15th Amendments to the United States Constitution enabled Congress with the responsibility to pass laws that protect and enforce the sacred right to vote. I thank the Chair for continuing this Subcommittee's commitment to upholding and protecting that fundamental right.

Ms. Nelson, in your testimony you State that the Voting Rights Act preclearance process was "successful at dismantling the continuation of Jim Crow subjection in the electoral arena." Can you explain to us why the Voting Rights Act was so successful and how did it achieve success?

Ms. NELSON. That was tremendously successful. In fact, it wasn't until the Voting Rights Act was passed that our democracy really earned its name, and it fulfilled the promise of the 15th amendment that the right to vote should not be denied because of race, color, or a previous condition of servitude and it advanced the 14th Amendment's guarantee of equal protection under the law and it did that in many ways.

It, for example, banned literacy tests that we know were used to disenfranchise African Americans. It provided protections through section 2 of the Voting Rights Act by allowing the government and civil rights organizations and individuals to bring lawsuits against tests and devices and any other method of affecting the right to vote that ultimately resulted in discrimination because of race. All importantly, it created section 5 which was a filter for discrimination in our society.

Not only did it allow a federal district court in DC or the Department of Justice to examine new laws in certain jurisdictions, it also had a chilling effect in those jurisdictions and made them think twice before they would introduce a law that could potentially have a discriminatory impact on African American and other marginalized voters.

Mr. JOHNSON of Georgia. Well, let me stop you right there and turn your attention to the fact that in Georgia, premised upon the

big lie, in Georgia and other states, laws have been signed into operation. I would like for you to describe how those laws based on not having section 5 preclearance requirements, how these laws are acting to suppress the votes of Black people and people of color in America.

Ms. NELSON. Yes, we are actually engaged in litigation in Georgia because of the law that was recently passed that on many aspects, but particularly mail-in voting, and we know that that is a direct result of the fact that many African Americans availed themselves of this all-important tool and widely embraced tool to vote up until recently, because they turned out in record numbers and this was a direct backlash to that impressive turnout and that impressive exercise of the fundamental right to vote.

The Georgia law also limits the ability of people to receive sustenance as they wait online to vote. It criminalizes the provision of water and food to voters as they wait to exercise their right to vote. The very targeted way in which that law responded to the turnout and the particular challenges that face African American voters in Georgia is a reveal, and the particular process that was used to enact that legislation also demonstrated that the legislature was willing to do all it could to get this bill passed with no transparency, virtually no public comment, and no rigor as to how it would affect Georgia residents.

That is but one example of the very many bills and laws that the Brennan Center does such an excellent job of tracking and that we are seeing proliferate across the country.

Mr. JOHNSON of Georgia. Thank you.

My time has expired, and I yield back.

Ms. ROSS. Thank you so much.

We are going to try Ms. Fischbach again.

Ms. FISCHBACH. All right, can you hear me now?

Ms. ROSS. Great job. You are recognized for five minutes.

Ms. FISCHBACH. Thank you, Madam Chair, for your patience. I appreciate it. Remote internet is also a challenge so, and now I am on my phone so using my phone today. I thank you again.

I just wanted to ask Mr. Nobile a couple of questions if I could. In your opinion, do you think that states have used the Shelby County decision to institute measures that amounted to voter suppression or did covered states wait until after this decision to institute changes to voting practices that would have previously been blocked by the preclearance regime?

Mr. NOBILE. That is correct, Congresswoman Fischbach. It is, I enforced section 5 in the voting section for six years. I have represented covered jurisdictions in my time since then, and section 5 was effective, but what it did was increase regulation to stop discrimination and it increased costs to make minor changes to voting laws. So, there really is no surprise that following Shelby there was a flood of laws that people had either delayed or been thinking about implementing but just didn't because the expenses would have been so much. So, the degree of that and how many of those there are, it is tough to say, but just because things were implemented post-Shelby doesn't mean they were done with discriminatory intent or effect or were retrogressive effect.

Ms. FISCHBACH. Well, thank you very much. I just wanted to ask you if you have anything else to add? I know you have been listening, and if you had anything to add to some of the questions that have already been asked, maybe from your opinion.

Mr. NOBILE. Well, I think everyone has different views on election integrity. Some people think it is inherently racist. Some people think it is good to have procedures to ensure chain of custody in ballots and to make sure that there is proper observation in the electoral process.

As you know, as everyone knows, Arizona is undergoing an audit as we speak right now. There was a series of letters from the Secretary of State and the sum of some of her complaints was that there was an inadequate chain of custody of the ballots during the auditing process. Basically, what she is arguing is that there is inadequate chain of custody post-election through the audit to justify the legitimacy of the audit, which is, honestly, some of the very same things that people have been saying pre-election. There is concern about chain of custody, ballot drop boxes and how these things are being used. Maybe there is someone out there, but most people don't have a problem with the drop box. They have a problem with the drop box that isn't monitored because they want to make sure there is no malfeasance.

As everyone knows, politics in elections doesn't bring out always the best in human nature, and politics in elections are a form of human competition. For at least 2,500 years, over the history of democracy, people have been using whatever they need to do to get a competitive advantage in the election. People cheat and humans cheat in a variety of contexts, whether it is cheerleading competitions, sumo wrestling, or the Kentucky Derby, recently, people are going to do whatever they need to do to get a competitive advantage.

Now, I suspect we all disagree on the quantity of that, but it is confusing to me as someone, that someone who has actually sat and observed elections firsthand to see why the context it brings out some of the worst behavior in human behavior, suddenly there is no cheating or people trying to get a competitive advantage. Whatever people's disposition towards election integrity, I think human nature shows us that people will strive to get a competitive advantage in the electoral process and so it is appropriate to have measures to try to ensure the legitimacy of the vote.

I honestly believe that the civil rights era, the Civil Rights Act, the Voting Rights Act was a voter integrity measure to some extent because the legitimacy of the elections was suspect in the '60s and before then, because large swaths of the American South were not allowed to participate in the electoral process. So, it is tough to evaluate human or popular opinion without having people vote.

I am sorry, Chair Fischbach. I can't hear you.

Ms. ROSS. Yes, Ms. Fischbach. We can't hear you. Are you yielding back?

Ms. FISCHBACH. I am sorry. I guess that muted automatically for some reason and I apologize. Thank you very much. My time has expired, so I yield back.

Ms. ROSS. Okay, thank you.

I see we have Mr. Raskin. You are recognized for five minutes.

Mr. RASKIN. Thank you, Ms. Ross, for calling this important hearing. I want to pick up with something that Mr. Nobile just said and perhaps, Ms. Nelson, you could address this.

I appreciate Mr. Nobile's candor about this because sometimes what we get from our friends on the other side is a denial of the history of disenfranchisement and suppression of the right of people to vote, and he seemed to acknowledge that it would come back again if we don't do anything to stop it. He attributed it to human nature; Mr. Johnson attributed it to our history of racism and political White supremacy in the country, but we are already seeing it coming back.

Ms. Nelson, let me ask you about Georgia. We know there are hundreds of bills across the country that are meant to dismantle early voting, weekend voting, or make people go out and get a notary public before they ask for an absentee ballot or whatever. In Georgia they have already signed into law a bill making it a crime punishable by up to a year in jail to pass somebody a bottle of water or a chocolate chip cookie who has been waiting in line for six hours to vote.

So, you say, correctly, this will have a disproportionate effect in African American communities, where I think it has been shown the lines are longer in a lot of the minority communities, so let's say a State comes up with a law like that which will definitely have a severely disproportionate effect on the minority community.

In the wake of *Shelby County v. Holder*, Ms. Nelson, what can you do as a lawyer to stop it? If everybody agrees, if a reasonable person would agree that this has targeted the minority community, what can you do to stop it? Does preclearance work anymore or can you go get an injunction against it? What can you do?

Ms. NELSON. Well, if section 5 were in place, we would have that law screened by the Federal Government. There would have to be an examination by a federal district court or the Department of Justice, and the analysis would be whether minority voters are put in a worse position as a result of the passage of that law, and I think the answer would be a resounding yes.

As you mentioned, minority voters are exponentially more likely to have to wait in long lines, to have to endure obstacles for a variety of reasons as they try to exercise the fundamental right to vote. There have been studies in Georgia that show that Georgia voters waited in longer lines this past election and in previous elections. So, this type of targeted legislation that makes that wait, makes that burden even more difficult and more onerous to bear is something that I am certain a federal court or a Department of Justice that was doing its job would recognize puts minority voters in a hard place.

Mr. RASKIN. I am sorry. So, now what, do you have any means in your arsenal to deal with it now?

Ms. NELSON. Yes. We can use section 2 as we are and the Constitution to bring litigation to try to seek injunctive relief, but that is a very, very high bar. Courts are not inclined to grant injunctive relief without a very significant showing of a likelihood of success and the hope is that the injunction would be granted before any election occurs. That is not something that we can rely on and short of—

Mr. RASKIN. In fact, isn't there a canon of construction where the courts favor not getting involved in an election before it occurs? You see what has happened with the removal of section 5, is the burden has been put on the voters all over the country—in Georgia, Alabama, Texas, and California, wherever it might be to go and get a court to get involved and to overcome all the burdens in doing that as opposed to simply the Department of Justice or a Federal Court looking at what their plan is and then examining whether it has got a discriminatory effect.

Well, let me go to Ms. Weiser. If we do adopt this attempt to save the precoverage formula where now we are covering based on proven voting rights violations that Mr. Nobile has already given us a preview of what the right-wing attack on that is going to be. They are going to say, well, there are a lot of reasons that you might have adjudicated cases of violations they might just want to settle the case and so on.

So, what is going to save us from the Supreme Court just again finding another reason to strike it down the way that they did in *Shelby County v. Holder*? That leads to my final question, which is: Do we need a constitutional amendment guaranteeing the right to vote so we are not constantly playing whack-a-mole or hide-the-ball with people who fundamentally don't want to allow huge populations of Americans to vote?

Ms. ROSS. Ms. Weiser, Mr. Raskin's time has expired so if you could do it in ten seconds, it would be great. I think the last one is a yes or no question.

Ms. WEISER. The last one is that would certainly help, but I don't think it is necessary because under properly interpreted under grand doctrine, the Constitution does protect the right to vote not only through multiple amendments but also through the first and 14th Amendments. On the proven cases of discrimination, Mr. Nobile's objections seemed to only be to the settlements prong. I think that there aren't other reasons why there would be judgments or on the settlements, if they are excluded then we will certainly lose a bunch of instances of discrimination.

This is something that Congress can balance, the incentives on both sides and that—

Ms. ROSS. Thank you for doing that.

Ms. Garcia, you are recognized for five minutes.

Ms. GARCIA. Thank you, Madam Chair, and it is great to see you at the gavel.

To the Ranking Member, I am so sorry about all the technical problems. I know, I have had them. So, I know that it is, we all have to work together through all these even though we have been doing it now for almost a year. We still seem to have some of these difficulties.

I want to thank you, Madam Chair, for putting this great panel together on this very important topic. It is important that we know that the Voting Rights Act in its history, as my colleague Representative Raskin has mentioned, has a rich history of the need for the Act and it is as one of the witnesses said, it kind of puts a ribbon on what our democracy is because it is, in fact, the right to vote that helps us protect all our other rights.

So, that is why it is important that we have this discussion because it is not really just about protecting the rights to vote for Latinos and for African Americans and Asian Pacific Americans, it is to protect everyone's right to vote. So, even when attempting to register, organize resist voters at registration, sometimes it has meant risking our jobs, it has meant risking our lives. It has meant putting our homes and ourselves at risk, but people have a right to vote and we better make sure that they can exercise that right.

It is unfortunate that even with this rich history that we fast-track to today, we are still finding these assaults on our democracy through assaults on the right to vote. As it has been mentioned already by many of you and some of my colleagues, Texas, regrettably, is a leader in this area. Republicans today are in Austin legislating and as has been mentioned Georgia has passed some laws, now Texas is trying to mirror passage of all those laws to restrict the right to vote and making it harder for communities of color and people to be able to cast their ballots.

So, in light of this attack on voting rights and extreme concerns about the impact to our communities, it is important that I share with you, and I ask for unanimous consent to add to the record a letter from the Texas congressional delegation to the Department of Justice to provide what actions the Department may take to review and challenge these laws from Texas should they become law. The session is still about three or four more days to end, so we will know soon just what we will have to challenge.

The 2020 election has repeatedly shown to be secure, safe, and accurate and, in Texas, this last election brought the highest turnout in 30 years. So, it is no surprise that we are seeing all these additional suppression and intimidation through the ballot, through these laws that are being proposed. So, I implore my colleagues from across the aisle in Texas to stop attempting to suppress the minority vote and let the people vote. That is the core of our democracy. So, I think it is high time that we pass the John Lewis act.

I also, Madam Chair, wanted to include a unanimous consent for a letter from the congressional delegation to Majority Leader Schumer urging him to pass their companion bill. Also, of course, a copy of my written testimony from June 2014, when I was a State Senator and spoke before the Senate Judiciary Committee on updating the Voting Rights Act in response to the Shelby case. So, Madam Chair, I ask for unanimous consent.

Ms. ROSS. All great additions to the record.

Ms. GARCIA. All right. Thank you, ma'am.

So, I want to start, Ms. Nelson, with you. Mr. Raskin put you through some of the items that have been passed in Georgia. I am sure you are keeping track, as many of you are, of the bills that are being proposed in Texas, and the question becomes, how are we really going to be able to challenge it? What would be the cost of litigation should we choose to challenge any one of these bills that, unfortunately, at least a couple of them are getting through?

If we can't do it under section 5, then we have got to use the constitutional basis. It is a hard bar as you said, but what about the cost? I mean, can your average litigant afford this?

Ms. NELSON. That is an excellent question and just in brief, no. These cases cost hundreds of thousands of dollars and sometimes into the millions to litigate. As many of my colleagues on this panel know because we were all involved in the *Veasey v. Abbott* case and that litigation has wrapped and we are dealing with attorneys' fees and they are significant, it takes enormous resources to challenge these laws and the complex bill that Texas is attempting to pass would require an intense amount of time, money, and commitment to challenge it and it is not something that the average voter is likely to be able to do own and it is very challenging for civil rights organizations like ours to continue to bear the burden of protecting our democracy from these assaults and from these discriminatory laws.

So, it is we absolutely need prophylactic legislation that would prevent us from the need to litigate at this clip and at this scope.

Ms. GARCIA. It takes a long time, doesn't it?

Ms. NELSON. It takes a very long time, and during that time elections happen, and leaders are elected under discriminatory conditions. That cannot be how our—

Ms. ROSS. Ms. Nelson, we are going to need to have you wrap up because we are going over time, so.

Ms. NELSON. Thank you. That is not how our democracy can continue to operate.

Ms. GARCIA. Well, thank you again and thank you to all the groups. Without you, we could not get some of this success so thank you for your work, and I yield back.

Ms. ROSS. Okay. Without objection, all your additions to the record are added.

[The information follows:]

MS. GARCIA FOR THE RECORD



SYLVIA R. GARCIA

STATE SENATOR
DISTRICT 6

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

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

Dear Chairman Leahy and Ranking Member Grassley:

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

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

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

CHANNELVIEW DISTRICT OFFICE
13301 EAST FREEWAY., SUITE 304
HOUSTON, TEXAS 77015
(713) 453-5100

MAIN DISTRICT OFFICE
5425 POLK ST., SUITE 125
HOUSTON, TEXAS 77023
(713) 923-7575
FAX: (713) 923-7676

ALDINE DISTRICT OFFICE
150 W. PARKER RD., SUITE 603
HOUSTON, TEXAS 77076
(713) 884-8797

sylvia.garcia@senate.state.tx.us

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

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

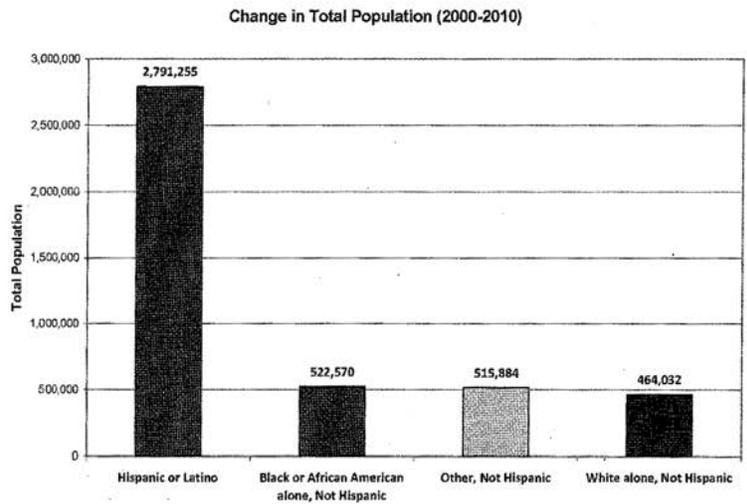
The Rapid Growth of Historically Underrepresented Communities Makes Ensuring Equal Access to the Ballot Particularly Critical for the Health of Democracy

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

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

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



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

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

Discrimination in Voting in Texas Continues

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

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

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

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

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

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

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

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

2013 – City of Pasadena

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

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

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

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

2013 – Galveston County

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

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

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

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

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

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

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Texas Statewide Violations

2001 – Statewide Redistricting

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

2004 – Statewide Redistricting

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

2007 – Statewide Candidate Qualifications for Fresh Water Supply District Supervisors

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

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2011 – Statewide Congressional and Legislative Redistricting

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

2011 – Statewide Voter ID

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

Texas Political Subdivision Violations

2002 – City of Freeport

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

2002 – City of Seguin

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

2006 – North Harris Montgomery Community College District

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

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

2007 – Waller County

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

2008-09 – Gonzales County

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

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2010 – Runnels County

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

2011 – Nueces County

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

2011 – City of Galveston

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

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

2011 – Galveston County

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

2011-13 – Beaumont Independent School District

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

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

Texans Need a Modernized Fully Functioning Voting Rights Act

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

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

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

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

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

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

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

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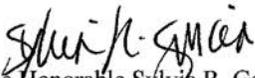
“Experience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books—and I have helped to put three of them there—can ensure the right to vote when local officials are determined to deny it.

In such a case our duty must be clear to all of us. The Constitution says that no person shall be kept from voting because of his race or his color. We have all sworn an oath before God to support and to defend that Constitution.

We must now act in obedience to that oath.”

Thank you for the opportunity to testify today.

Respectfully Submitted,


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

Enclosed Attachments (5):

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

Attachment A



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

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

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THE WALL STREET JOURNAL

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Body

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

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

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

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

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

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

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

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

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

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

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

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

"The likelihood is very much there that it will work against minority representation," said Ben Miranda, one of five existing board members. Mr. Horne's office declined to comment.

In Pasadena, which has a population of roughly 150,000, some residents say special election protections for minorities are no longer necessary due to the city's Hispanic majority. But others say the changes in the city's racial composition haven't yet changed politics due to a lack of voter participation by Hispanics.

More than 55% of Pasadena's voting-age population is Hispanic, but people with a Spanish surname, a proxy for those of Hispanic origin, represent only around 35% of the registered voters, according to city data.

"It doesn't punch its weight," said Walter Wilson, a political-science professor at University of Texas, San Antonio, of the minority electorate in general.

Pasadena elected all City Council members citywide in 1981, when Mr. Isbell, who has been elected to a total of five four-year terms, first became mayor. A decade later, local activists sued the city, seeking council districts to ensure representation for the growing Hispanic community. The tension was defused a year later, when city leaders moved to create council seats by geographic region.

The proposal before voters on Tuesday would turn two of the eight council seats back into citywide positions, and redraw the remaining six geographic districts to represent regions of the city.

Supporters say the change would unify the council and focus its attention on economic opportunities around Pasadena, including a new cruise-ship terminal and an entertainment district that could include a new version of Gilley's, the rollicking bar that put Pasadena on the map in "Urban Cowboy," starring John Travolta as a refinery worker.

"The town's identity is plant workers...western," said Mr. Isbell, as he swayed on a rocking chair in his office. "It's a heritage that we are proud of."

Opponents say the change would dilute Hispanics' voting power and make it harder for them to voice their needs, such as sprucing up the city's faded, heavily Hispanic north side.

"This city is no longer a Gilley's town," said Councilman Omaldo Ybarra, 34, who keeps a hobble-head doll of President Barack Obama on his desk.

Mexican flags fly alongside American flags nowadays at Pasadena's car lots, and Hispanic businesses have taken over entire strip malls, including one that houses Cinema Latino, which mostly shows movies subtitled in Spanish and serves tamarind and hibiscus drinks along with Coke.

In a tiny storefront next door to the theater, Jorge Armando, a 32-year-old from the Mexican state of Puebla, sells CDs with music spanning his native country. He said that when people like him can vote-Mr. Armando is a permanent resident seeking citizenship-"things will be very different" for Hispanics in the U.S.

In the meantime, Cody Wheeler, a recently elected council member whose family hails from Mexico, is knocking door to door to urge those who are eligible to vote against the mayor's proposal on Tuesday. Overall turnout in Pasadena is regularly less than 10%.

"We're doing everything in our power to engage the electorate," said Mr. Wheeler, who won his seat last May by 33 votes.

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He hadn't convinced Iris Gutierrez, 18, a college student, who could legally vote, but chose not to register because she feared she would be called for jury duty.

"I don't have much interest in it," she said of Tuesday's election.

Write to Ana Campoy at ana.campoy@wsj.com and Nathan Koppel at nathan.koppel@wsj.com

Notes

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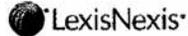
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Attachment B



ALL IN WITH CHRIS HAYES for November 8, 2013

MSNBC ALL IN with CHRIS HAYES 8:00 PM EST
November 8, 2013 Friday

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Section: NEWS; Domestic

Length: 8102 words

Byline: Chris Hayes

Guests: Bill Carter, Eric Boehlert, Steven Reiner, Julie Fernandes, Mike Pesca, Emily Bazelon, Roman Oben, Barbara Buono

Highlight: CBS News is retracting, apologizing for and plans to correct a story it broadcasts on "60 Minutes" about the attack on the U.S. consulate in Benghazi, Libya, that killed four Americans last year. The city of Pasadena, Texas, is attracting attention for one thing related to their government, their effort to suppress the Latino vote.

Body

CHRIS HAYES, MSNBC HOST: Good evening from New York. I'm Chris Hayes.

We begin with a story that has refused to go away and not because of the facts involved, but because of the concerted effort on the right to stoke scandal at any cost.

Tonight, CBS News is retracting, apologizing for and plans to correct a story it broadcasts on its crown jewel program "60 Minutes" about the attack on the U.S. consulate in Benghazi, Libya, that killed four Americans last year -- a story it broadcasts using a government contractor who claimed to be an eyewitness to the attack, but who it appears was not in fact where he said he was on the night in question. The so-called eyewitness did not apparently see the events he claimed to describe.

On "CBS This Morning", "60 Minutes" correspondent Lara Logan acknowledged the mistake.

(BEGIN VIDEO CLIP)

LARA LOGAN, "60 MINUTES" CORRESPONDENT: You know, the most important thing to every person at "60 Minutes" is the truth. And today, the truth is that we made a mistake. And that's very disappointing for any journalist. It's very disappointing for me.

Nobody likes to admit they made a mistake, but if you do, you have to stand up and take responsibility, and you have to say that you were wrong. And in this case, we were wrong.

(END VIDEO CLIP)

HAYES: The explosive charge in Logan's original report was that there was an eyewitness account from a British security contractor named Dylan Davies who used the pseudonym Morgan Jones, who claimed the U.S. could have sent back-up to the besieged facility because he himself was able to go enter it and do battle with the bad guys.

(BEGIN VIDEO CLIP)

LOGAN (voice-over): Morgan Jones scaled the 12-foot high wall of the compound still overrun with al-Qaeda fighters.

MORGAN JONES, CONTRACTOR: One guy saw me. He just shouted, I couldn't believe that it's him because it's so dark. He started walking towards me.

ALL IN WITH CHRIS HAYES for November 8, 2013

LOGAN: And as he was coming closer --

JONES: I just hit him with the butt of the rifle in the face.

LOGAN: And no one saw you do it?

JONES: No.

LOGAN: Or heard it?

JONES: No, there was too much noise.

(END VIDEO CLIP)

HAYES: To a Benghazi scandal fire that was finally in its dying embers, the "60 Minutes" report was a gallon of gasoline.

The next morning, the FOX News tour began featuring Steve Doocy and Senator Lindsey Graham.

(BEGIN VIDEO CLIP)

STEVE DOOCY, FOX NEWS: CBS did this story on Benghazi and I see criticism from the left where they go, you guys are covering a phony scandal. "60 Minutes" doesn't cover phony scandals.

SEN. LINDSEY GRAHAM (R), SOUTH CAROLINA: If we don't have a joint select committee to get out of this stove-piping problem, we're never going to get the truth. And where are the survivors? Fourteen months later, Steve, the survivors, the people who survived the attack in Benghazi, have not been made able to the U.S. Congress for oversight purposes.

So I'm going to block every appointment in the United States Senate until the survivors are being made available to Congress. I'm tired of hearing from people on TV and reading about stuff and books.

(END VIDEO CLIP)

HAYES: Because of the "60 Minutes" segment, Senator Lindsey Graham was going to block every appointment made by the president.

But even then, that day, even on that Monday, it was apparent that the so-called eyewitness may have had some pretty questionable motives. Media Matters founder David Brock on our show that night disclosed that even FOX News itself was evidently weary of using Dylan Davies as a source.

(BEGIN VIDEO CLIP)

DAVID BROCK, MEDIA MATTERS: And the other witness appears to be some type of British mercenary who apparently in conversations with FOX News, asked for money to talk and so, you know, FOX News even drew a line there, but it was good enough for CBS.

(END VIDEO CLIP)

HAYES: It turns out, CBS was also publishing Davies book, through its company Simon & Shuster, the connection "60 Minutes" did not disclose during that original report.

As for Davies, while FOX News may have shied away from him because he asked for money, it didn't stop the very same FOX News from running more than 13 segments over 11 different shows inspired by the CBS report. The right's delight at mainstream validation of their own pet obsession was even comically evident at a campaign rally for the now defeated Virginia gubernatorial candidate, Ken Cuccinelli, a week before Tuesday's election.

Cuccinelli's warm-up act for stoking the crowd in Benghazi, including Congressman Frank Wolf.

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(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The man who was going to get to the bottom of what's going to happen in Benghazi.

Thank you, Jeremiah. I appreciate that introduction, and we are going to get to the bottom.

(CHEERS)

And if anyone watched "60 Minutes" last night, you can see why we need a --

(END VIDEO CLIP)

HAYES: Then, last Thursday, "The Washington Post" reported that Davies account to "60 Minutes" and the story in his book were different from an incident report he himself filed with his employer, but Blue Mountain Security.

But CBS News stood by their story, continued to defend it, despite multiple queries. CBS News chairman and "60 Minutes" executive producer Jeff Fager said he was proud of the program's reporting on Benghazi and, quote, "confident the source told accurate versions of what happened that night.

But the bottom fell out yesterday when "The New York Times" reporter that Mr. Davies told the FBI he was not in fact on scene until the morning after the attack.

(BEGIN VIDEO CLIP)

LOGAN: What we now know is that he told the FBI a different story and that was the moment for us, when we realized that we no longer had confidence in our source and that we were wrong to put him on air and we apologized to our viewers. We will apologize to our viewers and we will correct the record on our broadcast on Sunday night.

(END VIDEO CLIP)

HAYES: Joining me now is Bill Carter, a reporter for "The New York Times", who covers the television industry. He wrote "The Times" story on this today.

Bill, my head's spinning. How did this happen?

BILL CARTER, THE NEW YORK TIMES: Well, I think it happened because CBS was looking to get a new angle on the story. They got a book and in the book, this security man claimed that he was there and went through what they considered a betting process and decided he was credible and put him on the air. I think they needed a new angle because I don't think they had a lot of other new material in that report.

So, they really needed this guy to be truthful and they were in the middle of this situation where you know, he was saying one thing to his boss and a different thing to them, but it was a credible reason for that, because he had left his villa when he was supposed to not go to the scene, and what he told was a dramatic story and that added a lot of drama to what CBS wanted to report.

HAYES: What's interesting to me is that even when the issues start to be raised about his credibility, Media Matters is raising issues, then on Thursday, there's a "Washington Post" report, you know, it follows this kind of classic cycle, which is ignore, deny, double down, and then eat crow.

CARTER: Yes. And I spoke to Lara Logan before it blew up and she was very adamant about how credible this guy was.

HAYES: She was adamant about how credible he is to you when you talked to her?

CARTER: Yes, she said she believed in what he said and she didn't think he had given two versions and the FBI report would prove that. That he gave the same report to the FBI that he gave to CBS. And so, that became really the critical aspect of, with the FBI report corroborates it.

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HAYES: So, you got two versions of the event, you got the diversion of event, the incident report, I stayed in my villa, I wasn't there the night I said I saw these dramatic things. You have what he told the CBS cameras and the audience of "60 Minutes", and the tiebreaker was what did he tell FBI, and the tiebreaker goes to he was not there.

CARTER: And it turns out he gave three interviews to the FBI. They interviewed him three separate times. And, you know, each occasion, he told the story the way it came out in the incident report. He stayed at the villa, he didn't go to the scene.

I spoke to CBS about that last night and they were obviously taken aback by that. They then spent the next couple of hours themselves checking with their FBI sources and by this morning, they had gotten the same report we had, which is that the FBI version was not their version.

HAYES: I want to bring in Eric Boehlert, senior fellow at Media Matters for America, Steven Reiner, former producer for "60 Minutes" and CBS, now director of broadcast and digital journalism at Stony Brook University.

Eric, well, you guys -- I mean, in some ways, this is not to be uncharitable here, but I'll tell the truth. This is a little over-determined in the case of Media Matters, like you guys are a liberal group. You fact check conservatives, conservatives obsessed with Benghazi, people might say maybe people like to say, well, Media Matters stopped clock being right, you know, twice a day.

But, you guys were right about this.

ERIC BOEHLERT, MEDIA MATTERS: No, we have been right about Benghazi for 13 months. I mean, we have been fact checking the story to death, and when CBS decided we want to piece of that pie, we want a piece of that right wing media narrative, there are lingering questions when there are none, when this story has been exhaustively researched by Congress. Military have talked about what the reinforcement responsible was.

When they decided to sort of key into that buzz machine, you talked about you know, FOX News the next day for an hour, the senator talking about it. What's the number one way to know you hit a home run? The next day, a senator's talking about your story.

They knew it was all predetermined. They couldn't resist it. The story didn't add up. There were no lingering questions.

The conflicts of interest should have stopped them. The discrepancies in the narrative should have stopped them. They should have apologized a week ago.

This whole thing is a train wreck, conception, execution, denial.

HAYES: I want to make clear here, Steven, I don't want to like put a dagger in "60 Minutes." I have tremendous admiration for "60 Minutes". I really do. It's incredible franchise. It's incredible they do the journalism they do. That they get the ratings they do. That they produce the profit they do.

In some ways it's like a miracle it exists in television journalism, which I think is why all of us take it so seriously. What is it like in that building today?

STEVEN REINER, FORMER CBS "60 MINUTES" PRODUCER: It's obviously a very, very difficult day for everyone there, but my question is how much real self-examination is being done there. I watched Lara this morning on CBS this morning and even though there was an apology, and even though it was borderline mistakes were made, I don't believe there was still an adequate explanation of just what kind of vetting really was done, at the end of the day.

Journalism 101, you have a single source.

HAYES: Yes, exactly.

REINER: And you have --

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HAYES: The most dangerous thing in the universe.

REINER: And you have a single source who is a self-interested source because the source is trying to sell books. Then, you have a story, which is a political hot potato, which can be red meat to certainly one side of the argument and it seems to me that raises the bar and makes it more crucial that you do your due diligence.

And I didn't hear anything in the explanation of what we did to vet that leads credibility to can be red meat to certainly one side of the argument we were fooled. You shouldn't have been fooled.

HAYES: So, the Boehlert piece is here, right, is that this was basically, you see this story, you think this is going to light up the right.

BOEHLERT: It did.

HAYES: And it did and it's also like a box for us to check the next time we're accused of liberal media. Remember, we did that Benghazi story.

Just so folks understand the universe this is coming out, Threshold is the imprint of Simon and Shuster, that was publishing the book, although it has now been recalled. Being pulled out of -- we're trying to get video of them packing up the books. That would be a good --

CARTER: By the way, that's a CBS decision.

HAYES: Right, that's a CBS decision, it's getting pulled from the top.

Now, Threshold is a conservative imprint that publishes books by Glenn Beck, Sarah Palin, the book, "Censorship: The Threat to Silence Talk Radio", Mark Levin. I mean, that's the world this story is coming out of. Those are some red flags.

BOEHLERT: Yes. You know, they want to key into it, like I said, there's an automatic audience there. But when you're going to wade into that, you have to be careful. You cannot stain your reputation just because you want to sort of fuel this.

One other quick point, after the National Guard story, you know, 2004, "60 Minutes," their last real huge embarrassment, they appointed a panel. Came outside, did lots of interviews, hired lots of lawyers and looked at this. I don't see, if they did that for that, how do they don't --

HAYES: I want to talk about that. Mary Mapes, who is famously Dan Rather's producer on the story of the National Guard documents, which were forged documents about President George W. Bush's record in the National Guard, famous Rather-gate scandal.

Mary Mapes had this to say, "My concern is the story is done very pointedly to appeal to more conservative audience's beliefs about what happened at Benghazi. They appear to have done the story to appeal specifically to political conservative audience obsessed with Benghazi, believes that Benghazi is much more than a tragedy".

You can't avoid the parallels here, Bill.

CARTER: Well, you can't avoid them because everybody's going to think of it.

I mean, I do think -- to me, this is a far lesser scandal because I don't see this as people aren't doing this sort of in a presidential election, trying to influence voting, et cetera. I think, I may be wrong, but I think people have to step back and say, look, there's a lot of agendas that were being played out here.

You're saying CBS wanted to court the right or whatever.

HAYES: Well, I was saying, I call it the Boehlert piece.

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CARTER: OK, that's (INAUDIBLE).

But my sense is they were wanting to do something on Benghazi, spent a lot of time doing it and didn't have a lot. And then this guy's book showed up. That's what I think. That's my guess.

REINER: It was a mini perfect storm. They needed to inject a big B12 shot into that Benghazi story.

(CROSSTALK)

REINER: One of the things we try to tell some of our students is how to watch television and be aware that that fellow's story, had nothing. I mean, in essence, had nothing to do with the same old story they were telling in the rest of the piece. This was a little bit of smoke and mirror -- let's inject a dramatic, heroic story, and somehow we'll give the rest of it deeper meaning.

CARTER: I want to say one thing. Getting involved in this, you then see the impact, because the State Department didn't like this at all. They didn't like this at all. And they kind of went after this guy. They wanted to go after.

And so, reporting on this is a minefield. It's a minefield.

HAYES: Right. And what I don't want to happen is to, well, if something is an ideological minefield, let's not step into it.

What does have to happen --

(CROSSTALK)

BOEHLERT: How about debunking it?

HAYES: Or just do diligence and put up what appears to be a fabricator and put the credibility of the crown jewel of CBS News on the line.

Bill Carter from "The New York Times", Eric Boehlert from Media Matters, Steven Reiner from Stony Brook University -- thank you all really.

Coming up, this is the city of Pasadena's Web site. See here where it says we have the kind of community, culture and responsiveness that are attracting attention. They are attracting attention for one thing related to their government. Their effort to suppress the Latino vote.

Why a Texas ballot initiative was the most important election of the week you haven't heard about, coming up.

HAYES: Later on the show, we're going to talk about Jonathan Martin, a Miami Dolphins offensive lineman who was allegedly bullied so mercilessly, he left the team. Sadly, Martin's experience is not unique. Extreme locker room hazing is pretty uncommon.

So, on a more sober note, tonight, I want to know, what questions would you ask someone who spent a lot of time in an NFL locker room? Tweet your answers @allinwithchris, or post to Facebook.com/allwithchris. I'll share a couple later in the show when we talk to someone who was in an NFL locker room for 12 years.

Stay tuned. We'll be right back.

HAYES: Earlier this year, the Supreme Court dealt the Voting Rights Act its most devastating blow in the 48 years since its enactment, when by a 5-4 vote, it suspended the important enforcement of the crucial section five of the act. It got a very core of the law and it meant that nine states would be free to change their election laws without getting preclearance approval from the federal government.

We've been talking for months about the potential and likely ramification of this decision and this week, we saw it play out in dramatic fashion on Election Day in one city in Texas.

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(BEGIN VIDEOTAPE)

HAYES (voice-over): Pasadena, Texas, a suburb of Houston, sometimes called Stinkadina from the smell of its chemical plants and oil refineries, home of 150,000 people, and the setting, the iconic film, "Urban Cowboy".

UNIDENTIFIED MALE: Cowboy?

UNIDENTIFIED MALE: Depends on what you think a real cowboy is.

HAYES: But like a lot of Texas towns, Pasadena has changed radically since the days when John Travolta walked the streets in a 10 gallon hat.

UNIDENTIFIED FEMALE: Pasadena not longer a small town, but a not so small city.

HAYES: The changes come in the last ten years thanks to growth in the Hispanic population, which has risen from 48 percent to 62 percent, making white people a minority in the new Pasadena.

Luckily for them, they are still a majority of the voting population. While the Hispanic population accounts for a majority of Pasadena residents, Hispanics make up only 32 percent of the city's voters, but the people who are running Pasadena see the writing on the wall. They know there are only a few voter registration drives and maybe a comprehensive immigration reform bill away from being relegated to minority status.

So, this summer, Pasadena Mayor JohnyIsbell came up with a plan. Right now, the city is run by maybe and eight council members. Each member is elected from one of eight districts each representing a section of the city.

And for the first time in the city's history, there are now two Hispanics on the council. One is Cody Ray Wheeler.

CODY RAY WHEELER, PASADENA CITY COUNCIL MEMBER: We kind of came in there, looking to bring change, reform, to really engage in the community and we've called the mayor out on a lot of things we thought weren't very honest.

HAYES: In August, Isbell started pushing a plan to shrink the number of districts from eight to six, and replace those two with at large seats to be voted on by everyone in Pasadena, and by everyone, we mean the town's white voting majority.

WHEELER: He decided to make a full power grab and he didn't care who you'd have to step over to get it.

HAYES: To the community, the goal of the plan was pretty clear.

PATRICIA GONZALES, PASADENA RESIDENT: I think what he's trying to do is trying to stop us from being able to get the things we need and be able to be the majority. He doesn't like it.

HAYES: Dilute the power of the Hispanic vote and hand two council seats to the majority white voting population. Ensuring the citywide, majority white population could band together and retain their power.

WHEELER: What this effectively does is give the south part of town the majority of council.

HAYES: It turns out this is precisely the sort of thing section five of the Voting Rights Act was designed to block. In fact, Supreme Court Justice Ruth Bader Ginsburg cited this precise type of discrimination from a pre-section five world when a Voting Rights Act came before the court earlier this year.

RUTH BADER GINSBURG, SUPREME COURT JUSTICE: These second generation barriers included racial gerrymandering, switching from district voting to at large voting.

HAYES: Did you hear that? At large voting -- it's the oldest trick in the book and it's so immediately recognizable that when a neighboring Texas town of Beaumont cooked up a similar at large plan, it was blocked by the Justice Department in December of 2012.

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But then, the Supreme Court killed section five of the Voting Rights Act in their 5-4 decision in *Shelby v. Holder*. And the mayor of Pasadena, Johnny Isbell made his move.

WHEELER: He blatantly said at the first meeting we had, now that the preclearance from the Voting Rights Act is gone, we're going to redistrict the city.

HAYES: In the mayor's own words --

MAYOR JOHNNY ISBELL, PASADENA: The Justice Department can no longer tell us what to do.

HAYES: So, this summer, Isbell arguing that certain council members don't care about citywide issues, moved to put his own at large plan on the ballot.

WHEELER: The mayor's quite aware of what this does, but he just seems to not care.

HAYES: On Tuesday, the folks of Pasadena went to vote on proposition one and the majority won by a margin of 87 votes. Now, that section five is dead, there are thousands of potential Pasadenas all across the South.

(END VIDEOTAPE)

HAYES: We should note that Patricia Gonzalez who we spoke to in that report is a resident of Pasadena, also community activist with the Texas Organizing Project.

Joining me now is Julie Fernandes, former deputy assistant attorney general in the civil rights division of the Department of Justice, now, a senior policy analyst at the Open Society Foundations.

All right. You used to work at a desk, getting applications from places that wanted to do changes like this. How common or anomalous is the story of Pasadena?

JULIE FERNANDES, OPEN SOCIETY FOUNDATIONS: Well, I think changes to the method of election are actually the second most common type of voting change, that drew objections during the days of section five, so they were ones that often got a lot of scrutiny because you always have to ask the question why and assess the impact in the way your piece described.

HAYES: I think what's interesting about this story, (a), if I'm not mistaken, the Shelby County case that came before the court that initiated the court striking down was not dissimilar case. It was actually a change to the gerrymandering of a district of a relatively small town.

And what I think is interesting is we talk about voter ID and stuff happening at the state level. There is a lot of stuff that happens at the municipal level where these fights can get really nasty, and when the stakes are high -- property taxes, school equity, things like that that we don't necessarily see from the national level.

FERNANDES: That's part of what we lost here when we lost section five, is we lost the ability to know about this stuff. Everybody's going to know about statewide redistricting, everybody is going to know about statewide law changes. But places like Pasadena, Texas, or little towns, Clara, Alabama, Shelby County, all over the country, they're going to be doing things to manipulate the system, things that sort of define who the electorate is for their advantage, that has a significant minority impact and we're just not going to know about it because we don't have section five.

HAYES: Just so people can see in that map, these are the entire states that were formerly subject to preclearance which (INAUDIBLE). They range from Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia.

Talk to me about the case of Beaumont because that was a case in which you had basically a very similar set of facts and precisely the sort of thing the Justice Department said no way.

FERNANDES: Right. Just in December of 2012 is the perfect analogy, just in December of 2012, the Beaumont ISD made a change, I think it was from seven single member districts to five single member and two at large.

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HAYES: Sounds familiar.

FERNANDES: Yes, very similar story and the same region of the state. And DOJ determined that was going to have an impact. In this case, I think from your piece, it's also clear that there's a concern about there being a discriminatory purpose as well, which is a constitutional violation.

And I think, you know, in fact, we see in Texas, a similar thing in Galveston, Texas, twice. I think once fairly reasonably, one in the late '90s. This is not an unusual technique and the situation where the minority population is growing, you have districts and there's an attempt to say how do you stop that growth from impacting the outcome of the election. It's classic.

HAYES: So, what is the recourse now that section five isn't there, preclearance is gone, the vote happened on Tuesday. The people who want to change, the mayor got his way. That's the change -- I think the city's constitution essentially, the charter.

So, what can people do?

FERNANDES: I think the resource is and I think there are people looking at whether or not there's a way to challenge in under section two of the Voting Rights Act, the part of the act still there, that you can use to bring a lawsuit to say this action was purposely discriminatory or had discriminatory effect. But those lawsuits take forever, Chris, they take a long time, they're expensive.

If the plaintiffs have such a case and if they prevail, we're looking at two years or more before we're going to have a resolution. That's two years with this -- a council elected this system, which is an arguably discriminatory system, setting the policy for that town.

HAYES: Right. Two careers in which we have these two at large districts, which we may lose all Hispanic representation in this town that is majority Hispanic, what could be past in the interim, which is the whole entire reason section five and four of Voting Rights Act, the preclearance was there.

Julie Fernandes from the Open Society Foundation, thank you so much.

FERNANDES: Thanks.

HAYES: Coming up --

(BEGIN VIDEO CLIP)

BARBARA BUONO (D-NJ), GUBERNATORIAL CANDIDATE: New Jersey represents the last vestiges of the old boy machine politics that used to dominate states across the nation. And unless more people are willing to challenge it, New Jersey's national reputation will suffer.

(END VIDEO CLIP)

HAYES: That was Democratic candidate for governor of New Jersey, Barbara Buono, in her speech following loss to Governor Chris Christie. She has a lot to say about the race and the governor and her fellow Democrats, and she will be my guest right here, next.

(BEGIN VIDEO CLIP)

BARBARA BUONO, (D) NEW JERSEY GUBERNATORIAL CANDIDATE: The democratic political bosses, some elected and some not, made a deal with this governor despite him representing everything they are supposed to be against. They did not do it to help the state. They did it out of a desire to help themselves politically and financially.

(END VIDEO CLIP)

HAYES: That was former democratic New Jersey State Senator, Barbara Buono, on Tuesday, following her --

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SEN. BUONO: Hey, I am still a senator.

(LAUGHING)

HAYES: Still senator -- good point, following her blowout loss to Chris Christie in the governor's race in a speech in which she also thanked her supporters for withstanding, quote, the onslaught of betrayal from our own political party. It is a victory speech/announcement for his 2016 presidential run that night. Christie suggested, he is the one guy who is figured out how to bring people together in a time of political polarization.

(BEGIN VIDEO CLIP)

CHRIS CHRISTIE, (R) NEW JERSEY NEWLY ELECTED GOVERNOR: I know that tonight a dispirited America angry with their dysfunctional government in Washington -- looks to New Jersey to say, "Is what I think happening really happening?" Are people really coming together? Are we really working African-Americans and Hispanics, suburbanites and city dwellers, farmers and teachers? Are we really all working together?

Let me give the answer to everyone who is watching tonight, under this government, our first job is to get the job done and as long as I am governor, that job will always, always be finished.

(END VIDEO CLIP)

HAYES: There is a lot more to the story of how Chris Christie brought people together in New Jersey and the governor wants to tell you and there is no one better to tell that tale than current state Senator, Barbara Buono of New Jersey. Senator, thank you so much for being here.

BUONO: Great to be here.

HAYES: You use this word, betrayal, in your concession speech.

BUONO: Yes.

HAYES: It is a strong word. Why did you use that word?

BUONO: Well, I just thought it would be important to be honest. You know, I struck a positive note as well because I think that this is an election first woman to run for governor of the state of New Jersey in a Democratic Party, definitely a ground breaking event.

And I want to make sure that all the young women and young men for that matter and minorities knew that it can be done, even in the face of insurmountable odds. That said, the Democratic Party unfortunately cut deals with Chris Christie and we really never had a chance in terms of gaining the financial support and institutional support that we really needed.

HAYES: You were outfund raised, I think of 6-1, if I am not mistaken --

SEN. BUONO: That is academic at this point.

HAYES: Well, the question -- I mean what do you mean by cut deals? I think the story -- here is the story that the national media is saying about Chris Christie. In these polarized times, here is the guy who hugs President Obama after Sandy, who is in a Obama state that went Obama by 17 points, democratic state, won by a whopping, you know, whatever was 30 points on Tuesday night, you know? And, is bringing people together. What about the bringing people together, do people outside of New Jersey politics not understand?

BUONO: Well, I can tell you in New Jersey, he has not brought people together. People are -- you know, we have the highest unemployment in the region for the last four years. People are struggling. But, what this governor has done, people's eyes glaze over when he tells jokes on late night T.V. and he talks about Sandy, Sandy, Sandy, and the fact of the matter is, you know, the Democratic Party bosses and Chris Christie struck a deal.

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HAYES: What does it mean? What strike a deal mean?

BUONO: Well, you know? It can mean different things for different people. You know, for those in South Jersey that meant that Chris Christie would not mount an offensive against their senators and assembly people in that district.

It could mean different things in the Northern end of the state depending on what your political interests are and what your business interests are. And, the fact of the matter is, I think that people of New Jersey deserves someone to represent them and not someone's narrow political and business interests.

HAYES: So, there is a kind of nonaggression pact, essentially, that is struck between members of your party in the state senate, George Norcross is one of them in South Jersey, right? Yes?

BUONO: Yes.

HAYES: That basically, they are not going to go after Christie because it is in their own interest to be able to work with him to deliver whatever goods they need for their district.

BUONO: Look, Chris Christie -- nobody is more enamored with Chris Christie than himself. And, he said, he is a straight talker; but, let me just tell you this. You put a political boss in front of him and say this is what you need to do to get elected in the next election and you will see him fold like a cheap suit.

HAYES: You say Christie?

BUONO: Yes.

HAYES: What do you mean by that?

BUONO: Well, you know he really does not -- he said it himself when he was in Boston a few months ago. He said if you want someone who stands for anything, or ideology or conviction, then I am not your guy because I am in it to win it. And, honestly, I do not care that he is running for president. It is how he is running for president.

HAYES: But, then what is wrong with this mono. I mean when you look at Washington, right, the thing that everyone is talking about warning for are the days of transactional deal making politics.

BUONO: They are?

HAYES: Well, people, when people look at the shutdown, they say, "Well, if we had things like earmarks, if there are ways to have kind of these transactional deals, that things would work."

BUONO: There is a big difference between having a deal that benefits the people of New Jersey or the people of the nation or any state and a deal that is solely to benefit the political or business interests of someone. That is the big difference. Compromise and transactional politics, I think, are two very different things and I have a very different impact on the people and the democracy.

HAYES: What is work going to be for you like as a member of the senate caucus in the state of New Jersey after saying the things you said, after being abandoned and betrayed by your fellow democrats?

BUONO: Look. I have always run against the bosses. Back in 1994, when I first transfer the assembly, I ran against the political bosses' candidate and I won. And, then again when I ran in the senate, they said I could not win, and I did.

And, I became the first woman majority leader, first woman budget chair because there were all these deals that were being made. You know I am always going to be the person I am. I have been there and I will continue to be there for the people of New Jersey and that is it. Very simple.

HAYES: All right. State Senator, Barbara Buono, thank you so much for your time.

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BUONO: Thanks for having me.

HAYES: Coming up, the story everyone is talking about this week, NFL bullying. My guest will include a former NFL player, who says fans have demanded total access and immersion in the game and then complain about the culture in the same breath. Stay with us.

HAYES: Earlier in the show, we asked you what questions you would ask someone who spent years in an NFL locker room. We got a ton of answers on Twitter and Facebook. Here is just a few, Sean from Twitter asked, "Was there any discussion about harassment laws and your rights when you were hired by the NFL?"

Stevie wonders, "If you saw this happening, would you intervene. I was choke it in the first place." And, Cindy wants to know, "Who sets the code of conduct in a locker room? How is that person chosen and is the code of conduct condoned by the coaches?" Those are great questions. Thanks to HBO's series "Hard Knocks," we can actually take a look inside a real NFL locker room. Here is what was happening last year with the Miami Dolphins.

(BEGIN VIDEO CLIP)

RICHEL INCOGNITO, MIAMI DOLPHINE GUARD: You check your Facebook lately? Maybe you should not use your (EXPLICIT WORD) number for your iPad password, bud. 8484.

UNIDENTIFIED MALE SPEAKER (1): I used it.

INCOGNITO: Weird.

UNIDENTIFIED MALE SPEAKER (2): Got him.

INCOGNITO: It is a good guess. You might want to check your Facebook, bud.

UNIDENTIFIED MALE SPEAKER (1): What does it say? (EXPLICIT WORD)

INCOGNITO: I was going to put something up there rude, but then I saw the picture of your girlfriend, I felt bad.

(END VIDEO CLIP)

HAYES: He seems, nice, right? Charming Facebook (inaudible) that clip Dolphins Lineman, Richie Incognito is at the center of a bullying harassment hazing scandal that is rocking the NFL this week. In just a few short minutes I will be joined right here in the studio by a former player who said this week that you only get bullied in an NFL locker room if you allow it to happen.

HAYES: It is the bullying scandal that has shaken a multibillion dollar business to its foundation. The story is absolutely thrown into disarray. The organization Forbes calls the most lucrative sports league in the world. The \$9 billion industry that is, The National Football League.

Well, it began last week when reports emerged that Miami Dolphins Jonathan Martin had left the team after a prank his teammates pulled on him in the cafeteria. A prank Martin apparently did not find funny. He says that in a reporting he got frustrated and smashed his tray on the floor and left the facility.

Initially, the story out of Miami was that Martin left the team because he needed quote, "Assistance for emotional issues." In the days since, new allegations have emerged indicating that Martin was the victim of intense sadistic and persistent bullying and hazing in the locker room.

And, according to reports, the chief instigator of that bullying was his team Richie Incognito. Incognito for his part has quite a story. In 2003, he was suspended by his college coach of Nebraska. A year later convicted a misdemeanor assault, same year suspended indefinitely by Nebraska and he was dismissed from Oregon's program after only a week with the team then after a few years in the NFL in 2009, he was voted the league's dirtiest player in a poll of fellow players.

ALL IN WITH CHRIS HAYES for November 8, 2013

Fellow teammate Cam Cleeland remembers Incognito as and I am quoting directly, "An immature unrealistic scumbag with no personality and locker room cancer who just wanted to fight everybody all the time." Earlier this week, Incognito jumped on Twitter to defend himself and challenge a reporter from ESPN tweeting, "If you or any of the agents you sound off for have problem with me, you know where to find me. #bringit."

Which the reporter did by tweeting some of the messages Incognito allegedly left on Martin's phone like, "Hey, what's up, you half N-word piece of expletive." On Sunday, the dolphins announced Incognito had been suspended for conduct detrimental of the team. Now, the NFL is investigating just yesterday. Martin's camp released this statement. Jonathan Martin's toughness is not an issue. He endured harassment that went far beyond the traditional locker room hazing.

Jonathan looks forward to getting back to playing football. In the meantime, he will cooperate fully with the NFL investigation. The scandal has just ripped back the curtain in the part of the football world we do not get to see every week, when we tune in to watch what is essentially managed to televise violence, which also happens to be the most successful form of entertainment in America today.

Joining me now is Mike Pesca, Sports Correspondent for NPR. Emily Bazelon, Senior Editor of legal affairs, writer for "Slate." Also author of a great book, "Sticks And Stones: Defeating The Culture of Bullying and Rediscovering the Power of Character and Empathy.

Mike I want to begin with you. This has blown up. I mean, it is kind of remarkable to me what a fire storm this has created. And, I think the entry point into why it is, is you see Jonathan Martin, who is just a massive human being, who does one of the most physically demanding, intimidating, strenuous jobs in America probably and you think, how could this guy be bullied. Right? That is the core of it.

MIKE PESCA, NPR SPORTS CORRESPONDENT: Right. And, it is the job of so many Americans, so many armchair quarterbacks that they say -- you to them, it speaks to toughness and it speaks like this lost ideal of whatever their version of masculinity is.

And, this is why when it came out, you did not need a lot of information. In fact people did not have a lot of information. The first day when people were debating it, they did not even know about the death threats that he got from Incognito and some of the slurs that you read.

But, you know, the debate was, how do you not stand up for yourself? How do you not punch the other guy in the nose? And, that came from players, former players, the GM of his team, just everyone.

HAYES: From the GM of his team. Former players, coming out like Ricky Williams, who I like and respect.

PESCA: Yes. I am a football fan of Jeff.

HAYES: He is a really thoughtful guy. Emily, as someone who wrote about and studied bullying, I am really curious to hear your reaction to the kind of disbelief that is being expressed both in the league and I think people watching that someone of that size could be bullied. And, I want you to talk about that right after we take this break.

HAYES: We are back. I am here with Mike Pesca and Emily Bazelon. And, joining us now is Roman Oben a former NFL player, who is a left tackle, now a football analyst for MSG and MY9 News. He is wearing a super bowl ring. I never held a super bowl ring in person. It is massive.

All right, Emily, I want to go to you on this -- This bullying question. What was your reaction to someone who wrote a whole book on bullying to the reaction of so many people, how could this massive individual be bullied?

EMILY BAZELON, WRITER FOR SLATE: Look, Jonathan Martin is a big guy in a locker room with a lot of other big guys. And, I think what matters here is the context. He is the new player. Richie Incognito is the veteran, who is in a leadership position and you can be socially excluded and made to feel harassed and terrible about yourself by other people. You can go through that kind of psychological torment and bullying, no matter how big you are.

HAYES: Yes. I think the psychological component of this is key. But Roman, you are someone -- you have been tweeting basically being like -- what a lot of other players have said, which is, "Look, if you can't take the heat, get out of the kitchen," I guess? I mean how are you reacting to this?

ALL IN WITH CHRIS HAYES for November 8, 2013

ROMAN OBEN, FORMER NFL PLAYER: Well, I think given this incident, there is different levels between what is a rookie responsibility, or getting the donuts and doing all those things and what Richie Incognito did to Jonathan Martin. And, as these ten levels have say in between there and I think -- At those cases, someone should have said hey, lay off this kid. I'm a man first. Deal with it in the parking lot.

And, obviously in regular society, in bullying in the bigger picture, you can't deal with it that way, but talking about a football environment because I played football in the locker, I mean that is how you deal with it. So, you deal with the locker room with locker room issues and unfortunately, this story has become so huge that you have Ph.Ds and people in education and if this is the workplace, you would not have to buy lunch for everyone everyday. You would not be in the hazing. But, unfortunately, this has come out, a lot of things I have seen throughout my whole career and college.

HAYES: OK. So, what I think we need to do here is distinguish between a few different categories and things.

OBEN: Right.

HAYES: So, there is hazing, which is like "Hey, rookie, pick up my pads," which I think is a kind of -- I guess kind of a jerk move; but, like that is okay. That is not the worst thing in the universe.

OBEN: No. Not at all.

HAYES: And, there is a rookie dinner, where we run up a \$15,000 tab and you have to pay for it. Well, that sucks, I mean -- but -- OK that is not violent. Then, there is physical violence. I want to hear the story because this Incognito guy seems to me, just diagnosing like something of a psychopath.

This is a former player Cam Cleeland, who was clubbed in the face by a sock filled with coins that free-agent linebacker Andre Royal had spent all day collecting from teammates -- Incognito. It shattered Cleeland's eye socket and nearly cost him his eye, which now provides him only with partial vision. That is not hazing. That is assault. Right? Am I wrong about that? Or does that happen in locker rooms all the time.

OBEN: It is assault and when we read it, it is awful, but in the football environment, we always tow that line between what is a passionate head coach and what is the appropriate. What is motivation? What is getting in a guy's face and what is inappropriate? What's getting a rookie tougher, seeing what a guy is made of and what's a racist comment and I think Richie Incognito absolutely went too far. We have all acknowledged that. But, there is an unwritten rule, and this has not been discussed this week. If you cannot deal with the Richie Incognito, and I do not feel this way, but if you can't deal with Richie Incognitos of the world, what are you going to do on third and ten against Jared Allen?

HAYES: That is -- I am sorry. That is crap.

OBEN: Hey! Look. Why do these teams scrutinize these rookies when they come out of college? Why does the general manager for the Miami, Dolphins asked Ded Bryant, was your mother a prostitute? This is the same organization.

HAYES: OK. So, there is two ways to go by responding to that. And, I want to get Emily's response to that question. But, here is my response to that is that first of all, you are making me feel like, "A. I got to think the psychological make-up that allows you the stand tough and strong under conditions of third and ten and in these sort of relentless, sadistic mental games are different, but may be they are not.

But, if they are not, then what you make me feel is that like football is just a game of sadism and violence and kind of a mall of horror that we all gaze upon and clap for. Like if you are telling me there is not that much difference than playing this game and being hounded this way in a locker room, I am like, "Oh, football is even more messed up than I thought."

OBEN: But, the fans want it, though. They want Hard Knocks. They want to go in the locker room. They want to see this stuff. And, when this happens, "It is oh! I can't believe these guys behave this." Well, it is football. It is not a fourth grade at recess.

ALL IN WITH CHRIS HAYES for November 8, 2013

HAYES: Right. But, it is also -- Mike. --

PESCA: But, it is not football. I mean so many teams have come out and said that sort of behavior would never happen in our locker room and I think what is troubling is that you are here saying rightly so, there is a fine line. There is a gray area. This is way over the line, but you ask the Dolphins. The Dolphins, all are sticking up for Incognito.

HAYES: Right.

PESCA: They are all saying, "Well, this is not the situation that you understand it." And, the rest of the league is kind of 50/50 on its Incognito was right. But the Dolphins all stick together. That shows me a sort of group mentality.

HAYES: Yes.

PESCA: Very troubling.

HAYES: That is my question for you, Emily, which is I think everyone now says, "Yeah, this was over the line."

OBEN: 100%.

HAYES: And, we have heard the voice mails that are just like, "I am threatening to kill you." Like you can't threaten to kill people or rape their loved ones, which is also happening.

BAZELON: Right. Right.

HAYES: So, why do not people intervene even when -- even when they know it is wrong and over the line?

BAZELON: You know, sometimes, it is easier to side with the dominating bully and it is harder to side with the person who in this case is being accused of breaking the code by going public. And, so I think this is a real test for the NFL.

I mean think about the message that this is sending to high school kids and their coaches about the kinds of team behavior we should be evaluating. If it is Richie Incognito who emerges from this as the one who has all the defenders in the sports world, then what does that say about kids who are being hazed and harassed on their team and who come forward and ask for help.

HAYES: If you are in that locker room, when you play that in your head, do you think you would have said something? You would have done something?

OBEN: 100% because I said from the rookie responsibility to where it led, you say, "Hey, Richie, lay off this kid. He is going to have to help us when he is a second round pick. Let's try something else."

HAYES: Have you ever done that, actually? Have you been in those situations?

OBEN: 100%. And, I have been in both sides of it. I have been in there when they are taping rookies, and a guy stripped down to his jock strap, and they are icy -- I mean all these stuff -- all right, guys, that is enough, guys. That is enough. And, that is why people said, "Oh, this would not happen in the Steelers' locker room. The Giants or Patriots or teams have sustained, leadership sustained. A long head coach. This would happen in a Miami, Dolphins where they are trying to reestablish their identity.

HAYES: Emily Bazelon from Slate Mike Pesca for NPR and former NFL player, Roman Oben. I really wish we had an hour to talk about this. May be we will have you all back, really. Thank you so much. That is "All In" for this evening. The "Rachel Maddow" Show starts right now. Good evening, Rachel.

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Classification

ALL IN WITH CHRIS HAYES for November 8, 2013

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Attachment C

Plans to redistrict Pasadena City Council

Copyright 2013: Houston Chronicle | August 15, 2013 | Updated: August 15, 2013 10:29pm

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After former House Majority Leader Tom DeLay's fall from grace, we thought that Texas politicians would know better than pursue mid-decade redistricting. Not so in Pasadena, where Mayor Johnny Isbell is trying to change Pasadena's city council districts.

Isbell proposed last month to replace two of Pasadena's single-member districts with two at-large seats. The Bond/Charter Review Committee recommended against moving forward with the changes, at least for the upcoming election. But the proposal alone is distressing enough. Historically, replacing districts with at-large seats has been used to discriminatory ends, and such moves are often blocked by the Department of Justice. Only a few months ago, that would have been the case here. Not anymore. For decades, the Voting Rights Act has been a useful speed bump in Texas. Due to our history of discrimination, any alteration to voting laws or processes had to be approved by the Department of Justice. When the Supreme Court struck down the part of the VRA that based preclearance requirements on past discrimination, it busted open a hole in that wall, and Texas politicians have wasted no time to climb through.

This newfound lack of federal oversight allows local politicians to implement maps that threaten to discriminate against minority voters. The current individual districts in Pasadena allow large, compact and politically cohesive minority populations to elect the representatives of their choice. Replacing these districts with at-large seats could dilute minority voting power, submerging the voting-bloc in a sea of majority voters.

As our Founding Fathers wrote in the Federalist Papers, our republic cannot function if the full spectrum of our nation's diverse interests do not have representation in government. Decades of discrimination kept vast segments of society away from the table, and only now do we start to see representation rising to the ideals our nation was founded upon. That progress is brought to a halt when cities such as Pasadena make it more difficult for a growing Hispanic population to take part in the democratic process.

Even with the removal of direct barriers to voter registration, historic discrimination in education, housing, employment and health services hinders minority ability to participate effectively in the political process and elect representatives of their choice. Pasadena's city government makes this point painfully clear - Hispanics comprise a majority of the voting-age population, and a majority of a voting-age population in six of the eight city council districts, but have yet to turn that into electoral success.

Anyone who cares about functioning government should be troubled by such a disconnect between population and representation.

Attachment D

NewsRoom

8/27/13 Hous. Chron. B1
2013 WLNR 21307877

Houston Chronicle
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August 27, 2013

Section: B

Suit blasts Galveston judge plan as biased County commissioners are trying to cut number of justice of peace courts

Harvey Rice

GALVESTON - A Galveston County plan slashing the number of justice-of-the-peace districts from eight to four intentionally discriminates against minority voters and should be blocked, according to a federal lawsuit filed Monday.

The lawsuit comes exactly one week after Galveston County commissioners approved a redistricting plan for justices of the peace similar to one rejected last year by the U.S. Justice Department. The department opposed the plan because it reduced the number of districts with black and Hispanic majorities from two to one, as does the one adopted last week.

Galveston County was the first Houston-area government to take advantage of the June 25 U.S. Supreme Court decision to change an election law that otherwise might have been blocked by the Justice Department. The decision in *Shelby County v. Holder* effectively ended a requirement that Texas governments receive Justice Department approval before making any changes affecting voting. Since then Pasadena has asked voters to approve a redistricting plan that previously was blocked by the Justice Department, and the city of Galveston is considering doing so.

By cutting the number of justice of the peace districts in half, Galveston commissioners reduced the number of judges from nine to four. Although the county has eight districts, there are nine justices of the peace because two are elected from a single precinct, an unusual arrangement arrived at under a 1992 consent judgment in a discrimination lawsuit.

'They did it anyway'

Attorney Joe Nixon, whose firm was hired by the county to redraw the justice-of-the-peace districts, said the plan is in compliance with the 1965 Voting Rights Act. "It's hard to say there was race involved when of the five seats lost one was a minority and four were non-minorities," Nixon said. He said the proportion of minority districts is the same as in the plan the Justice Department approved for commissioner's districts.

Attorney Chad Dunn, who filed the lawsuit, said the new plan is both intentionally discriminatory and has a discriminatory effect. "The county was already told by the Department of Justice that this plan was discriminatory," Dunn said. "The county knew the plan was discriminatory, and they did it anyway."

Seeking injunction

Suit blasts Galveston judge plan as biased County..., 2013 WLNR 21307877

Commissioners said the number of districts needed to be reduced to improve efficiency and save money. They argued that the change would save \$1 million annually, noting that two of the existing justices of the peace accounted for only 2 percent of the county caseload.

The lawsuit by two black justices of the peace, two black constables, a Hispanic constable and a black Galveston County resident asks the court for an injunction halting the use of the new districts in November elections.

The lawsuit also asks the court to declare that the new plan dilutes the voting strength of minority voters in violation of the Voting Rights Act and it amounts to unconstitutional gerrymandering. It also asks the court to reinstate the requirement for Justice Department approval of changes to election policies.

'Like Pearl Harbor'

The president of the city of Galveston chapter of the National Association for the Advancement of Colored People, David Miller, said he was upset that the lone minority commissioner on the court, Stephen Holmes, who is black, was not consulted about the change and that it was made without public hearings. "That was like Pearl Harbor. That was a sneak attack," Miller said.

The failure to consult Holmes was a reason cited last year by the Justice Department for blocking a plan to redistrict commissioner's districts and is another reason for asking the court to halt the latest redistricting plan, Dunn said.

harvey.rice@chron.com

--- Index References ---

News Subject: (Minority & Ethnic Groups (1M143); Social Issues (1SO05); Government Litigation (1GO18); Judicial Cases & Rulings (1JU36); Legal (1LE33))

Region: (Texas (1TE14); U.S. West Region (1WE46); Americas (1AM92); North America (1NO39); U.S. Southwest Region (1SO89); Hawaii (1HA58); USA (1US73))

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NewsRoom

Attachment E



dallasnews

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Voter ID woes could soar in higher-turnout elections, officials fear

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By BRITTNEY MARTIN
Austin, Texas
bmartin@dallasnews.com
Published: 24 November 2013 10:35 PM
Updated: 24 November 2013 11:37 PM

AUSTIN — Delays at the polls this month due to glitches with voters' identifications could signal a bigger problem to come next year, when many more turn out for state and county elections.

Thousands of voters had to sign affidavits or cast provisional ballots on Nov. 5 — the first statewide election held under the state's new voter identification law — because their name on the voter rolls did not exactly match the name on their photo ID.

It took most only a short time, but election officials are concerned that a few minutes per voter to carefully check names and photos against voter registration cards, and then to have voters sign affidavits or fill out provisional paperwork, could snowball into longer waits and more frustration.

A review by *The Dallas Morning News* found that 1,365 provisional ballots were filed in the state's 10 largest counties. In most of them, the number of provisional ballots cast more than doubled from 2011, the last similar election, to 2013.

Officials had no exact count for how many voters had to sign affidavits, but estimates are high. Among those who had to sign affidavits were the leading candidates for governor next year, Republican Greg Abbott and Democrat Wendy Davis.

"If it made any kind of a line in an election with 6 percent [voter] turnout, you can definitely imagine with a 58 percent," said Dallas County elections administrator Toni Pippins-Poole.

In Dallas County, 13,903 people signed affidavits affirming their identity.

The statewide election included nine proposed constitutional amendments, along with various local city and school board offices and propositions. It was the first to take place under Texas' 2011 law requiring that voters present a government-issued photo ID when they vote.

Name-match issues might surface for women who recently married or divorced and changed their identification but not their voter registration. For others, a shortened version of a name might appear on one document, while the full name is on the other.

Signing the affidavit didn't interfere with their ballot counting in the election, and election workers were instructed to give the voter the benefit of the doubt on a name-match issue.

Alicia Pierce, a spokeswoman for the secretary of state's office, which oversees elections, said officials worked to make the affidavit process as simple as possible. To sign the affidavit, voters need to initial after their signature on the poll's sign-in sheet.

Voters are also given the option to update their voter registration information at the polls. Pierce said officials hope that shortcut, along with continued voter education campaigns, will cut down on the number of affidavits and provisional ballots needed next time.

Those without the proper ID or who refused to sign an affidavit could fill out a provisional ballot. Such ballots are not counted unless

the voter presented the proper identification to elections officials within six days.

Harris County, the state's largest, had 704 voters fill out provisional ballots. Of those, 105 were cast because the voter failed to show an acceptable photo ID.

Constitutional-amendment elections tend to draw a much lower turnout than elections for the governor, other statewide officials, countywide officials and members of Congress. Voter ID critics fear that means many voters who didn't cast ballots this year will have trouble in March, when the Republican and Democratic parties hold primaries, or next November's general election.

State Rep. Trey Martinez Fischer, D-San Antonio, said longer lines could deter working voters, voters with children and others from voting.

"Voter ID is a solution looking for a problem," said Martinez Fischer, who has worked to defeat the law. "There's not a voter identification problem in the state of Texas."

The law, which the Legislature enacted in 2011, was delayed by the U.S. Justice Department's objection but took effect earlier this year, when the Supreme Court struck down federal oversight of elections in Texas and other states.

Now, Democrats and civil rights groups, along with the Justice Department, are suing to try to overturn the law, arguing that it has a disproportionate effect on minorities. U.S. District Judge Nelva Gonzales Ramos will hold a trial in September in Corpus Christi.

Republicans say requiring ID is a necessary step to eliminating the possibility of fraud in elections.

A Dallas Morning News analysis in September found that just four cases of voter irregularity pursued by Abbott, the state attorney general, since 2004 could have been prevented by the photo ID requirement.

Follow Brittny Martin on Twitter at @beedotmartin.

Did you see something wrong in this story, or something missing? Let us know.

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01 Comments

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33rd District, Texas



Congress of the United States
House of Representatives
Washington, DC 20515-4333

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May 26, 2021

Office of the Attorney General
950 Pennsylvania Avenue Northwest
Washington, D.C. 20530

Dear Attorney General Garland:

As members of the Texas Congressional Delegation, we write to request information regarding the Department of Justice's efforts to protect the voting rights of Texas citizens, amid partisan efforts by Texas Republicans to pass dangerous legislation that will restrict the right to vote and make it harder for communities of color across Texas to cast their ballots.

During the 2020 election, Texans across our state risked their lives to vote during a deadly pandemic to ensure their voices were heard at the ballot box. The 2020 election has repeatedly been shown to be secure and accurate and in Texas brought the highest voter turnout in nearly 30 years.¹ Despite this success however, Texas leaders are participating in the dangerous trend occurring in numerous states across the country pushing discriminatory Jim Crow-style voter suppression laws on our constituents.

These bills will suppress minority voter turnout and silence the voices of Black, Hispanic, people of color, and those with disabilities into law while making voting harder for the general public in the state of Texas. These bills will roll back local efforts meant to widen access by curbing extended early voting hours, prohibiting drive-thru voting and making it illegal for local election officials to proactively send applications to vote by mail to voters, even if they qualify.²

1 <https://www.chron.com/news/election2020/article/texas-election-2020-voter-turnout-15704851.php>

2 <https://www.texastribune.org/2021/04/01/texas-voting-restrictions-legislature/>

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33rd District, Texas



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In light of this attack on voting rights and our extreme concern about the impact on our constituents, we respectfully request a written response to the following questions by July 1st, 2021:

1. What action, if any, will be taken by the Department of Justice to review/challenge Texas Senate Bill 7 if passed? This bill, amongst other provisions, contains provisions that would forcibly redistribute polling places away from communities of color.³
2. Will the Justice Department commit to setting aside funds to challenge this bill or other discriminatory laws that violate section 2 of the Voting Rights Act?
3. Please describe any other current measures the Justice Department is taking to prevent voter suppression efforts the State of Texas.

Thank you for your prompt attention to this matter. Should you have any questions about this request, please contact Luke Dube at 202-225-9897 or luke.dube@mail.house.gov.

Sincerely,

Marc Veasey
Member of Congress

Colin Allred
Member of Congress

³ <https://www.texastribune.org/2021/05/23/texas-voting-polling-restrictions/>

MARC A. VEASEY
33rd District, Texas



Congress of the United States
House of Representatives
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LLOYD DOGGETT
 35 TH DISTRICT, TEXAS

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 18 TH DISTRICT, TEXAS

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Texas Democratic Delegation
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 9 TH DISTRICT, TEXAS
 CHAIRMAN

May 25, 2021

The Honorable Charles Schumer
 Majority Leader
 United States Senate
 Washington DC, 20510

Re: H.R. 1 - For the People Act and H.R. 4 (116th Congress) - the John Lewis Voting Rights Advancement Act

Dear Majority Leader Schumer:

As members of the Texas delegation, we write in urgent need of your help to preserve every Texan's right to vote. The Texas Legislature is considering a litany of bills that would make voting more difficult, particularly for voters of color and voters with disabilities. Our most marginalized citizens are being disproportionately targeted by these bills, which will have an impact not seen since the pre-civil rights era if enacted.

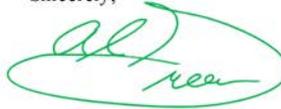
The most notable of these bills are H.B. 6 and S.B. 7. Both are swiftly moving through our state's Republican-dominated legislative chambers, and any opportunity to stop these efforts to limit Texans' ability to vote greatly depends on our ability to pass the For the People Act (H.R. 1) and the John Lewis Voting Rights Advancement Act (H.R. 4 in the 116th Congress).

Since the Supreme Court invalidated key provisions of the Voting Rights Act in 2013, Texas has passed, defended, and implemented a number of election laws that have added barriers for communities to access the ballot box. Most infamous is its strict voter ID law that federal courts ruled was discriminatory against minority voters. The bills that the Texas legislature is prioritizing this session would close polling places in communities of color, foster intimidation of voters with disabilities as well as those who have limited English proficiency, and reduce opportunities for early voting. The testimonies of trusted civil rights organizations – including the NAACP of Texas, MALDEF, and the Texas Civil Rights Project – detailing the many ways in which these bills would make voting less accessible have not deterred legislators from moving the bills forward.

Although civil and voting rights activists across Texas continue to fiercely fight to prevent these Texas bills from becoming law, they require reinforcement from the Federal government. It is imperative that the U.S. Senate immediately take up and move forward the For the People Act and the John Lewis Voting Rights Advancement Act, with appropriate amendments if necessary, to ensure all Texans – and all Americans – can access their right to vote, regardless of their race, ethnicity, gender, income, disability, or party affiliation.

Should you have any questions, please do not hesitate to contact the Office of Congressman Al Green in Washington, D.C., by phone at (202)225-7508 or by emailing Congressman Green's Chief of Staff, Niha Razi at Niha.Razi@mail.house.gov.

Sincerely,



Al Green
Chairman
Texas Democratic Congressional Delegation

Eddie B. Johnson
Dean
Texas Democratic Congressional
Delegation

Shelia Jackson Lee
Member of Congress

Joaquin Castro
Member of Congress

Filemon Vela
Member of Congress

Colin Allred
Member of Congress

Lizzie Fletcher
Member of Congress

Lloyd Doggett
Member of Congress

Henry Cuellar
Member of Congress

Marc Veasey
Member of Congress

Vincente Gonzalez
Member of Congress

Veronica Escobar
Member of Congress

Sylvia Garcia
Member of Congress

Ms. GARCIA. Thank you.

Ms. ROSS. Finally, we have Ms. Jackson Lee.

Ms. JACKSON LEE, you are recognized for five minutes.

Ms. JACKSON LEE. Thank you very much, Madam Chair.

Thank you to the witnesses for their testimony. I was openly wanting to submit five articles into the record and would like to specifically read a quote into the record. One article says, "Racist voter suppression Texas laws keep Latinos from the ballot box." A particular quote, "Texas has a long history. It is a State that has the most pronounced overt, racist voter suppression tactics that we know of."

I can assure you that is extremely accurate inasmuch as that my district is a voting rights district. It has been a voting rights district since Barbara Jordan went to the United States Congress and it has been a voting rights district since I was elected in 1994. But, for the NAACP Legal Defense Fund and counsel, this district would be the target along with others for extinction. Right now, we are in the line of redistricting, and we are likewise the target.

So, I want to ask these questions, and I cannot, Madam Chair, see the time, so I appreciate your help. I would like to ask this to Mr. Greenbaum, and I would like to ask a question as well to Ms. Nelson, if you would.

There is, obviously, a discussion about the practical aspects of voting and that is mail ballots, ballot locations, re-enfranchising felons—those are all very important and I advocate for them strongly. Even there is an idea of a voting or a redistricting commission, which one would also note that it may not be a perfect commission in every state. Tell me how preclearance section 5, Mr. Greenbaum, in particular, indicates that the efficiency of section 5 is the element that gets to stopping what is voting discrimination at the door and how relevant that is in comparison to forcing the section 2 procedures. Also, if you would, the former President routinely undermined election integrity. He did it in the election in 2020. Considering these base attacks on election integrity, equity, can you explain what is at stake if we do not address the Supreme Court's gutting of the Voting Rights Act?

I would like both of you to answer that question and realize that my time is probably already gone.

Madam Chair, I ask to submit five articles into the record. I would appreciate that.

Ms. ROSS. Without objection.

[The information follows.]

MS. JACKSON LEE FOR THE RECORD

SHEILA JACKSON LEE

18TH DISTRICT, TEXAS
COMMITTEES:

JUDICIARY

SUBCOMMITTEES:

Chair

Crime, Terrorism, Homeland Security and
Investigations

Immigration and Citizenship

Constitution, Civil Rights, and Civil Liberties

HOMELAND SECURITY

SUBCOMMITTEES:

Cybersecurity, Infrastructure Protection, and Security
Technologies

Counterterrorism and Intelligence

Emergency Preparedness, Response, & Recovery

BUDGET COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

STEERING AND POLICY COMMITTEE

VICE CHAIR

CONGRESSIONAL PROGRESSIVE
CAUCUS

CHIEF DEPUTY WHIP

DEMOCRATIC CAUCUS

FOUNDER AND CO-CHAIR

CONGRESSIONAL CHILDREN'S
CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

HEARING ON: “OVERSIGHT OF THE VOTING RIGHTS ACT: A CONTINUING RECORD OF DISCRIMINATION”

CISCO WEBEX
THURSDAY, MAY 27, 2021
9:00 A.M. (CENTRAL)



- Thank you, Chairman Cohen and Ranking Member Johnson, for convening this timely and important hearing on “Oversight of the Voting Rights Act: A Continuing Record.”
- Let me welcome our witnesses and thank them for taking time out of their busy schedules to share with us their perspectives and views on the federal government’s efforts to remedy voter discrimination, which continues to persist and evolve in form despite the passage of the Voting Rights Act:

Janai S. Nelson

Associate Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF);

Wendy Weiser

Vice President, Democracy, Brennan Center for Justice;

Jon Greenbaum

Chief Counsel & Senior Deputy Director, Lawyers Committee for Civil Rights Under Law; and

(Minority Witness) T. Russell Nobile, Senior Attorney, Judicial Watch.

- Mr. Chairman, the Supreme Court has described the right to vote as the one right that is preservative of all others.
- However, since the enactment of the Voting Rights Act of 1965 (“VRA”)—considered the most effective civil rights statute ever enacted by Congress—the right to vote has been under constant assault.
- The VRA was enacted at a time when many African Americans in southern states had been denied the right to vote, and when attempting to register, organize or even assist others in their attempt to register to vote meant risking their jobs, homes, and racial violence.
- Prior to the enactment of the VRA, litigation initiated under the Civil Rights Acts of 1957 and 1960 failed to eliminate discrimination in voting because jurisdictions simply shifted to different tactics in order to disenfranchise African Americans.
- Section 5 of the VRA was structured to keep ahead of those tactics by barring the worst offenders from adopting new election laws until they first proved to the Department of Justice or a federal district court in Washington, D.C. that those laws would not discriminate – a provision known as the “preclearance” requirement.
- Section 4 of the VRA established a coverage formula - based in large part on whether a particular jurisdiction had a history of discrimination in voting - to determine which jurisdictions were required to comply with, among other things, the Section 5 preclearance obligations.

- Mr. Chairman, I am here today to remind the members of this committee that the right to vote – that “powerful instrument that can break down the walls of injustice” – faces grave threats.
- The threat stems from the decision issued in June 2013 by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 193 (2013), which invalidated Section 4(b) of the VRA, and paralyzed the application of the VRA’s Section 5 preclearance requirements.
- According to the Supreme Court majority, the reason for striking down Section 4(b) was that “times change.”
- Now, the Court *was* right; *times have changed*.
- But what the Court did not fully appreciate is that the positive changes it cited are due almost entirely to the existence and vigorous enforcement of the Voting Rights Act, and that is why the Voting Rights Act is still needed.
- As Justice Ruth Bader Ginsburg stated in *Shelby County v. Holder*, “[t]hrowing 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.”
- My constituents remember very well the Voter ID law passed in Texas in 2011, which required every registered voter to present a valid government-issued photo ID on the day of polling in order to vote.
- The Justice Department blocked the law in March of 2012, and it was Section 5 that prohibited it from going into effect.
- At least it did until the *Shelby* decision, because on the very same day that *Shelby* was decided officials in Texas announced they would immediately implement the Photo ID law, and other election laws, policies, and practices that could never pass muster under the Section 5 preclearance regime.
- The Texas Photo ID law was challenged in federal court and the U.S. Court of Appeals for the Fifth Circuit upheld the decision of U.S. District Court Judge Nelva Gonzales Ramos that Texas’ strict voter identification

law discriminated against blacks and Hispanics and violated Section 2 of the Voting Rights Act.

- Following this decision, the governor of Texas then signed into law a requirement that voters without an ID must provide a current utility bill, a bank statement, or paycheck, and sign declaration that explained why they lacked one of seven acceptable forms of identification.
- Protecting voting rights and combating voter suppression schemes are two of the critical challenges facing our great democracy.
- Without safeguards to ensure that all citizens have equal access to the polls, more injustices are likely to occur and the voices of millions silenced.
- And this is exactly what we have seen over this past year.
- After voters of color helped flip key states into the Democrats' column during the presidential election, Republicans have channeled their myth that the election was stolen into legislative pushback in state capitols across the United States.
- In Texas and nationally, the Republican campaign to change voting rules in the name of "election integrity" has been largely built on concerns over widespread voter fraud for which there is little to no evidence, and one major effort has been to implement Voter ID laws.
- Those of us who cherish the right to vote justifiably are skeptical of Voter ID laws because we understand how these laws, like poll taxes and literacy tests, can be used to impede or negate the ability of seniors, racial and language minorities, and young people to cast their votes.
- Consider the demographic groups who lack a government issued ID:
 - African Americans: 25%
 - Asian Americans: 20%
 - Hispanic Americans: 19%
 - Young people, aged 18-24: 18%
 - Persons with incomes less than \$35,000: 15%

- And over the past year, we have seen other attempts at abridging or suppressing the right to vote, including:
 - Curtailing or eliminating early voting
 - Ending same-day registration
 - Not counting provisional ballots cast in the wrong precinct on Election Day will not count.
 - Eliminating adolescent pre-registration
 - Shortening poll hours.
- These thinly disguised but intentionally discriminatory attempts seek a return to the days of Jim Crow and a restoration of the badges and vestiges of slavery.
- In April 2021, the Texas Senate passed SB 7, which focuses on increased voting regulations in diverse, urban areas, by setting rules for the distribution of polling places in only the handful of counties with a population of at least 1 million — most of which are either under Democratic control or won by Democrats in recent national and statewide elections.
- Texas Senate Bill 7 targets initiatives championed in Harris County to make it easier for more voters to participate in elections.
- Senate Bill 7 limits extended early voting hours, prohibit drive-thru voting and make it illegal for local election officials to proactively send applications to vote by mail to voters, even if they qualify.
- The legislation is at the forefront of Texas Republicans' crusade to further restrict voting in Texas, which saw the highest turnout in decades in 2020, with Democrats continuing to drive up their vote counts in the state's urban centers and diversifying suburban communities.
- Texas Republicans falsely claim SB 7 “standardizes and clarifies” voting rules so that “every Texan has a fair and equal opportunity to vote, regardless of where they live in the state.”
- SB 7 would make wholesale changes to address isolated — and rare — incidents of fraud at the expense of voting initiatives that were particularly successful in reaching voters of color.

- SB 7 originally limited early voting hours from 7 a.m. to 7 p.m., curtailing the extended hours offered last year in Harris County and other large counties where voting ran until 10 p.m. for several days to accommodate people, like shift workers, for whom regular hours don't work. The bill was rewritten before it reached the Senate floor to allow for voting only between 6 a.m. and 9 p.m.
- SB 7 prohibits the day of 24-hour voting, like the one Harris County offered last November.
- SB 7 would also outlaw the drive-thru voting set up at 10 polling places in the county for the general election.
- **The Harris County election office has estimated that Black and Hispanic voters cast more than half of the votes counted both at drive-thru sites and during extended hours.**
- Texas Republicans disingenuously claim drive-thru and overnight voting prevents poll watchers' oversight, characterizing them as the "eyes and ears of the public," when they are in fact not public watchdogs but instead inherently partisan figures, appointed by candidates and political parties to serve at polling places.
- And poll watchers did have access to observe drive-thru and 24-hour voting last year.
- SB 7 broadens poll watchers' access at polling places, even giving them power to video record voters receiving assistance in filling out their ballots if the poll watcher "reasonably believes" the help is unlawful, which raised the real likelihood of intimidation of voters who speak languages other than English, as well as voters with intellectual or developmental disabilities who may require assistance.
- Despicably, SB 7 as originally drafted would have required voters citing a disability to provide proof of their condition or illness, including written documentation from the Social Security Administration or a doctor's note, to qualify for the latter.

- SB 7 is now in a conference committee made up by members from both chambers who are expected to work out the differences in each chamber's version of the bill — both of which remain opposed by civil rights groups with long histories of fighting back voting laws that could harm voters of color.
- Additionally, in March 2021, the Republican Georgia Governor signed SB202, which changes the state's election code to prevent a repeat of what occurred in November 2020 and January 2021, when the state voted Democratic for president for the first time in 28 years and for the U.S. Senate for the first time since 2000 by intentionally erecting barriers designed to make burden the rights of African Americans, Latinx, other persons of color, young persons, and seniors and the disable to exercise the most precious and fundamental of all rights, the right to vote.
- This new rebel Georgia election law would require Georgia voters to provide their driver's license or state ID number, or a photocopy of another accepted identification if the requesting an absentee ballot.
- The law provides that secure ballot drop boxes can only be placed inside advance voting locations and only accessible when those locations are open, which means voters could not use them during the three days preceding an election or on Election Day -- the period when returning an absentee ballot by mail is most risky since it must arrive by 7 p.m. on Election Day to count.
- Under the new Georgia law, counties would no longer have the ability to stop counting ballots until they are finished and accelerates the deadline by four days by which counties must complete certification, a change that will most impact the large, metro counties that typically certify on or close to the current deadline.
- Perhaps the most odious provision of the bill, and the one that most reveals the invidious discrimination motivating it, is Section 33, which makes it a crime for someone who is not an election worker to give food or beverage to any elector waiting in line to vote – even where they had been waiting in line for up to eight hours, as was the case in last summer in some of Georgia's most Democratic areas.

- None of these actions would have survived the preclearance process of Section 5 of the Voting Rights Act of 1965 that would be in place except for the U.S. Supreme Court's infamous decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), which struck down the coverage formula in Section 4 of the VRA.
- Although attacks on our most sacred of rights, like Texas SB 7 and Georgia SB 202, have increased in fervor over the past year, they are not new.
- For this reason, in each Congress since 2006, I have introduced the Coretta Scott King Mid-Decade Redistricting Prohibition Act, most recently as H.R. 44 in the 116th Congress.
- This bill would ban redistricting at any time other than immediately following a Census.
- The only exception allowed is if a federal court mandates a mid-decade redistricting in order to comply with the Constitution or the Voting Rights Act.
- And I am proud that the Coretta Scott King Mid-Decade Redistricting Prohibition Act has been incorporated in its entirety in Sections 2401 and 2402 of H.R. 1.
- After the Census which occurs every 10 years, states redraw their congressional districts to maintain the district populations' evenness, as well as adjust if any members need to be added or subtracted based on a state's share of the national population.
- However, on rare occasions a state will redistrict a second time within the decade.
- This is almost always done by a party gaining complete control of a state, and creating more favorable conditions for their party to win more of the state's seats in Congress.

- Now, there are some who might claim that such redistricting should be permitted because it is simply part of the rough and tumble of political combat waged by Republicans and Democrats.
- But remember the African proverb: “when the bull elephants fight, the ground get trampled on.”
- And guess what is the ground being ‘trampled on’ when these bull elephants fight like is currently happening Texas with SB 7?
- It is the voting rights of African-Americans, Hispanics, Asian Americans and Pacific Islanders, and other minorities.
- There is simply no good reason for a state with a documented history of discrimination against minorities in voting to redraw its legislative or congressional districts more than once in a decade.
- Texas SB 7, along with the law passed in Georgia and the 361 bills to restrict or curtail voting rights introduced in 47 states, illustrates the critical importance of Senate passage, and the signing by President Biden, of the *John Lewis Voting Rights Advancement Act* and the already House-passed H.R. 1, the “*For The People Act*,” which, among other things, would protect and make it easier to vote in federal elections, end congressional gerrymandering, and increase safeguards against foreign interference.
- The *John Lewis Voting Rights Advancement Act*, introduced as H.R. 4 in the 116th Congress and soon to be reintroduced, responds to current conditions in voting today by restoring the full protections of the original VRA, which was gutted by the Supreme Court in 2013.
- The legislation provides the tools to address these discriminatory practices and seeks to protect all Americans’ right to vote and creates a new coverage formula that applies to all states and hinges on a finding of repeated voting rights violations in the preceding 25 years.
- States that have repeated and persistent violations will be covered for a period of 10 years, but if they establish a clean record moving forward, they can come out of coverage.

- The *John Lewis Voting Rights Advancement Act* establishes a targeted process for reviewing voting changes in jurisdictions nationwide, focused on measures that have historically been used to discriminate against voters, such as voter ID requirements or the reduction of multilingual voting materials.
- The *John Lewis Voting Rights Advancement Act* would also allow a federal court to order states or jurisdictions to be covered for results-based violations, where the effect of a particular voting measure (including voter ID laws) is to lead to racial discrimination in voting and to deny citizens their right to vote and allows the Attorney General authority to request federal observers be present anywhere in the country where there is a serious threat of racial discrimination in voting.
- Finally, the *John Lewis Voting Rights Advancement Act* increases transparency by requiring reasonable public notice for voting changes and revises and tailors the preliminary injunction standard for voting rights actions to recognize that there will be cases where there is a need for immediate preliminary relief.
- H.R. 1, the “*For The People Act*” would usher in a host of changes that protect and revitalize our democracy, would ban several practices that have been used to suppress or minimize the voting power of African Americans, communities of color, and young persons, and would expand the right to vote in the following ways:
 - incorporate the Coretta Scott King Mid-Decade Redistricting Prohibition Act, to ban redistricting at any time other than immediately following a Census.
 - establish uniform rules that every state would have to follow when drawing congressional districts, including enhanced protections to make sure the political effectiveness of communities of color is not diluted;
 - prohibit mid-decade redistricting as Section 2402, by incorporating the “*Coretta Scott King Mid-Decade Redistricting Prohibition Act*,” introduced as H.R. 164 by Congresswoman Sheila Jackson Lee;
 - prohibit knowing and intentional communication of false and misleading information – including about the time, place, or manner of elections, public endorsements, and the rules governing voter eligibility and voter registration – made with the intent of preventing eligible voters from casting ballots and

- establishes federal criminal penalties for deceiving or intimidating voters; and
 - restricts states from purging eligible voters and outlaws voting caging; and
 - prevent states from prohibiting any person from distributing mail-in ballot applications, or from prohibiting election officials from distributing voter registration applications.
- Mr. Chairman, it is the responsibility and sacred duty of all members of Congress who revere democracy to preserve, protect, and expand the precious right to vote of all Americans
- Before concluding there is one other point I would like to stress.
- In his address to the nation before signing the Voting Rights Act of 1965, President Johnson said:

“Presidents and Congresses, laws and lawsuits can open the doors to the polling places and open the doors to the wondrous rewards which await the wise use of the ballot.

“But only the individual Negro, and all others who have been denied the right to vote, can really walk through those doors, and can use that right, and can transform the vote into an instrument of justice and fulfillment.”

- In other words, political power – and the justice, opportunity, inclusion, and fulfillment it provides – comes not from the right to vote *but in the exercise of that right.*
- And that means it is the civic obligation of every citizen to both register and vote in every election, state and local as well as federal.
- Because if we can register and vote, but fail to do so, we are guilty of *voluntary* voter suppression, the most effective method of disenfranchisement ever devised.

- Mr. Chairman, for millions of Americans, the right to vote protected by the Voting Rights Act of 1965 is sacred treasure, earned by the sweat and toil and tears and blood of ordinary Americans who showed the world it was possible to accomplish extraordinary things.
- So today, let us rededicate ourselves to honoring those who won for us this precious right by remaining vigilant and fighting against both the efforts of others to abridge or suppress the right to vote and our own apathy in exercising this sacred right.
- Thank you again for convening this important hearing and I look forward to hearing the testimony of our witnesses.
- Thank you, Mr. Chairman, I yield back my time.

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<https://www.houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php>

Gov. Abbott limits mail ballot drop-off locations, forcing Harris County to close 11 sites

ZACH DESPART OCTOBER 01, 2020

Gov. Greg Abbott on Thursday declared that counties can designate only one location to collect completed mail ballots from voters, forcing Harris County to abandon 11 sites set up for that purpose.

Abbott's proclamation said counties also must allow poll watchers to "observe any activity conducted at the early voting clerk's office" related to the delivery of marked ballots. He said the measure was designed to improve ballot security.

"The state of Texas has a duty to voters to maintain the integrity of our election," Abbott said in a statement. "These enhanced security protocols will ensure greater transparency and will help stop attempts at illegal voting."

Abbott did not cite any examples of voter fraud, which election law experts say is exceedingly rare.

Harris County Clerk Christopher Hollins had set up 12 locations — 11 of them county clerk annex offices — throughout the 1,777-square-mile county to collect mail ballots. They offered residents an alternative to placing their ballots in the mail, amid concerns that the U.S. Postal Service would struggle to deliver ballots on time.

The county now will only be able to accept ballots only at its election headquarters at NRG Arena.

Hollins did not immediately respond to a request for comment. The Texas Democratic Party called the move "blatant voter suppression."

"Republicans are on the verge of losing, so Governor Abbott is trying to adjust the rules at the last minute," Party Chairman Gilberto Hinojosa said in a statement.

State leaders also are attempting to prevent Hollins from sending mail ballot applications to all 2.4 million registered voter. The Supreme Court on Wednesday heard oral arguments in a lawsuit filed by Attorney General Ken Paxton seeking to halt Harris County's plan.

More than 207,000 Harris County residents have requested mail ballots so far, far more than in any previous election. Hundreds have already been returned.

The language of Abbott's proclamation was similar to that used in a lawsuit filed by Houston conservative activist Steve Hotze with the Texas Supreme Court. Hotze argued that Harris County was violating the Texas Election Code by setting up multiple locations to collect mail ballots, accepting mail ballots before in-person voting began and extending the early voting period.

It was Abbott, however, who added an extra week of early voting in an effort to ensure residents could vote safely during the COVID-19 pandemic.

Hotze, a litigious champion of far-right causes, filed a series of lawsuits challenging restrictions Abbott and local leaders issued during the early months of the pandemic.

zach.despart@chron.com

📰 **NBC NEWS** >

<https://www.nbcnews.com/news/latino/racist-voter-suppression-texas-laws-keep-latinos-ballot-box-groups-n1241862>

'Racist voter suppression': Texas laws keep Latinos from the ballot box, groups say

OCTOBER 03, 2020

SAN ANTONIO — The coronavirus pandemic could challenge Latino voter turnout this year, and voting advocates say it just adds to the barriers intentionally enacted to keep Latinos and voters of color from casting their ballots.

“Texas has a long history; it’s the state that has the most pronounced, overt, racist voter suppression tactics that we know of,” said Lydia Camarillo, president of the Southwest Voter Registration Education Project, formed in 1974 when Mexican Americans still were being kept from voting.

Latinos are almost 40 percent of the population and are on track to be the state’s largest population group by next year. Latino turnout has been rising, but those trying to ramp up the bloc’s voting in the state must each year overcome laws and measures that play a role in keeping them from voting.

Of more than 15,000 Covid-19 deaths in Texas so far, 56.1 percent are Hispanics and 30.1 percent are whites.

But Texas Republican Gov. Greg Abbott has refused to expand its mail-in voting to accommodate people concerned about being exposed to the virus when they go to the polls.

Abbott did expand early voting by six days, but others in his party are suing to prevent that expansion.

Abbott went further by announcing the shutdown of satellite locations for Texans allowed to vote by mail. He is allowing one drop-off box per county — a move, he said, that would protect the integrity of the elections and stop illegal voting.

The announcement drew immediate criticism and a lawsuit filed by the League of United Latin American Citizens.

The governor's decision will have a big impact in Texas' large urban counties, where Democrats have been winning, including in Harris County, the nation's third most populous county.

Harris County Judge Lina Hidalgo slammed the governor's decision, noting that the county for which she serves as the chief elected official is bigger than the state of Rhode Island. "This isn't security, it's suppression," she said in a tweet.

Harris County is bigger than the state of Rhode Island, and we're supposed to have 1 site? This isn't security, it's suppression. Mail ballot voters shouldn't have to drive 30 miles to drop off their ballot, or rely on a mail system that's facing cutbacks.

If Texas wanted to facilitate broad participation, it would ensure remote and early voting were widely available, along with multiple, convenient and broadly available polling places, said Thomas Saenz, president and general counsel for Mexican American Legal Defense and Educational Fund.

"That is not what Texas is doing," Saenz said. "That's for a reason. Texas authorities know they are suppressing the vote."

Texas' history of disenfranchising voters — from holding whites-only primaries, to barring people from voting based on whether they speak English, to outright intimidation and closing voting locations in minority locations — was so notorious that for years the state had to get Department of Justice approval for any election changes under Section 5 of the Voting Rights Act.

There's no question that Latinos' youth and the population's disparities in education and income are factors in voter turnout. Younger people are less likely to show up at the polls. Voters who do, often are more educated and have higher incomes, Saenz said.

But Texas Latinos' voter registration is lower than that of Hispanics in other parts of the country, so demography and disparities aren't the only explanation. "Given Texas' history, you have to believe some of that is obviously linked to race," he said.

In 2013, the Supreme Court gutted the Voting Rights Act, and within hours, Texas imposed a strict Voter ID law. As an example, it allows only certain

forms of ID — such as a gun permit — but not a college identification card, which is what many young voters have. An early version of the law was found to deliberately discriminate against Blacks and Latinos.

“For 144 years, Texas has perfected the science of suppressing voters at the ballot box,” Beto O’Rourke, a former presidential candidate and former congressman, said in a recent virtual Democratic event. Its preference for gun permits over college IDs is part of an “infrastructure of suppression,” he said.

Without the federal government oversight, the state became a national leader in reductions of polling sites, according to a study by The Leadership Conference Education Fund.

Last year, the state tried to purge its rolls of tens of thousands of voters based on flawed Texas drivers’ license data. The attempted purging followed a year in which Latinos had doubled their turnout at the polls. Although the state was stopped, the tactic may have terrorized some voters fearful of doing the wrong thing into skipping voting, Saenz said.

After Monday, Oct. 5, it will be too late to register to vote in Texas.

The state has one of the earliest deadlines for registering — while it also spurns online registration. Federal law requires states to allow people to register to vote when they apply for a driver’s license. The state finally began to comply this week, after a federal judge ordered it. Texas now allows people who update or renew their licenses to also get on the voter rolls. Otherwise, people must fill in an application, print out the completed form and mail it in or drop it off.

Texas has also made it tough to register voters, requiring people to be deputized by taking training and passing an exam. The person registering must be able to vote in Texas and can only register voters in the county where they are deputized, for a limited time. There are 254 counties in Texas.

In 2017, the Republican-led Texas Legislature ended straight ticket voting — when a person votes for all candidates of a single party by checking or clicking on one box.

It came as more Democrats were straight ticket voting. Democrats won a reinstatement of straight ticket voting, but a three-judge panel of the 5th

Circuit Court of Appeals overturned the decision this week after Republicans appealed.

Jason Villalba, a former Republican state representative who formed the Texas Hispanic Policy Foundation, said his Republican colleagues in the Legislature never intentionally diminished or limited the ability of Latinos to vote.

But there was a big concern among Republicans that Democrats would “game the system” and “harvest votes” among constituencies that do not historically vote, are economically disadvantaged and are people of color, said Villalba, now an independent voter. He acknowledged “exceptional ignorance to our community” exists.

The nonprofit Move Texas has been working since January to register voters, especially young people of color. It has mailed out 400,000 applications with stamped return envelopes.

The pandemic stalled the work that involved going to campuses and other places with clipboards and registering people — and underscored how difficult it is to register in Texas, said Drew Galloway, Move Texas executive director.

"Voter suppression is alive and well and we've known this since Move Texas started in 2013. We really had to help young people overcome these barriers set up by the state," Galloway said. He said 41 percent of the state is under age 30 and 63 percent of that group are young people of color, mostly Latino.

Despite the tougher registration rules, Latino voting has grown simply because of numbers. Albert Morales, senior political director for Latino Decisions polling firm, said 730,000 Latino Texans have turned 18 since Hillary Clinton ran in 2016.

Camarillo's Southwest Voter Registration Education Project had planned to visit high school classrooms to register at least 140,000 students who will be old enough to vote by Election Day.

Texas law requires schools to offer registration twice in a school year, but Camarillo said compliance is not enforced. The closure of schools by the pandemic hurt Camarillo's plans and now the group is relying on principals encouraging students to reach out to her group.

The state's secretary of state announced last month that 16,617,436 million Texans registered to vote, a record.

There are 5.6 million Latinos eligible to vote this year. But as of 2018, only 2.7 million were registered to vote and 1.9 million voted that November in the midterms.

Camarillo said she expects 2 to 2.1 million Latinos still will make it to the polls despite the obstacles.

Mary Moreno is the spokeswoman for the Texas Organizing Project, which is working to turn out 800,000 Latinos in November. The governor takes pride in Texas being first in everything, but not when it comes to voter participation, she said. "Everything he's done has effectively suppressed the vote," she said. Abbott's latest limits on ballot drop-off locations "is the latest example."

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<https://www.texastribune.org/2020/09/15/harris-county-mail-in-ballot-applications/>

Analysis: It's harder to vote in Texas than in any other state

ROSS RAMSEY

OCTOBER 19, 2020

How hard is it to register to vote and then to vote in Texas?

It's harder than in 49 other states, according to a "cost-of-voting index" compiled by political scientists at Northern Illinois University, Jacksonville University and Wuhan University in China.

Obviously, it's not impossible to vote in Texas; more than 10% of the state's registered voters — about 2 million citizens — had already cast their ballots, either in person or by mail, by Thursday night. That's certainly a sign of enthusiasm, and could either be a signal of a bigger-than-normal turnout or that a lot of Texas were itching to vote and did so as soon as they could.

But the state has erected obstacles throughout the voting system, and when you compare the comfort and convenience of voting in Texas with other states, Texas ends up at the bottom of the list.

Voting and election law is a persistent struggle in Texas between those who want to knock down impediments to voting and those who think more safeguards are needed to secure the process and the results — though the evidence for this is both anecdotal and thin.

That particular battlefield ranges from voter ID to current legal battles over how many drop-offs each county is allowed to provide for voters who would rather not put their absentee ballots in the mail, who's eligible to vote by mail and whether counties with curbside voting are making things too simple.

Here's how the researchers wrote up our state's position on the list: "Texas maintains an in-person voter registration deadline 30 days prior to Election Day, has reduced the number of polling stations in some parts of the state by more than 50% and has the most restrictive pre-registration law in the country, according to the analysis."

States at the top of the list — where it's easiest to vote — have voting conveniences that aren't available here, like online voter registration, automatic voter registration and allowing voters to register as late as Election Day. (The Texas deadline was Oct. 5.)

Some have universal mail-in voting, which the study considers a hallmark of a state where it's easy to vote. In Texas, voting by mail is only available to people ages 65 and older, to eligible voters confined to jail, for voters who are out of their county of residence during voting, and for voters who cite a disability that prevents them from safely going to the polls.

And higher-rated states require only a signature for in-person voting, instead of tight voter photo identification laws like the one in Texas.

Texas has one of the lowest voter turnout rates in the country, turning out 45.6% of its population of eligible voters in 2018, compared with a national average of 49.4%, according to the United States Election Project. In the last presidential race, in 2016, turnout was 51.4% of the state's eligible voters, a number that includes adults eligible to vote whether they registered or not. The national average was 60.1%.

The cost-of-voting index is an update of a study that includes indexes for elections back to 1996. In 2016, Texas was fifth from the bottom of the list, in company with Indiana, Tennessee, Virginia and Mississippi. This time around, Texas is behind every other state, in the bottom of the barrel with Georgia, Missouri, Mississippi and Tennessee.

Maybe the low turnout in Texas is related to the state's restrictive voting laws. Maybe eligible adults in Texas are less interested in voting, and the state's voting laws are just an excuse for the low civic engagement.

There's a way to find out, if state lawmakers' goal is to get more Texans voting. If they wanted more people to vote, they'd make it easier.

THE TEXAS TRIBUNE

<https://www.texastribune.org/2020/09/15/harris-county-mail-in-ballot-applications/>

Texas Supreme Court again blocks Harris County from sending mail-in ballot applications to all voters**ALEXA URA**

SEPTEMBER 15, 2020

The Texas Supreme Court has once again blocked Harris County from sending mail-in ballot applications to all its 2.4 million registered voters ahead of the November election.

In a Tuesday order, the Supreme Court granted the Texas attorney general's request to halt the county's effort just before a separate order blocking the mailing was set to expire. The all-Republican court told Harris County to hold off on sending any unsolicited applications for mail-in ballots "until further order" and while the case makes its way through the appeals process.

A state district judge had ruled Friday that the county could move forward with its plan, shooting down the state's claim that Harris County Clerk Chris Hollins was acting outside of his authority by sending out the applications. Texas Attorney General Ken Paxton, whose office claimed in court that the mailing of the applications would confuse voters, quickly appealed that ruling to the state's 14th Court of Appeals. Paxton kicked the request up to the Supreme Court after the appeals court declined his request to block the lower court's ruling and instead set an expedited schedule to consider the appeal.

The Supreme Court had previously blocked the county from mailing out ballots in line with an agreement between Harris County and the AG's office to pause the mailings until five days after a ruling from the state district judge. That agreement was set to expire Thursday.

In a statement Tuesday, Paxton celebrated the Supreme Court's order and reiterated his claim that Hollins "knowingly chose to violate Texas election law and undermine election security" — an argument the state district court rejected. On Twitter, Hollins said his was ready to send the applications and accompanying guidance on who qualifies to vote by mail "at the conclusion of this baseless litigation."

Harris County has faced intense criticism from Texas Republicans since announcing it would mail out the applications to every registered voter, going well beyond its initiative from the July primary runoffs when it sent applications to every registered voter in the county who is 65 and older. Under Texas law, those voters automatically qualify for a ballot they can fill out at home and mail-in or drop off at their county elections office.

The legal squabble over who can receive an application for mail-in ballot is part of a broader clash over mail-in voting in Texas during the coronavirus pandemic. The state's Republican leadership has fought off any form of expansion. Texas also allows voters to cast ballots by mail if they will be out of the county during the election period, confined in jail but otherwise eligible, or if they cite a disability, which the state defines as a physical condition or illness that makes a trip to the polls a risky endeavor.

While lack of immunity to the new coronavirus alone doesn't qualify a voter for a mail-in ballot based on disability, a voter can consider it along with their medical history to decide if they meet the requirement.

Despite the Supreme Court's block on sending out any unsolicited application, Harris County has already proactively sent applications for mail-in ballots to voters who are 65 and older — an initiative several other counties are now taking on ahead of the November general election.

The order in the Harris County case was the second issued by the Supreme Court on Tuesday that affects mail-in voting procedures. The state's top civil court also ordered the state to add three Green Party candidates back to the ballot after a judge previously ruled them ineligible. That decision will lead to a scramble at county elections offices, which must update their overseas and military ballots by the Saturday mailing deadline and send new corrected ballots to replace any that had already been mailed.

TM TEXAS MONTHLY >

<https://www.texasmonthly.com/news-politics/abbott-ballot-drop-offs-vote-suppression>

Greg Abbott's Voter Suppression Methods Have Become More Subtle—But They're Still Transparent

CHRISTOPHER HOOKS

OCTOBER 03, 2020

As lawsuits by Democrats proceed against Governor Greg Abbott's order limiting Texas counties to one mail-in ballot collection location, the state's lawyers will rely on a plausible-sounding justification for the action: to improve the "security" of the mail-in ballot process. The state will also surely argue that the order is limited in scope. Most of Texas's 254 counties already had only one drop-off location. The rule affects mainly a few populous counties, including Harris, home of Houston, which had set up twelve collection spots for its 2.4 million registered voters. The order doesn't technically keep anyone from voting—voters are, of course, still ostensibly able to mail in their ballots.

But put Abbott's order in the proper context—a high-stakes battle for control of the Texas House that might be decided by razor-thin margins in races in large counties such as Harris and Bexar and Dallas, along with other contested races for the U.S. House—and it becomes transparent. Abbott's long history of imaginative acts of voter suppression means he doesn't deserve the benefit of the doubt. And the governor's order raises the question of what else he might do to limit the vote by the time in-person early voting is scheduled to start on October 13.

Voter suppression comes in many flavors but varies in heavy-handedness. On one side of the spectrum, you have the government using the threat of force or punishment to bar individuals from exercising their rights. Many Americans can identify this kind of behavior as wrong. Call that the "steel-toe boot" school of voter suppression.

Texas still sees plenty of the boot. One of its most vigorous practitioners over the past two decades was Attorney General Greg Abbott, before he became governor, who was happy to give a firm kick in the kidneys to a wide range of

folks who set about registering new voters and helping them cast ballots. In 2004, Gloria Meeks, a 69-year-old Black woman from Fort Worth, helped a housebound 79-year-old neighbor fill out a mail-in ballot. Because Meeks didn't sign the envelope properly, her home was staked out in 2006 by Abbott's investigators, whom she repeatedly saw peeping through her window at bath time. During the course of Abbott's investigation, she had a stroke, which her friends blamed partly on the stress. She was never convicted of anything.

Around the time of the Meeks investigation, a PowerPoint presentation Abbott's office used to brief officeholders on "electoral fraud" included a picture of Black voters in line under the heading "Poll Place Violations." Fraud detectives, the slideshow said, should look out for "unique stamps" accompanying mail-in ballots. The example given was a 2004 stamp with the words "Test Early for Sickle Cell" over a picture of a Black woman kissing an infant. (Sickle cell anemia is disproportionately common among those of African ancestry.)

A half decade later, in 2010, Abbott's office sent armed agents to confiscate the equipment and paperwork of a voter registration drive in Harris County called Houston Votes, then the target of a local tea party group, which accused Houston Votes of perpetuating voter fraud. Houston Votes suffocated, unable to raise funds while under investigation. Though Abbott's office quietly concluded that the group had broken no rules, it destroyed everything it had confiscated, in an episode that would not have been out of place in Belarus.

On the other side of the spectrum, you have the "calculator" school of voter suppression, whose adoptees don't try to bar voters from casting ballots with the threat of force but rather change rules and tweak the way elections are conducted in ways that give themselves advantages that accumulate. Some of these rule changes are large and easily recognizable, as when elected officials draw districts in ways that favor their party. But many tweaks are small, and their impact can be hard to define or easy to dismiss, not least because they come with the perfectly sensible-sounding justification of promoting election security. (Never mind that Republicans who raise alarms about such security, often by hyping simple clerical errors, have never presented evidence, including in court cases, that it's a significant problem.)

The key to this strategy is that the constituencies of the Democratic party—the young, the working class, racial minorities—are, generally speaking, harder to register and to turn out to vote. So rules that make it just a little harder and more inconvenient to cast a ballot can usually be counted on to benefit the Republican party. The “calculator” vote suppressors enact laws such as voter ID and changes to the election code, which make lines longer at polling places. They might, say, gum up the postal system so that fewer mail-in ballots are delivered in time to be counted—as President Trump has stated he is working to do, or tighten rules that allow elections clerks to throw out more mail-in ballots from those who didn’t follow an arcane and unnecessary set of rules, as in the case of Gloria Meeks.

Changes like these might not make the difference in a high-profile statewide race, but they have potentially enormous impacts on smaller ones, including elections for the state House, which can be decided by dozens of votes. It’s the state House that Republican leaders like Abbott care the most about right now. They’re laser-focused on it. In 2018 Democrats won 67 seats in the Lege’s lower body. They need 9 more to win the majority this year, giving them some influence over the redistricting process and the drawing of legislative districts.

Democrats may well win a majority with 76 or 77 seats, which means there’s a huge incentive to pull just 1 or 2 seats over into the R column. In 2018 fourteen state House races were decided by margins of fewer than 5 percentage points. Two state House races in Harris County were decided by a margin of 0.2 percent or less: Republican Dwayne Bohac won reelection by 72 votes, and Democrat Gina Calanni beat a Republican incumbent by 97 votes.

Calanni lives in Katy, which is on the western border of Harris County. Because of Abbott’s order, there is now only one ballot collection place in the county, at NRG Stadium, which is a 45-minute drive from parts of Katy in clear traffic—of course a rare sight in Houston. That means some of Calanni’s constituents now face a drive of one and a half hours to turn in a mail-in ballot to the proper officials if they don’t want to give it to a postal service that has been intentionally slowed down by political appointees favorable to the president.

It’s easy to imagine a couple dozen Harris County residents putting off the drive until it’s too late. Maybe they drop their ballot in the mail instead, and

maybe they miss that deadline too. It's likewise easy to imagine that the margin of Calanni's reelection, or loss, is a few dozen votes. And when you add the impact of Abbott's order to the many other small ways state leaders have fought to make voting harder than it needs to be in this state—and add to *that* the impact of the general sense of confusion and demoralization that many Texans feel about the integrity of the Democratic process—you have considerably more than a few dozen votes.

Republicans have done this kind of “calculator” vote suppression for many years, including those in which they were far ahead in the polls and didn't need the help at all. But this year, the incentive to peel away Democratic margins a few dozen votes at a time is much higher. And with weeks left before the election, it's safe to assume there are more changes coming.

<https://outline.com/JhpXMN>

Ms. JACKSON LEE. Thank you.

So, both of you would ask that question quickly, please.

Mr. GREENBAUM. Sure. Congresswoman Jackson Lee, section 5 is effective and efficient because, number one, it stopped voting rights discrimination before discriminatory changes could be put into effect. It followed a pretty straightforward retrogression test; whether all our voters of color were worse off under the change than they were before. In comparison to that litigation, under section 2 or under causes of action is time-consuming and expensive. Going back to the Texas ID case as an example that it took us three and a half years to successfully litigate and during that time there were a lot of elections that took place under the discriminatory law, and then at the end of it we recovered over six million dollars in fees that is now on appeal. The State as of 2016 spent three and a half million on its own not to mention the expense of the Department of Justice.

Democracy—and really quickly in terms of your second question, I really think democracy is at risk, at serious risk right now, and some of the laws that we are seeing enacted in a number of states we will see what happens in Texas over the next couple days, it is really scary. As I alluded to in my testimony, I think the Georgia law is a great example of that. That suddenly after a number of years of having vote by mail in Georgia, it is after the election in which Black, in particular Black and Asian voters turned out in large numbers in terms of voting by mail and in bigger numbers than in White voters, that suddenly you have these restrictions.

Ms. JACKSON LEE. Thank you.

Can I quickly go to Ms. Nelson, and as you answer the question, remember preclearance for drawn a Congressional District, a preclearance as opposed to a section 2 action, why the John Robert Lewis bill is so crucial in restoring section 5.

Ms. Nelson?

Ms. ROSS. Again, very briefly. We have run out of time, so quickly.

Ms. JACKSON LEE. Thank you, Madam. I cannot see the clock where I am. Thank you so very much.

Ms. ROSS. No, that is okay. Okay.

Ms. JACKSON LEE. Thank you.

Ms. NELSON. Yes, we have talked about the durability of some of these discriminatory laws and decisions and how elections take place in that timeframe that we are challenging and litigating them, but I think in the redistricting context it is even more acute. You have lines drawn that often last the better part of the decade of redistricting that entrench power in a way that is not easily undone.

If we don't have a gatekeeping mechanism, if we don't have the ability to examine these redistricting plans before they go into effect, it will certainly wreak havoc on our democracy and severely undermine the legitimacy of it and of those elected officials who ultimately are produced based on discriminatory redistricting plans. Thank you.

Ms. JACKSON LEE. Thank you so very much.

Madam Chair, thank you so very much. I yield back.

Ms. ROSS. Thank you.

Is Ms. Bush here? I don't know. I haven't seen her. If she is not, then this concludes today's hearing.

Ms. BUSH. I am here.

Ms. ROSS. Oh, are you here, Ms. Bush? Yes. Okay, you are recognized for five minutes.

Ms. BUSH. All right, thank you very much. St. Louis and I thank you, Madam Chair, for convening this hearing.

To all my colleagues here today and elsewhere, we are running out of time. Republicans have been scrambling to suppress votes and they are doing so with urgency. As of March, more than 250 laws have been introduced in at least 45 states aimed in doing one thing which we all know, silencing the voices of Black and brown and indigenous voters. From Georgia court challenges to the 2020 elections to the ongoing election audits in Arizona, Michigan, and New Hampshire, the Republican Party has planted their flag and it is squarely in the camp of undermining our right to vote. This is not new and it will not change if Congress neglects our duty to protect the rights of all people, not just White people, to vote.

I want to highlight three things today. First, which I know has been stated, the preclearance formula, a key element of the Voting Rights Act which required many states to get federal approval to change their voting laws is not enough. In fact, several states like my own State of Missouri have not previously been covered by the preclearance formula. Our Republican-controlled State government has made clear in recent years that it is committed to surgically suppressing the votes of nonwhite Missourians including in predominantly Black communities like St. Louis. Missouri's obstructive voter ID laws have disincentivized thousands of people from even trying to vote.

Second, we cannot solely rely on the protections of section 2 of the VRA which prohibits discriminatory voting laws. Section 2 is reactionary. It can only be used after states implement their racist voting laws instead of protecting those rights on the front end. The *Shelby v. Holder* decision made clear that those section 2 protections are not enough.

Finally, it is precisely because of these debates that H.R. 4, the John Lewis Voting Rights Advancement Act, must be accompanied by H.R. 1, has to be, which addresses many voter protections such as preventing voter purges and long wait times and expanding early voting nationwide. As Ms. Nelson mentioned, we cannot rely on the course to retroactively fix these issues. We have to stop voter suppression before it happens.

For those of in Missouri who were not covered by the preclearance formula and those of us who live in states with a clear pattern of voter suppression, the protections put forward in H.R. 1 are crucial. For these reasons, I call on my colleagues in the Senate to urgently pass this legislation.

So, Ms. Nelson, the record here is extensive, but can you please briefly highlight the most problematic changes to voter laws and practices those states have enacted since Shelby County, including states like Missouri?

Ms. NELSON. There are so many, but I will try to pinpoint the ones that I think are particularly deleterious. Certainly, voter identification laws that are targeted to exclude minority voters and that

are designed by their particular requirements to make it more difficult to vote, registration limitations that not only limit the ability of parties, third parties to help register people, they have a deterrent effect on voter registration drives and get out the vote efforts because people are concerned that they may be violating laws and ultimately prosecuted making voter registration more difficult through needing to produce identification or to request an absentee or mail-in ballot with missed signature requirements and those types of means of making it just so much more challenging to just access the ballot. All of this has been greatly exacerbated by the pandemic where we are putting people at risk if they need to have contact with a third party or go to an administrative office to register or exercise the right to vote.

There are many other ways in which our voting laws are limiting the ability to turn out and vote. We talked about the criminalization of providing sustenance to voters as they wait. We talked about the idea that many early voting places have been cut short, the hours are not consistent across the country and across even State jurisdictions. There are not often the adequate and equal allocation of voting machines and voting apparatus. I could go on and on, there are so many ways in which our democracy is not equitably administered.

Ms. BUSH. Yes, I need—Thank you. I just have one more quick question. Well, I am thinking my time is up, but thank you.

This concludes today's hearing. I want to thank all our witnesses for appearing. Without objection, all Members will have five legislative days to submit additional written questions—so, Ms. Bush, you can submit your last question—for the witnesses or additional materials for the record. With that, the hearing is adjourned.

[Whereupon, at 11:38 a.m., the Subcommittee was adjourned.]

APPENDIX

Materials submitted by Jon M. Greenbaum, Chief Counsel and Senior Deputy Director, Lawyers' Committee for Civil Rights Under Law, National Commission for Voting Rights, submitted by Steve Cohen, a Member of Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Tennessee available at <https://docs.house.gov/meetings/JU/JU10/20210527/112700/HMTG-117-JU10-20210527-SD010.pdf>.

Materials submitted by Wendy R. Weiser, Vice President, Democracy, Brennan Center for Justice, , submitted by Steve Cohen, a Member of Subcommittee on the Constitution, Civil Rights, and Civil Liberties from the State of Tennessee available at <https://docs.house.gov/meetings/JU/JU10/20210527/112700/HMTG-117-JU10-20210527-SD011.pdf>.

